



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁL

Case Summary

February 2013

Summary of the trial process at the Dili District Court January 2013

On 16 January 2013 all of the courts recommenced their operations after a judicial recess of one month. This summary describes hearings that took place at the Dili District Court.

During January 2013 JSMP observed hearings related to 19 cases. These cases comprised 16 criminal cases and 3 civil cases.

These criminal cases comprised 10 cases of ordinary maltreatment, 1 case of serious maltreatment, 1 case of rape, 1 case of attempted rape, 1 case of serious maltreatment of a spouse, 1 case of aggravated property damage and 1 case of aggravated theft. There were also 3 civil cases, comprising 2 cases involving land disputes and 1 case of breach of contract.

In several of these cases a final decision was issued, and other trials were delayed for a range of reasons. Several trials were adjourned because defendants, victims and witnesses did not respond to court summons, one case was adjourned because the court did not follow the schedule for court hearings, and one case was adjourned because the judge was unable to appear due to an illness.

The following information provides a summary of cases tried:

1. Crime of simple offence against physical integrity – Case No. 369/C.Ord/2012/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Edite Palmira
Public Prosecutor:	: Vicente Brites
Public Defenders:	: Joãozito Cardoso, and Sergio Lobo (trainee lawyer)
Conclusion:	: Case closed

This matter was tried on 16 January 2013. The public prosecutor alleged that the defendant committed the crime of a simple offence against physical integrity by punching and kicking the victim. This case allegedly occurred on 15 December 2011 in Becora, Dili.

During the trial, the victim Luis Mendes and the family of the deceased Avelino Pereira withdraw their complaint. Therefore, pursuant to Article 145 (2) of the Penal Code, the court decided to close this case.

2. Land Dispute - Case No. 134/Civil/2010/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Jacinta Correia
Lawyer for the plaintiff	: Pedro Aparicio (private lawyer)
Lawyer for the respondent	: José Gutteres (private lawyer)
Conclusion	: Trial adjourned

On 16 January 2013 the Dili District Court adjourned a trial in a case involving a land dispute which was scheduled to be heard on the aforementioned date. The object of the dispute is located in Becora, Dili.

The trial was adjourned because the court failed to adhere to the schedule of hearings that had been prepared in advance and therefore the lawyer decided to go home. The adjournment occurred because the judge presiding over this matter was attending to another duty that could not be interrupted.

The land at the center of this dispute had been occupied by Chin Qoe Lien since Portuguese times and then in 2005 the land was sold to Fernando Silva. However, a third party identified as Lay I Fa claimed that the land in dispute belonged to him.

The trial was scheduled to continue on 8 February 2013 at 3pm.

3. Crime of simple offence against physical integrity – Case No. 654/2011/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Edite Palmira
Public Prosecutor	: Domingos Barreto
Public Defender	: Andre Geroto (International public defender)
Conclusion	: Court issued an admonishment

On 16 January 2013 the Dili District Court tried this case. This case was registered as Case No. 654/C.Ord/2011/TDD. The defendant in this case RMC allegedly committed the crime against the victim ONM on 16 July 2011, in Vilanova Village, Atauro Sub-District, Dili District.

The public prosecutor alleged that on 16 July 2011 at 5pm, the defendant hit the victim twice on the back causing the victim to fall to the ground and the victim suffered pain all over his body. This case occurred

because the victim ordered the defendant to go and look for his helmet that had gone missing near the home of the defendant.

In relation to the aforementioned act, the public prosecutor charged the defendant with Article 145 of the Penal Code, regarding a simple offence against physical integrity.

During the trial the defendant completely rejected the charges of the public prosecutor. The defendant stated that he had not struck the victim, but had merely pushed the victim because the victim appeared to be heavily intoxicated. The victim explained that the defendant had struck him twice in the stomach and twice on his back because the victim had ordered the defendant to go and look for his helmet that had gone missing from his motorbike that was near the home of the defendant.

The witness AdJ testified that the defendant had struck him five times in the stomach for the aforementioned reason (he had asked the defendant to go and look for/find his helmet).

In his final recommendations, with reference to the evidence produced during the trial, the public prosecutor requested for the court to hand down a fair sentence in accordance with Article 145 of the Penal Code.

The lawyer for the defendant requested for the court to acquit the defendant from the charges of the public prosecutor due to provocation, because the victim had ordered the defendant to go and look for his missing helmet, even though it was not the responsibility of the defendant. In addition, the victim also entered the home of the defendant without permission.

After hearing the final recommendations of the two parties, the court adjourned the trial until 29 January 2013. Then on 29 January 2013, the court concluded this case by admonishing the defendant.

4. Crime of simple offence against physical integrity – Case No. 407/C.Ord/2012/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Edite Palmira
Public Prosecutor	: José Ximenes
Public Defender	: Manuel Gonçalves (private lawyer)
Conclusion	: Trial adjourned as the hearing did not take place

On 17 January 2013 the Dili District Court adjourned the trial of a case involving the crime of a simple offence against physical integrity because the judge was ill.

The defendant was the first wife and she allegedly committed the crime against the victim who was the second wife. This case occurred on 18 August 2008 at the Taibessi market, Dili.

The court has not yet set a date to continue this trial.

5. Rape – Case No

Dili District Court
Judge Composition : Singel
Judge : Antonino Gonçalves, Duarte Tilman and
Public Prosecutor : Remígia de Fátima da Silva
Public Defender : Marcia Sarmento
Conclusion : Trial adjourned

On 17 January 2013 the Dili District Court once again adjourned a case involving the crime of rape that was registered as Case No. 635/C.Ord/2011/TDD. This case was adjourned because the court changed the date of the hearing without clear justification and did not provide advance warning to the parties.

The court then decided to continue the trial on 25 February 2013 at 9am.

6. Crime of simple offence against physical integrity – Case No. 641/C.Ord/2012/TDD

Dili District Court
Judge Composition : Single
Judges : Edite Palmira
Public Prosecutor : Domingos Barreto
Public Defender : Manuel Exposto
Conclusion : Trial adjourned

On 17 January 2013 the Dili District Court adjourned a trial in a case involving the crime of a simple offence against physical integrity because the judge was ill.

The court has not yet set a date to continue this trial.

7. Attempted Rape – Case No. 699/C.Ord/2012/TDD

Dili District Court
Judge Composition : Single
Judges : António Gomes, Antonino Gonçalves, Edite Palmira
Public prosecutor : Oscar Silva Tavares
Lawyers : Sergio Lobo (trainee lawyer) and Andre G.
Conclusion : Ongoing

On 18 January 2013, the Dili District Court conducted a trial in a case involving attempted rape that was registered as Case No. 699/C.ord/2012/TDD.

JSMP was unable to access information in this case because the trial was closed to the public.

8. Crime of simple offence against physical integrity – Case No. 287/C.Ord/2012/TDD

Dili District Court
Judge Composition : Single

Judge	: Ana Paula Fonseca
Public Prosecutor	: Nelson Carvalho
Public Defender	: Manuel Gonçalves (trainee private lawyer)
Conclusion	: Ongoing

On 21 January 2013 the Dili District Court conducted a trial in case involving the crime of ordinary maltreatment against physical integrity which was registered as Case No. 287/C.Ord/2012/TDD. This case allegedly occurred on 23 June 2011 in Ermera District.

The public prosecutor alleged that on 23 June 2011 that the defendant cut down a bamboo tree near the home of the victim. While the tree was being cut down it fell and injured a buffalo belonging to the victim. The victim asked the defendant to provide medical care to the buffalo and if it did not recover then the defendant could eat the buffalo.

In his indictment the public prosecutor stated that the defendant immediately hit the victim, kicked him 3 times on the side of his body, struck him 4 times on his back and struck him one time on his right cheek causing the victim to fall to the ground. In addition, the wife of the defendant (RdA) also joined in the assault on the victim but the victim managed to run away. As a result of this assault the victim had to receive medical treatment at the Gleno community health clinic.

In the aforementioned trial the judge tried to get the two parties to reach an amicable settlement but was unsuccessful. The victim requested for the two defendants to give him 5 buffaloes, 5 *belak* (traditional ornament of considerable value) and US\$ 1000. However the defendants were only able to give him 1 buffalo, 1 *belak* and US\$ 100. As the two parties could not agree, the court decided to adjourn the trial until 11 February 2013 at 9am. This adjournment was aimed at proving the two parties with an opportunity to resolve their problem.

9. Breach of contract – Case No. 19/Civel/2009/TDD

Dili District Court	
Judge Composition	: Panel
Judges	: Edite Palmira, Paulo Texeira, António do Carmo
Lawyer for the plaintiff	: Olga Barreto Nunes
Lawyer for the respondent	: Manuel Gonçalves (trainee private lawyer)
Conclusion	: Ongoing

On 22 January 2013 the Dili District Court conducted a hearing in a case involving a breach of contract for a financial loan that occurred in 2004. This case involved Julio Pereira as the plaintiff and Fransisco de Jesus as the defendant.

In the agreement signed by the parties, the respondent borrowed US\$ 10,000 belonging to the plaintiff at a rate of interest of 10% (with total interest of US\$ 3000). However the respondent did not pay the interest on the loan and the interest had increased to US\$ 35,000.

The respondent is obliged to pay the interest on the aforementioned loan pursuant to Articles 1299, 1251 and 1250 of the Indonesian Civil Code.

In relation to this process the lawyer for the respondent requested for the court to provide an opportunity to his client to pay the interest on the loan in two stages. Namely, for US\$ 20,000 to be paid in March 2013, and for the remaining US\$ 15,000 to be paid in April 2013. The plaintiff accepted this request.

The court did not set a date for a further hearing because the court is expecting the two parties to enter into an agreement that will be submitted to the court for validation.

10. Crime of maltreatment of a spouse - Case No. 669/C.Ord/2011/TDD

Dili District Court	
Judge Composition	: Panel
Judges	: Jacinta Correia, António Gomes, António do Carmo
Public Prosecutor	: Oscar Silva Tavares
Public Defender	: Laura Lay
Conclusion	: Ongoing

On 22 January 2013 the Dili District Court conducted a hearing in a case involving the crime of maltreatment of a spouse, that was allegedly committed by the defendant FS against the victim MMSB. This case allegedly occurred on 27 August 2010 in Rainain Sub-Village, Comoro Sub-District, Dili District.

The public prosecutor alleged that the defendant suspected the victim of having a relationship with another man. Therefore, the defendant became angry and damaged goods in the home including a door, table and chair. In addition the defendant hit the victim with an electric sander. Prior to this case the defendant allegedly maltreated the victim on numerous occasions.

In relation to the aforementioned act the public prosecutor charged the defendant with Article 145 of the Penal Code regarding maltreatment of a spouse in conjunction with Article 35 (a) of the Law Against Domestic Violence.

In court the victim rejected some of the alleged facts. The victim only confirmed that the defendant had damaged household furniture. In addition the victim could no longer recall the date and year in which the aforementioned incident occurred.

As the facts stated in the indictment did not exactly match the statement of the victim, the court read out the charges once more to help the victim recall her previous statement. That statement included reference to being slapped once and that the defendant had used the electric sander to hit her on the back.

The witnesses TS and Is stated that they did not witness the defendant striking the victim, but they heard from the victim that the defendant had damaged a door, window and table.

In his final recommendations, the public prosecutor requested for the court to acquit the defendant from the charges because the victim had not provided clear testimony about the facts and her statement conflicted with the charges of the public prosecutor.

The lawyer also welcomed the request or recommendation of the public prosecutor.

The trial was adjourned until 17 February 2013 at 2pm for the announcement of the final decision in this case.

11. Land dispute - Case No. 08/Civel/2012/TDD

Dili District Court	
Judge Composition	: Single
Judge	: António Gonçalves
Lawyer for the plaintiff	: Julio P. Cardoso (private lawyer)
Lawyer for the respondent	: Arlindo Dias (private lawyer)
Conclusion	: Settled via an amicable agreement

On 24 January 2013 the Dili District Court conducted a trial in a case involving a dispute over land situated in Becora, Dili that occurred in 2011. The plaintiff Nuno Barreto Ching brought legal proceedings against the respondent Guilhermino Ching who is the brother of the plaintiff.

During the trial the court tried to get the two parties to reach an amicable settlement, but was unsuccessful in this regard. Therefore the plaintiff requested to the court to settle the case by having the parties reach a traditional settlement.

The respondent welcomed this request and the court gave the two parties 15 days to reconcile. The results of this reconciliation or agreement are to be submitted to the court.

12. Aggravated Property Damage - Case No. 155/C.Ord/2011/TDD

Dili District Court.	
Judge Composition	: Panel
Judges	: Edite Palmira, António Gomes, Jose Maria de Araujo.
Public Prosecutor	: Oscar Silva Tavares
Public Defender	: Luis Alves (trainee private lawyer)
Conclusion	: Ongoing

On 24 January 2013 the Dili District Court conducted a hearing in a case of aggravated property damage involving 4 defendants (PBF and 3 others whose identities are unknown). This case allegedly occurred on 5 April 2012 in Farol, Motael Village, Nain-feto Sub-District, Dili District.

The public prosecutor alleged that the defendants threw stones that struck the window of a vehicle being driven by the Dili Police Operations Commander (AM) who was traveling through Farol. The actions of the defendants caused the state to lose \$ 1,750, however the other three defendants have not yet been arrested by the authorities.

During the trial the defendant stated that he was not involved in this case. At that time he was walking near the car and suddenly AM grabbed him and threw him on the ground, he was thrown into the car and a gun was pressed against his forehead.

In his testimony, AM stated that PBF and his three friends were standing next to a kiosk and threw stones at his vehicle. After stoning the car of the victim, the other three ran away but the defendant PBF stayed at the scene so AM was able to arrest the defendant immediately.

In his final recommendations the public prosecutor stated that the defendant was guilty of committing the crime of aggravated property damage as set out in Article 259 of the Penal Code.

Therefore, the public prosecutor requested for the court to sentence the defendant to a prison sentence of 3 years, to be suspended for 4 years. The public prosecutor also requested for the court to order the defendant to pay compensation of US\$. 1,750.

The lawyer requested for the court to decide the matter in the interest of justice. The hearing to read out the court's decision was set for 5 February 2013 at 11.30am.

13. Crime of simple offence against physical integrity – Case No. 526/C.Ord/2011/TDD

Dili District Court

Judge Composition

: Single

Judge

: Jacinta Correia

Public Prosecutor

: Vicente Brites

Public Defender

: Manuel Gonçalves (trainee private lawyer)

Conclusion

: Defendant ordered to pay a fine

On 28 January 2013 the Dili District Court conducted a hearing in a case involving ordinary maltreatment characterized as domestic violence. This case allegedly occurred on 18 February 2011 in Alor Sub-Village, Dili.

The public prosecutor alleged that the defendant maltreated the victim, who is his wife. The indictment stated that the incident occurred because the defendant was unhappy with the victim making a commotion/talking a lot when the defendant came home late from work. As a result of the argument the defendant choked the victim and hit her on her back.

Before the court, the defendant only stated that he had slapped the victim and caused her to suffer a black eye, but he rejected the claim that he had choked the victim, or thrown the victim to the floor or punched the victim in the back.

After hearing testimony from the defendant, the court ended the hearing and adjourned the trial until 29 January 2013 to announce the final decision.

Based on evidence presented during the preliminary hearing, the defendant was proven guilty of committing maltreatment against the victim.

Therefore, the court sentenced the defendant to pay US\$ 37.50, and for this fine to be paid in installments of 50 cents a day for 75 days. The court also issued a suspended sentence in the form of 50 days imprisonment that will be executed if the defendant does not pay the fine imposed against him.

14. Crime of simple offence against physical integrity – Case No. 612/C.Ord/2012/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Jacinta Correia
Public Prosecutor	: Hipólito Santa
Public Defender	: José da Silva
Conclusion	: Case closed

On 28 January 2013 the Dili District Court validated an amicable agreement and closed Case No. 612/C.Ord//2012/TDD. The defendants in this case were Jose Lopes, Silvino Santos, Helio Izo, Epifanio Marcos and Teodorico Soares da Costa. The defendants were accused of committing the crime of maltreatment against the victims Nelson da Costa de Araújo and Maria Antónia (husband and wife).

The public prosecutor alleged that on 13 September 2008 at approximately 11pm the defendants came to the home of the victims and committed affray, which included one defendant pounding on the door of the house while the others threw rocks at the house. The defendants then chased the victims when they tried to escape to the Liquica District Police Station. The defendant Epifanio kicked one of the victims in the knee. The defendant Benigno struck one of the victims in the back and the defendants Helio and Silvino hit one of the victims in the face and the body many times. As a result of this assault the victims had to receive medical treatment at the Liquiça Community Health Clinic.

Before the court the victim stated that the two parties settled this matter amicably on 25 December 2009, and they agreed to have their case closed. The defendants confirmed their actions and promised not to reoffend in the future. Therefore they agreed to close this case and have the court validate their agreement.

15. Crime of simple offence against physical integrity – Case No. 501/C.Ord/2012/TDD

Dili District Court	
Judge Composition	: Single
Judge	: Duarte Tilman
Public Prosecutor	: Domingos Barreto

Public Defender : Cândia Xavier
Conclusion : Trial adjourned because victim did not appear in court.

On 29 January 2013 the Dili District Court adjourned a trial in a case involving the crime of ordinary maltreatment which was registered as Case No. 501/C.Ord/2012/TDD. The trial was adjourned because the victim did not appear in court. This case involved the defendant JA who allegedly committed the crime against the victim whose identity is unknown. This incident allegedly occurred di Ulmera Village, Liquica.

The trial was adjourned until 22 May 2013 at 09.30am.

16. Crime of simple offence against physical integrity – Case No. 546/C.Ord/2012/TDD

Dili District Court
Judge Composition : Single
Judge : Edite Palmira
Public Prosecutor : Domingos Barreto
Public Defender : Manuel Exposto
Conclusion : Trial progressed to announcement of court's decision

On 30 January 2013 the Dili District Court conducted a hearing in a case involving the crime of maltreatment characterized as domestic violence. The defendant in this case JdS allegedly committed the crime against the victim AF. This case allegedly occurred on 3 January 2012 in Liquiça District.

The public prosecutor alleged that the defendant was drunk and argued with the victim. Therefore, the defendant slapped the victim once, pushed the victim into the wall of the house and the victim suffered an injury to her ear.

In relation to the aforementioned act, the public prosecutor charged the defendant with Article 145 of the Penal Code on assault as well as Article 35 of the Law Against Domestic Violence.

Before the court, the defendant stated that he was drunk and he couldn't remember what had happened. The victim stated that the defendant did not slap her, but he had only pushed her into the wall of the house which caused her to suffer an injury to her ear.

In his final recommendations the public prosecutor requested for the court to issue the defendant with a lengthy suspended prison sentence. The lawyer asked the court to admonish the defendant.

The court decided to adjourn the trial until 4 February 2013 at 2.30 pm to read out its decision.

17. Crime of simple offence against physical integrity – Case No. 591/C.Ord/2012/TDD

Judge composition : Single

Judge : Jacinta Correia
Public prosecutor : Vicente Brito
Lawyer : Manuel Exposto
Conclusion : Trial progressed to announcement of court's decision

On 30 January 2013 the Dili District Court conducted a hearing in a case involving ordinary maltreatment characterized as domestic violence. This case was registered as Case No. 591/2012/TDD. This case involved the defendant GA who allegedly maltreated the victim JV who is his wife. This case allegedly occurred on 1 November 2011 in Becora Village, Cristo Rei Sub-District, Dili District.

The public prosecutor alleged that on 1 November 2011 at 10pm the defendant hit the victim once on her right cheek and pushed the victim to the floor and stomped on her head. This incident occurred because the victim did not buy some insect repellent.

In relation to the aforementioned incident, the public prosecutor alleged that the defendant violated Article 145(1) of the Penal Code regarding a simple offence against physical integrity as well as Article 35 (b) of the Law Against Domestic Violence.

During the trial the defendant admitted his actions, and the court heard the testimony of the victim. In his testimony the victim stated that the defendant slapped the victim threw her on the ground and stomped on her head and the victim suffered an injury to her head, however after 4 days they reconciled and they are still together.

In his final recommendations, the public prosecutor requested for the court to issue a fine because the defendant was guilty of committing the crime as alleged by the public prosecutor.

The public defender requested that if the court was going to issue a fine then such a punishment should be proportional to the economic circumstances of the victim.

The trial to announce the decision was set for 1 February 2013 at 5pm.

18. Crime of aggravated theft, Case No. 0114/ C.Ord/2012/TDD

Judge Composition : Panel
Judges : Edite Palmira, Julio Fontes, Antonino Gonçalves
Public Prosecutor : Oscar Silva Tavares
Public Defender : Marcia Sarmento
Conclusion : Case adjourned because the defendant and the witness did not appear in court

On 30 January 2013 the Dili District Court adjourned a trial in a case of aggravated theft because the defendant did not appear in court. Also the witness GNR did not appear in court.

In the following hearing the court decided to summon the defendant via a public notification. However, JSMP obtained information that this case allegedly occurred in 2006 in Aimutin, Dili.

The trial was scheduled to continue on 12 February 2013 at 3pm.

19. Crime of Serious Offence against Physical Integrity, Case No. 0670/ C.Ord/2011/TDD

Judge Composition	: Panel
Judges	: Ana Paula Fonseca, Jacinta Correia, Paulo Texeira
Public Prosecutor	: Nelson Carvalho
Public Defender	: Jaime Leite
Conclusion	: Ongoing

On 31 January 2013 the Dili District Court tried the defendant RSA who was accused of committing the crime of serious maltreatment against the victim LFdJ. This incident allegedly occurred on 5 March 2011 in Ermera.

The public prosecutor alleged that on 5 March 2011, the victim together with his wife and children were heading to their garden to dig up some cassava. The defendant who lived near to the garden became angry and suddenly slashed the victim's hand with her machete, injuring the victim.

Before the court, the defendant stated that she committed this act because the defendant, his wife and children, had yelled at the defendant and said she was a thief.

This case allegedly occurred due to a dispute over land that the defendant and the victim had been using as a plantation. The defendant stated that she had rights to the land because she inherited the land from her husband.

The victim admitted the facts, however the victim had planted the cassava in the plantation, therefore he had the right to dig it up for consumption.

The witnesses IS and EM testified that they saw the defendant use her machete to injure the victim. They believed that the incident occurred because of a land dispute (over a plantation).

The trial was scheduled to continue on 14 February 2013 at 2.30pm.

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