



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

Case Summary

Period: July 2011

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Summary of cases tried at the Dili District Court in July 2011

Introduction

JSMP has continued to monitor trials conducted in the various courts of Timor-Leste. This court monitoring has covered both criminal and civil cases that were conducted during the month of July. This summary encompasses all of the cases tried by the Dili District Court during the first two weeks of July 2011.

This summary covers 3 cases involving sexual violence, 3 cases of murder (1 case of ordinary murder and 2 cases of aggravated murder), 1 case involving abuse of power, 3 cases of property damage (2 cases of ordinary/minor damage and 1 case of serious damage) and one case of light maltreatment. In addition, there were 2 cases of violence accompanied by threats, whereby one case was heard in conjunction with the crime of damage, and the other case was heard separately because it involved the same defendant for incidents that occurred in difference locations.

In addition to the aforementioned criminal cases, there were also 3 civil cases. These included 1 case involving paternity, 1 case of neglect, and 1 case involving a land dispute. Therefore, this case summary covers 15 cases in total. During the monitoring period JSMP noted that a trial was postponed every day. These adjournments occurred because the parties (defendant, witness or victim) failed to attend, however in one case the public defender failed to appear without any explanation.

Just like previous editions, this case summary is aimed at disseminating new information based on monitoring conducted at Dili District Court between the 4th and 14th July 2011, covering trials that took place during the aforementioned two week period.

The following information provides a summary on the trial process

1. Case of Sexual Assault, No. 71/C.ord/2011/TDD

On 4 July 2011 the Dili District Court conducted a hearing in a case of sexual assault that allegedly occurred on 28 April 2010. This matter was registered with the court as Case No.71/C.ord/2011/TDD.

The trial was presided over by a panel of judges comprising João Felgar (international), Deolindo dos Santos (national) and Alvaro M. Freitas (national). The Public Prosecution Service was represented by Nelson de Carvalho, and the defendants were represented by the lawyer Adelino da Silva, and three other lawyers from the Legal Aid Organization 'Fundasaun Lia Loos Dili'.

The trial started with the reading out of the indictment by the prosecutor against the four defendants (MGD, EFS, JdS and EC). In addition to these four defendants, it is believed that another two defendants were involved in this case, however they have not yet been arrested by the authorities.

Based on the charges presented by the public prosecutor to the court on 28 April 2010 the victim was sexually assaulted by each of the defendants near the beach in Hera.

At that time the victim and her boyfriend were travelling on a motorcycle towards Hera and the defendants approached the victim and said that it was a prohibited area and therefore lovers were not allowed to go there. After making this statement the defendants forced the victim's boyfriend to go and buy cigarettes from a kiosk in Hera, and then they took the victim into the forest, forcefully removed the victim's clothes and took turns to rape the victim. Based on the aforementioned facts, the prosecutor charged the defendants pursuant to Article 173 of the Penal Code that carries a sentence of 4-12 years imprisonment.

After reading out the charges the court gave an opportunity to the defendants to testify or to use their right to remain silent in response these charges. Two of the defendants (JdS and EC) choose to use their right to remain silent. The other two defendants (EFS and MGD) rejected the charges and said that the charges were not true and emphasized that they were not involved in the case.

Based on the facts outlined in the indictment the public prosecutor asked the court to impose penalties commensurate with the acts carried out by the defendants against the victim.

In response to the prosecutor's charges, the defence asked the court to acquit the defendants for the following reasons: the court summoned the victim in writing three times but the victim did not appear in court, the defence also asked the court to summon the other two defendants (OS and AN) who were also involved in this case, because until now these two individuals have not appeared in court.

After hearing the final recommendation of the public prosecutor and the final plea from the defence the court decided to adjourn the trial until 26 July 2011 at 9am to announce the final decision.

2. Case of minor damage accompanied by threats, No. 96/C.Ord/2011/TDD

On 04 July 2011 the Dili District Court conducted a trial in Case No. 96.C.Ord/2011/TDD. This case related to minor damage accompanied by threats. This case involved three defendants (JdS, MdS and TX) who allegedly committed the crime against the victim AM in Metiaut Village, Cristo Rei, Dili on 22 February 2011.

The trial was conducted by single judge João Ribeiro. The Public Prosecution Service was represented by Reinato Bere Nahak, and the defendants were represented by public defender Olga Barreto Nunes.

In this case the public prosecutor charged the defendants for committing the crime of minor damage accompanied by threats as set out in Articles 258 and 157 of the Penal Code. The actions of the defendants were motivated by the fact that the victim built a house on government land without first securing an announcement or approval from the village chief or the locals to build a house. Therefore the defendants knocked down the construction and threatened the victim and told him not to continue with the construction, otherwise they would kill him.

The defendants rejected the charges of the public prosecutor. In order to establish the facts and truth in this matter the court heard testimony from the victim and witness about what actually occurred.

The witness AdS testified that at that time he saw the defendants JdS and MdS cutting (damaging) the timber supports of the house belonging to the victim and the defendants also said that they would kill the victim AM. The witness also testified to the court that at the time of the incident the defendant TX was carrying a machete at the scene of the crime. Based on the evidence provided during the trial, the prosecutor asked the court to sentence the defendants to two years imprisonment.

The final sentence will be read out in the afternoon of the 19th July 2011.

3. Case of ordinary murder and attempted murder, No. 217/C.ord/2011/TDD

On 5 July 2011 the Dili District Court conducted a trial in a case of ordinary murder and attempted murder (Case No. 217/C.Ord/2011/TDD). This case occurred in Fatu-Cado, Railako Kraik Village, Ermera District. It is alleged that the incident occurred on 13 January 2011 relating to a land dispute. Based on information provided this case had already been resolved by the Sub-Village Chief the year before, however the defendant MMC decided to go ahead and murder the victim Evaristo Soares.

The trial was presided over by a panel of judges comprising Alvaro Freitas (National), João Felgar (International) and António Fonseca (National). The Public Prosecution Service was represented by Nelson de Carvalho, and the defendants were represented by public defender Fernando Lopes de Carvalho.

The trial started with the reading out of the indictment by the public prosecutor charging the defendant with the criminal act of ordinary murder, pursuant to Article 138 of the Indonesian Penal Code (ordinary murder) and articles 23 and 24 (attempt to commit a crime) of the Penal Code.

The trial continued with the examination of testimony from 3 defendants (MMC, JDM, and JJ) who were suspected of being involved in this case. The defendant MMC testified that the incident occurred because the victim and the wife of the victim, as well as their children, came to his house screaming and insulting him at 8pm. At that time the defendant went straight to the home of the sub-village chief to report the incident, but after the defendant arrived there, the victim suddenly struck the defendant on his back two times with a piece of wood, and the defendant turned around to fight the victim and struck him four times with a piece of wood until the victim fell to the ground. The other two defendants testified that they were not involved in the case and that the charges leveled against them were baseless.

After hearing the testimony of the defendants the court then summoned the witness HO who was the wife of Evaristo Soares (deceased) to provide testimony. This witness said that the three defendants MMC, JDM and JdJ came to their house and threw rocks. For this reason the victim went to the home of the sub-village chief to ask why the defendants had thrown rocks at their house. However, when the victim arrived at the home of the sub-village chief the defendants suddenly struck the victim with a piece of wood four times on the back of his head and the victim fell to the ground. The victim was taken to the Guido Valadares National Hospital however he good not be saved and passed away in the hospital. When the incident occurred this witness was also struck on the head when she was defending the victim (her husband). Therefore, in this case, the witness was also a victim of attempted murder.

After hearing testimony from the victim, the court adjourned the trial until 6 July 2011 at 9.30am to hear testimony from another two witnesses (ASDJ and PS).

On 6 July 2011 the trial continued with the examination of testimony from two witnesses who were identified during the hearing on 5 July 2011. ASDJ testified that MMC struck the victim and the other defendants shone the torch on him and after the victim was beaten they all ran away. Also, the witness PS (child of the victim) stated that he heard the defendants say something like *“a dog like this has to be beaten to death and then after that take money to the jail”*. Upon hearing this statement the witness ran towards the scene but the defendants had fled and he only saw his father lying on the ground.

Based on the testimony given by the witnesses for the defence, the public defender asked the court to reconsider the matter pursuant to Article 272 (statements by experts and technical consultants, Article 143 (regarding examination of the scene of the crime) and Article 144 (purpose of search) in accordance with the Timor-Leste Criminal Procedure Code. The public defender also asked the court to hear testimony from other witnesses, because these two witnesses were direct relatives of the victim. In response to this request

the court decided to adjourn the trial until 19 July 2011 at 9:30am to hear the testimony of other witnesses.

4. Paternity Case, No. 35/Civil/2009/TDD

On 6 July 2011 the Dili District Court continued the trial of Case No. 35/Civil/2009/TDD. This trial was presided over by Judge Guilhermino da Silva, and the Public Prosecution Service was represented by Ivónia Guterres, while the defendant was represented by public defender Manuel Sarmiento.

This case related to a dispute over paternity involving the defendant JdC and the plaintiff ES and five children.

The court found the defendant guilty of abandoning (not providing for) the plaintiff and five children, and that the defendant had remarried with another woman. Therefore the prosecutor demanded that defendant provide maintenance to the value of USD 65 every month for the five children. This money is to be used to fulfill the needs of the children until they can live independently. The prosecutor made this demand pursuant to Article 72 of the Timor-Leste Criminal Procedure Code and the Indonesian Civil Code, Articles 281 and 288.

The defendant is willing to provide maintenance to the value of USD 65 each month for the children and the money will be paid from 27 July 2011 onwards at the home of the defendant.

The final decision will be announced in a hearing on the 27 July 2011.

5. Case of serious damage, No. 10/C.ord/2011/TDD

On 7 July 2011 the Dili District Court read out a final decision in a case of serious damage, No. 10/C.Ord/2011/TDD. This trial was presided over by single judge João Ribeiro. The Public Prosecution Service was represented by José Luis Landim, and the defendant was represented by public defender Manuel Sarmiento.

This case occurred because the defendants MFG, LG and JMJ suspected and accused the victim AMDC of being a witchdoctor (a person who uses black magic) and the incident occurred on 7 October 2009 in Camea village.

At the completion of the trial the court decided to acquit the defendants from the charge made pursuant to Article 259 of the Penal Code and charge the defendants under Article 258 of the Penal Code because the court was convinced that the facts in this case had been proven because the value of the goods destroyed totaled just USD 146 and the total value did not reach USD 1000. Therefore, the court ordered the defendants to pay compensation of USD 50 for the corrugated iron of the victim which was stoned and damaged by the defendants.

The public prosecutor representing the victim plans to lodge an appeal with the Court of Appeal against the sentence handed down by the court against the defendants.

6. Case of Abuse of Power, No. 364/C.Ord/2009/TDD

On 7 July 2011 the Dili District Court continued the trial of Case No. 364/C.Ord/2009/TDD. This case relates to a an abuse of power involving the defendant RJB which was committed against the government of Timor-Leste in 2002.

In his final recommendation of sentence the public prosecutor modified the charges made pursuant to Indonesian Law No. 30/1999, articles 1 and 2 on the Indonesian Anti-Corruption Law, and replaced these charges with Article 295 of the Timor-Leste Penal Code. In accordance with Article 297 the prosecutor recommended that the defendant be sentenced to 2 years imprisonment.

The court confirmed that the defendant was the District Administrator of Dili and that he was proven to have abused his power to conduct transactions relating to a diesel machine belonging to the government for person gain. The defendant was also charged in relation to the return of money from the hire of the diesel machine to the value of USD 7,000.

The trial was presided over by a panel of judges comprising João Ribeiro, António Fonseca, and José Gonçalves. The Public Prosecution Service was represented by Domingos Barreto, and the defendant was represented by Public Defender Manuel Sarmento.

The final decision will be announced on 4 August 2011 at 2pm.

7. Case of divorce and abandonment, No. 133/2010/TDD

On 8 July 2011 the Dili District Court continued with conciliation attempts to settle a case of divorce and abandonment, namely Case No. 133/C.Ord/2010/TDD. The conciliation hearing was presided over by single judge José Gonçalves. The Public Prosecution Service was represented by Denis Lacerda, and the defendant was represented by Public Defender José da Silva.

Through this process the court determined three important conditions that have to be met by the parties, namely:

- The child AS who has been abandoned will live with the plaintiff DS (the child's mother).
- The defendant ZT is responsible for providing maintenance (meeting the needs of the child) to the value of USD 50 each month which will be transferred into a bank account. The transfer must be made on the first day of each month.
- The defendant has the right to visit the child once every two weeks and at Christmas time.

As part of this conciliation process both parties agree to comply with the court decision to verify the conciliation.

8. Case involving a land dispute, No. 57/Civ/2011/TDD

On 8 July the Dili District Court conducted a hearing in a case involving a land dispute (Case No. 57/Civ/2011/TDD. This case allegedly took place in Delta 4 Comoro, Dili on 11 December 2009.

The hearing was presided over by single judge José Gonçalves, and the defendant Josefa Henrique da Silva was represented by private lawyer Ângelo Neves, and the plaintiff was represented by Adelino da Silva, and 3 members of the legal aid organization 'Fundasaun Lia Loos Dili'.

On 8 July 2011 the court tried the case involving a land dispute, after the lawyer for the plaintiff presented material evidence to the court that the plaintiff had seized land and obstructed the defendant from leveling the land to build a house based on the claim of the defendant that the land was purchased from João Albano during the Indonesian occupation and was accompanied by full documentation. The court convened to hear testimony from three witnesses appearing on behalf of the defendant.

On the first day of the trial the court heard testimony from the witnesses FdC, Fd and EdCdJ (currently the Comoro Village Chief). They testified that the land was purchased by Ms. Josefa Henrique da Silva from Mr. João Albano accompanied by full documentation; however nobody knew who the owner of the land was during the Portuguese occupation.

After hearing testimony from these three witnesses, the court adjourned the trial until 11 July 2011 to hear testimony from other witnesses.

On 11 July 2011 at 10am the court continued with the trial to hear testimony from the defendant DM who was acting as a negotiator to settle this dispute, however the issue had not been resolved because the plaintiff did not accept an offer that was made and also told the court that the land had been purchased by Ms. Josefa Henrique da Silva from Mr. João Albano during the Indonesian occupation.

The court also heard testimony from two witnesses appearing for the plaintiff (PP and US). They testified that it was true that their father Manuel Gusmão (plaintiff) known as Kelegama had a plantation and planted rice on the land during Portuguese times. They also stated that when they were in Becora prison (nights were spent in the prison, but during the day they planted crops and rice to sustain their families) and finally Mr. Kelegama gave the land (plantation and rice field) to his son Manuel Gusmão (plaintiff).

After hearing testimony from these witnesses the court adjourned the trial until the morning of 12 July 2011 to hear further testimony.

On 12 July 2011 the court heard testimony from the plaintiff AO. There was still one more witness, but the court decided not to examine his testimony because the witness had been present from the outset of the trial.

In his testimony the witness AO stated that the land belonged to Mr. Manuel (plaintiff) because Mr. Kelegama and the father of the witness previously lived on that land, managed the plantation and rice field and then the land was given to his son Manuel (plaintiff).

After hearing testimony from both sides the court heard final pleas and the lawyer for the defendant, based on the testimony provided by witnesses, asked the court to order the plaintiff to halt activities being conducted on the land until the court issues a final decision (because the plaintiff was building a house on the land).

The lawyer for the plaintiff asked the court to consider the testimony provided by the witnesses, and to examine Article 54 of the RDTL Constitution, and Articles 533, 534, 535 of the Civil Code and Articles 12, 2 and 6 of the Agrarian Law No. 1/2010, and claimed that the plaintiff has legitimate right of ownership over this land.

Finally, the court decided to adjourn the trial to announce its final decision on 19 July 2011 at 4pm.

9. Case of Aggravated Murder, No. 13/C.Ord/2011/TDD

On 8 July 2011 the Dili District Court read out its final decision in Case No. 13/C.Ord/2011. This case relates to an aggravated murder classified as a crime against humanity allegedly committed by the defendant Valentim Lavio against the victim Patrício Sarmiento Viegas in Liquica District on 6 September 1999.

The court found that the defendant Valentim Lavio joined a militia group *Besi Merah Putih* in Liquica District and that it was proven that he took the life or was involved in the criminal act of murder committed against the victim by means of cutting the victim's throat then the victim was shot by the defendant Afonso de Jesus.

Based on the aforementioned evidence the Dili District Court, represented by international judge João Felgar, sentenced the defendant Valentim Lavio to 9 years imprisonment. The court issued its decision pursuant to Articles 5. 1(a), 10 (2) and 14 of UNTAET Regulation No. 15/2000.¹

10. Case of light maltreatment, No. 232/C. Ord/TDD

On 11 July 2011, the Dili District Court tried a case involving light maltreatment. This case involved the defendant FdS who allegedly committed the act against the victim TN in Quintal Boot on 5 May 2010.

¹ Refer also to JSMP Press Release "Dili District Court sentences member of the *Besi Merah Putih* (BMP) militia to 9 years imprisonment for serious crime that occurred in 1999" dated 8 July 2011.

This trial was presided over by single judge Álvaro Martins Freitas, and the Public Prosecution Service was represented by Remígia de Fátima da Silva, whilst the defendant was represented by public defender Manuel Sarmiento.

The public prosecutor charged the defendant for committing the crime of maltreatment by striking the victim with a rock three times in the head.

As a result of the defendant's actions the victim suffered injuries to his head and therefore the public prosecutor charged the defendant with violating Article 145 of the Penal Code. This article states that "*Any person who causes harm to the body or health of another person is punishable with up to 3 years imprisonment or a fine. Prosecution depends on the filing of a complaint.*"

However, the trial of this case did not continue because the parties (victim and defendant) reached an amicable settlement. The victim stated that as part of the amicable settlement the defendant provided a *tais* (woven cloth) to cover up the injury which was a symbol of regret from the defendant. The court decided to validate the settlement and discontinue the trial of this matter.

11. Case of minor damage, No. 211/C.Ord/TDD

On 11 July 2011 the Dili District Court tried a case of minor damage. The defendant JX was accused of committing the crime against the victim GS in Becora on 11 February 2011.

The trial was presided over by single judge Duarte Tilman. The Public Prosecution Service was represented by Ivónia Guterres, and the defendant was represented by public defender Manuel Sarmiento.

In her indictment the public prosecutor charged the defendant with damaging a fence and taking 10 sheets of corrugated iron from the home of the victim.

During this process the defendant admitted that he had done so because the victim did not pay him money (for his work/failed to respect the defendant's rights) while the defendant was building the home of the victim.

Based on the facts presented to the court by the defendant himself, the public prosecutor asked that the defendant be ordered to pay compensation for the goods that were damaged by the defendant. The public prosecutor made this recommendation pursuant to Article 258 (1) of the Timor-Leste Penal Code.

The final decision will be announced on 25 July 2011 at 9am.

12. Case of aggravated murder, No. 210/C. ord/2011/TDD

On 14 July 2011 the Dili District Court conducted a trial in a case of aggravated murder (No. 210/C.Ord/2011/TDD).

The trial was presided over by a panel of judges comprising Duarte Tilman, João Ribeiro, and José Gonçalves. The Public Prosecution Service was represented by Reinato Bere Nahak, and the defendant was represented by the Public Defender's Office.

In the hearing the court issued a decision pursuant to Article 255 of the Criminal Procedure Code to adjourn the trial until 11 August 2011 because the public defender appointed by the court was not present to represent the defendant. Based on information provided, the court will reappoint a public defender to represent the defendant for the rest of the trial.

13. Case of Rape, No. 180/ord/2007/TDD

On 14 July 2011 the Dili District Court tried a case of rape (No. 180/C.Ord/2007/TDD).

The trial was presided over by a panel of judges comprising Guilhermino da Silva, António Gonçalves, and Deolindo dos Santos. The Public Prosecution Service was represented by Hipólito Martins Santa, and the defendant was represented by Public Defender Manuel Exposto.

The court decided to adjourn the trial until 15 September 2011. The court took this decision because the victim and witness who had signed the summons failed to appear before the court to provide testimony.

14. Case of making threats, No. 234/C.ord/2011/TDD

On 13 July 2011 the Dili District Court held a trial in a case involving the making of threats. This case was registered with the Dili District Court with Case No. 234/C.Ord/2011/TDD. This case involved the defendant JB who was a member of PNTL against the victim AM from Atauro Sub-District on the evening of 27 November 2008.

The trial was presided over by Judge Guilhermino da Silva. The Public Prosecution Unit was represented by Domingos Barreto, and the defendant was represented by public defender Denis Lacerda (international).

The incident occurred on 27 November 2008 when the CPD-RDTL group hired some musical instrument (drums) belonging to the victim to celebrate the 28th November 2011. However, at that time at approximately 8pm the defendant came with a PNTL car and threatened the victim. The defendant threatened him by saying *“if you don't give the musical instrument (drums), I will shoot the instrument until it is destroyed and I will shoot your feet and smash them”*.

In relation to this case the public prosecutor charged the defendant pursuant to Article 157 of the Penal Code. The trial was adjourned until 15 July 2011 at 9:30am to hear testimony from the victims.

On 15 July 2011 the Dili District Court continued the trial.

The trial was presided over by the same judge, public prosecutor and public defender.

During the trial the victim said that the defendant JB came with a pistol and made the threat “*if you don’t give me the drums I will smash the drums and smash your feet*”.

Also the victim TX said that it was true that JB made the threat with his pistol.

The witness LdJ for the defence, who is the Makadede Village Chief, testified to the court that TB did not make a threat with his pistol and did not say a single word to the victim because at that time the witness went with TB to speak to the victim.

The trial continued on 20 July 2011 to hear testimony from witnesses presented by the prosecution.

15. Case of sexual abuse against a minor, No. 21/C.ord/2003/TDD

On 12 July 2011 the Dili District Court conducted a trial in a case involving the sexual abuse of a minor.² This case was registered with the Dili District Court as Case No. 21/C.Ord/2003/TDD

The trial of this case was presided over by a panel of judges comprising Deolindo dos Santos (presiding judge) Antoninho Gonçalves and Guilhermino da Silva (judge members). The Public Prosecution Service was represented by Nelson de Carvalho and the defendant was represented by Zinha Maria Soares and the court clerk was Hermelinda de Lima.

The public prosecutor charged the defendant pursuant to Article 177 of the Timor-Leste Penal Code. The final decision will be announced on 27 July 2011.

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² Refer to JSMP Press Release, 26 July 2011, available on the JSMP website:
<http://www.jsmp.minihub.org>