



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

## *Case Summary*

**Period: June 2012**

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### **Summary of trials at the Suai District Court during the third week of June 2012**

In the third week of June 2012 JSMP conducted monitoring of the trial process in the Suai District Court. This Case Summary complements the previous case summary that covered the first and second weeks of June 2012.

JSMP observed 8 cases during the aforementioned period. These cases comprised 1 case of intentional mismanagement, 2 cases of ordinary maltreatment, 1 case of infanticide, 1 case of embezzlement, 1 case of aggravated murder and 2 cases of domestic violence.

JSMP observed that although hearings were held at the aforementioned court on a daily basis, several cases still had to be adjourned because the parties not appear in court without clear justification.

The parties included victims and witnesses who had been summoned to give testimony before the court to help the court reveal the facts of alleged crimes.

The following information summarizes the hearings that took place:

#### **1. Crime of Intentional Mismanagement, Case No. 38/PEN/2012/TDS**

On 19 June 2012 the Suai District Court conducted a hearing in a case of intentional mismanagement which was registered as Case No.38/PEN/2012/TDS. The two defendants in this case LFS and OS were accused of committing the crime against the State of Timor-Leste. This case allegedly occurred in 2004, in Hola Rua Village, Tirlolo Sub-District, Manufahi District.

The trial was conducted by a panel of judges comprising Álvaro Maria Freitas (presiding), together with Florença Freitas and Pedro Rapoza Figuerreiro (international). The Public Prosecution Service was represented by António da Silva Tavares, and the defendant was represented by public defender Marçal Mascarenhas.

Based on the indictment of the public prosecutor, in 2004 the government through the Ministry of Agriculture allocated US\$ 7,000 to the defendant LFS in his capacity as the Village Chief and the defendant OS in his capacity of treasurer. The money was allocated for the construction of the Mindeilo Village Administration Office, however the construction process was halted and as a result village administrative activities were only being carried out in the home of the new Village Chief.

In relation to the aforementioned facts, the public prosecutor charged the defendant with Indonesian Law No. 31/1999 on Anti-Corruption as well as Article 274 of the Timor-Leste Penal Code.

In this hearing the defendants chose to exercise their right to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code<sup>1</sup>.

Although the defendants chose to exercise their right to be silent this does necessarily have an impact on their case. The right of the defendant to testify or not testify does not aggravate or mitigate certain facts and does not benefit or harm the case. In accordance with 165 of the Criminal Procedure Code the court shall freely assess the result of the proof obtained by means of recognition.

Based on JSMP monitoring the public prosecutor presented 7 witnesses. They were CM, VdC, MB, OR, VL, EQ, JdC and AH. They testified to the court that it was true that the Ministry of State Administration and Territorial Management allocated the money mentioned in the indictment, which totaled US\$ US\$ 7,000, to construct the Mindeilo Village Administration Office, however the building was not completed. The witnesses stated that the provision of public services was carried out at the residence of the new Village Chief.

In his final recommendations the public prosecutor requested for the court to sentence the two defendants to a minimum of 4 year's imprisonment. The request of the public prosecutor was made pursuant to the original charges and the testimony of the witnesses.

On the other hand the public defender requested for the court to free the defendant from all charges because the defendant not intend to hide the money. The construction was carried out, but it was not completed. In addition, the defendants did not have the necessary managerial capacity to account for this money.

The court will conduct a hearing to read out its decision on 4 July 2012 at 14.30pm.

## **2. Crime of Ordinary Maltreatment, Case No. 99/PEN/2011/TDS**

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<sup>1</sup> Article 60 (c) of the Criminal Procedure Code which sets out the rights of the defendant states that the defendant may freely decide to make or not to make statements and to do it, even at his or her own request, at any stage of the investigation or of the trial hearing

On 19 July 2012 the Suai District Court convened for a hearing in a case of maltreatment which was registered as Case No. 99/PEN/2011/TDS, however the hearing did not eventuate.

The hearing to adjourn this trial was presided over by single judge Álvaro Maria Freitas. The Public Prosecution Service was represented by António da Silva Tavares and the Office of the Public Defender was represented by Marçal.

According to the public prosecutor the parties (the victim and witness) were absent for five days without providing clear justification to the court, and therefore he requested for the court to order them to pay court costs of US\$ 10.

The trial of this case will continue on 24 April 2012 at 10.00 am.

### **3. Crime of Infanticide, Case No. 59/PEN/2011/TDS**

On 20 June 2012 the Suai District Court conducted a hearing to read out its decision in a case of infanticide which was registered as Case No. 59/PEN/2011/TDS. The crime was allegedly committed by Domingas Moniz Noronha in Mali Lait Village, Bobonaro Sub-District, Bobonaro District on 10 February 2011.

Previously the trial was presided over by a panel of judges; however the hearing to announce the decision was led by single judge Constâncio Barros Basmery, whilst the Public Prosecution Service was represented by António da Silva Tavares and Oscar Silva Tavares. The defendant was represented by a team of public defenders comprising Marçal Mascarenhas and João Henrique de Carvalho.

In accordance with the aforementioned process the court concluded that the defendant was guilty of committing the crime as charged by the public prosecutor. The defendant committed the crime after the baby was born by completely covering the baby's mouth until the baby died. Then the defendant took the body of the baby and placed it under a banana tree and placed a stone on top of the body.

The public prosecutor charged the defendant with Article 142 of the Timor-Leste Penal Code on infanticide.

Pursuant to the proceedings and the facts of the case the court decided to sentence the defendant to 3 years imprisonment, to be suspended (a non-custodial sentence).

Based on JSMP monitoring the court applied a suspended sentence against the defendant because the defendant has a baby who is just 2 months old. In addition, during the trial the defendant regretted her actions and promised to the court that the defendant would not commit the same act in the future.

### **4. Crime of embezzlement, Case No.56/PEN/2012/TDS**

On 20 June 2012 the Suai District Court conducted a hearing in a case of embezzlement which was registered as Case No. 56/PEN/2012/TDS. The four defendants in this case AM, JdJ, MB and SG were accused of committing the crime against the government of Timor-Leste. This case allegedly occurred in 2004 in Tapo Memo Village, Maliana Sub-District, Bobonaro District.

The trial was conducted by a panel of judges comprising Constâncio Barros Basmery (presiding), together with Florença Freitas and Pedro Rapoza Figueiro (international). The Public Prosecution Service was represented by António da Silva Tavares, and the defendant was represented by public defender Marçal Mascarenhas.

According to the public prosecutor in 2004 the defendants were acting in their respective capacities as Village Chief and Sub-Village Chief in Tapo Memo Village, Maliana Sub-District, Bobonaro District.

In January 2007 the government through the Ministry of Agriculture established a Community Development Fund totaling US\$ 10,000 (ten thousand American dollars) to provide support to the aforementioned village to develop agriculture.

From this money the defendants purchased four tractors each valued at US\$ 2,500 (two thousand five hundred American dollars); therefore the total money used to purchase the four tractors was US\$ 10,000 (ten thousand American dollars).

In December 2009 the defendants used these tractors as if they were their personal property to benefit their family and their own group, whereas these tractors were given to the entire community in Tapo Memo Village.

In relation to the aforementioned facts, the public prosecutor charged the defendant with Article 415 of the Indonesian Penal Code as well as Article 8 of Indonesian Law No.31/1999 on Anti-Corruption which corresponds with Article 295 the Timor-Leste Penal Code.

In their testimony the defendants stated that all of the charges of the public prosecutor were true, however the defendants also denied that the four tractors had been give back to the Village Administration Office, because the new Village Chief did not want to accept these tractors, and therefore they were still at the home of the defendants.

Pursuant to the aforementioned facts, in his final recommendations the public prosecutor requested for the court to sentence the defendants to 3 year's imprisonment, to be suspended for 5 years. The public defenders requested for the court to apply a lenient suspended sentence against the defendants because they expressed regret and they are first time offenders.

The reading out of the decision in this case will take place on 3 July at 2.30pm.

## **5. Crime of aggravated murder, Case No. 01/PEN/2012/TDS**

On 20 June 2012 the Suai District Court conducted a hearing to continue a trial involving a case of aggravated murder which was registered as Case No. 01/PEN/2012/TDS. The three defendants in this case ALB, AMB and PSM allegedly committed the crime against the victims Ernesto and Eusebio da Costa. This case allegedly occurred in Made Bau Village, Atabae Sub-District, Bobonaro District on 10 June 2011.

The trial was conducted by a panel of judges comprising Constâncio Barros Basmery (presiding) with judges Álvaro Maria Freitas and Florença Freitas. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and the defendant was represented by public defender Henrique de Carvalho.

This hearing was conducted to examine testimony from witnesses who were presented to the court by the public defender.

The witness LM testified to the court that it was not the defendants who murdered the two victims, because the three defendants' didn't have a problem with the victims. Then the witness stated that after the aforementioned event the three defendants also helped to take the bones to be buried at the homes of the victims.

The witness LP corroborated the testimony of LM and stated that it was true that the three defendants had no problem with the two victims (deceased), because they were related.

Then the witness DG testified to the court that he received a telephone call from another person who said that the two victims had been killed by someone, because after the incident the defendants had helped take the victim's bones to their home.

Although all of the witness testimony stated that the defendants were not involved, the public prosecutor referred to the facts revealed during the entire trial and maintained his stance pursuant to Article 139 (f) of the Penal Code on aggravated murder, and Articles 52.(2) (a), (c), (j), and (m) of the Penal Code regarding aggravating circumstances in general.

Pursuant to the aforementioned articles, in his final recommendations the public prosecutor requested for the court to sentence the two defendants to a minimum of 20 year's imprisonment. In addition, the public prosecutor requested for the court to order the defendants to pay compensation in accordance with the provisions of the law.

In response to the final recommendations of the public prosecutor, the public defender requested for the court to apply a lenient sentence against the defendants because the defendants were first time offenders and they were breadwinners who had to provide for their families.

A hearing to announce the decision in this case will take place on 3 July at 2.30pm.

## **6. Crime of Domestic Violence, Case No. 45/PEN/2012/TDS**

On 22 June 2012 the Suai District Court conducted a hearing in a case of domestic violence which was registered as Case No. 45/PEN/2012/TDS. The defendant in this case GRH allegedly committed the crime against the victim SdC. This case allegedly occurred in Fatu-Udo Village, Ainaro District on 27 November 2011.

The trial of this case was led by single judge Pedro Rapoza Figuerreiro (international). The Public Prosecution Service was represented by António da Silva Tavares, and the defendant was represented by public defender Marçal Mascarenhas.

According to the indictment of the public prosecutor, on 27 November 2011 at 7pm the defendant allegedly committed the crime against his spouse. The defendant allegedly slapped the victim twice on her left cheek and struck her on her body.

As a result of the defendant's actions the victim suffered swelling to her cheek. The motive behind the assault was that two dogs belonging to the defendant were missing and when the defendant asked the victim about this she said she didn't know, and then the defendant became angry and committed the aforementioned acts.

In relation to this incident the public prosecutor charged the defendant with Articles 2.1(a), 3(b), 35 and 36 of Law No. 07/2010 Against Domestic Violence as well as Article 145.1 of the Penal Code.

During the trial of this matter the defendant chose to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code.

Nevertheless, the witness testified to the court and corroborated the facts and the chronology of events set out in the indictment. However, the victim added that 2 days after the incident the defendant and the victim reconciled and continued living as husband and wife. This was because the defendant apologized and the victim forgave him.

The witness SG testified to the court that the witness saw the incident where the defendant slapped the victim twice on the cheek and struck the victim's body. In addition, the witness added that 3 days after the incident the defendant and the victim reconciled and went back to living together like normal.

Nevertheless, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 2 year's imprisonment, to be suspended for 3 years. The public prosecutor took this stance based on the statement of the victim and pursuant to the indictment.

The public defender requested for the court to apply a suspended sentence against the defendant because the defendant was a first time offender and the defendant regretted his actions also the defendant was the breadwinner who needed to support his family.

A hearing to announce the decision in this case will take place on 28 June 2012 at 10am.

## **7. Crime of Ordinary Maltreatment, Case No. 58/PEN/2012/TDS.**

On 22 June 2012 the Suai District Court conducted a hearing in a case of ordinary maltreatment which was registered as Case No. 58/PEN/2012/TDS. The defendant in this case DA allegedly committed the crime against the victim BdR in Holpilat Village, Maukatar Sub-District, Covalima District on 7 February 2012.

The trial of this case was led by single judge Pedro Rapoza Figueiro. The Public Prosecution Service was represented by António da Silva Tavares, and the defendant was represented by public defender João Henrique de Carvalho.

The hearing commenced with the reading out of the charges by the public prosecutor. The indictment stated that on 7 February 2012 the defendant committed the crime against the victim. The aforementioned criminal act was committed when the defendant hit the victim once above the left eye and struck the victim three times on the arm and back with a machete. As a result of the defendant's actions the victim suffered injuries and a swollen eye.

In relation to this incident the public prosecutor charged the defendant with Article 145 of the Penal Code which carries a sentence of up to 3 years imprisonment or a fine.

The defendant testified to the court that all of the charges made by prosecutor were true. However, the defendant also told the court that the defendant regretted his actions and promised not to repeat such actions in the future against anyone.

The victim provided testimony to the court and corroborated the facts mentioned in the indictment.

The witness FRA told the court that the witness saw the incident where the defendant hit the victim once above the eye and struck the victim three times on the right arm and back with a machete.

In relation to the facts revealed during the trial, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 1 year and six months imprisonment, to be suspended for 2 years. In addition, the public prosecutor also recommended for the court to order the defendant to pay compensation of US\$ 200.

The public defender requested for the court to apply a suspended sentence of 3 months against the defendant because he was a first time offender and he regretted his actions.

A hearing to announce the decision in this case will take place on 28 June 2012 at 11am.

## **8. Crime of Domestic Violence, Case No. 61/PEN/2012/TDS**

On 2 June 2012 the Suai District Court conducted a hearing in a case of domestic violence which was registered as Case No. 61/PEN/2012/TDS. The defendant in this case DS allegedly

committed the crime against the victim AB in Leo Hitu Village, Balibo Sub-District, Bobonaro District on 25 June 2011.

The trial of this case was led by single judge Pedro Rapoza Figueireiro (international). The Public Prosecution Service was represented by António da Silva Tavares, and the defendant was represented by public defender Marçal Mascarenhas.

According to the indictment of the public prosecutor, on 25 June 2011 at 8am the defendant allegedly committed the crime against his spouse. The actions of the defendant included throwing a telephone at the victim and striking her on the body. The motive behind the assault was because the defendant did not allow the victim to go to the Balibo market; however the victim insisted that she would go to the market. Therefore the defendant became angry and committed the aforementioned acts against the victim as set out in the indictment.

In relation to this incident the public prosecutor charged the defendant with Article 35 of Law No. 07/2010 Against Domestic Violence and Article 145.1 of the Penal Code.

In his testimony the defendant stated that all of the charges of the prosecutor were true. However the defendant also added that after the incident the defendant and the victim reconciled and were living together as normal. The defendant testified to the court that he regretted all of his actions.

Nevertheless, in her testimony the victim corroborated the facts outlined in the indictment and also admitted that after the incident the victim forgave the defendant because the defendant had apologized.

Pursuant to the aforementioned facts, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 1 year and 6 month's imprisonment, to be suspended for 2 years.

The public defender agreed with the request of the public prosecutor to apply a suspended sentence against the defendant because the defendant admitted and regretted his actions, and at the same time the defendant is the breadwinner who had to support his family.