



JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

SUMMARY

Period : March 2009

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Criminal cases tried and decisions issued by the Baucau District Court

This summary of cases is the result of observations conducted over five days at the Baucau District Court. JSMP monitored hearings in both minor and serious criminal cases. Minor criminal cases were tried by a single judge until the final decision, whereas serious criminal cases were tried by a panel of three judges. Therefore when a serious criminal case was scheduled for trial at the Baucau court it was necessary to bring a judge from Dili to make up the number necessary to compose a panel to conduct hearings.

Between 16-20 March the Baucau District Court tried 10 criminal cases from a total number of 19 cases scheduled for trial at the aforementioned court. Of the 10 cases, oral decisions were issued in 2 minor criminal cases. In five serious criminal cases the court examined testimony from defendants, victims and witnesses, and in two of these cases the court issued sentences of four years and 1 year two months imprisonment respectively.

In addition the court also adjourned one expedited trial in a case of damage to property. A number of cases were adjourned and rescheduled for trial to hear testimony from victims and witnesses.

Most of the aforementioned cases have been pending since 2005 - 2008, except for one case (expedited trial) where the defendant had been held in preventive detention in police cells for less than 72 hours.

More information about the aforementioned trials is provided below:

BAUCAU, 17/03/2009 (I)

A case of light maltreatment committed by the defendant against the victim. The Baucau Court adjourned the trial until 7 April 2009. The court adjourned the case after hearing testimony from the witness LX. The trial will continue with the examination of testimony from other witnesses who did not attend the aforementioned hearing.

According to monitoring conducted by JSMP during the examination phase, the witness LX informed the court about what he saw and knew about the maltreatment committed against the victim at the scene of the crime. In his testimony he said that he witnessed the maltreatment.

The witness testified that the defendant struck the victim with a piece of wood. The witness also explained that the victim was lying on the ground and covered in blood.

BAUCAU, 17/03/2009 (II)
No. 164/Crm.S/2008/TDB

This case of serious maltreatment was committed by the defendant (JF) against the victim (MF) because of a fight between their children. The indictment stated that the defendant used a piece of wood to strike the victim twice on the jaw resulting in injury. For these actions the public prosecutor charged the defendant under Article 351.1 and Article 55.1 of the Indonesian Penal Code. The public prosecutor decided to apply Article 55.1 because another defendant had assisted in the maltreatment committed against the victim. The defendant charged with Article 55.1 was the husband of the defendant JF who did not attend this hearing.

During the hearing the defendant exercised the right to remain silent, however during the examination of witness testimony the witness AF who is related to the defendant briefly stated that he/she saw the defendant strike the defendant as described in the indictment. After hearing the testimony of the witness, the public prosecutor also presented evidence (a branch from a coconut tree) and a machete to the court. The public prosecutor also mentioned other factors relating to this case, such as the fact that the parties had not yet reached an amicable settlement because each party argued that the other party should pay a fine. The trial of this case will be continued on 15 April to find out the results of an examination into the victim's psychological state. The victim did not attend the hearing due to a fragile mental state. At the conclusion of the hearing the defence asked the court to instruct the public prosecutor to summon the victim to ascertain the victim's condition.

BAUCAU, 17/03/2009...(III)
No. 12/Crm.S/09/TDB

The defendant AG was charged by the public prosecutor for selling government subsidized rice (MTCI) in violation of a government instruction issued in the form of a ministerial regulation. The prosecutor considered the actions of the defendant to be aimed at benefiting himself financially by raising the price of goods. The prosecutor charged the defendant under Article 390 of the Indonesian Penal Code. The public defender representing the defendant requested for the court to summon the local village chiefs as witnesses because they would have a good understanding of the conditions in the local community. However the village chiefs had already heard the testimony of other witnesses during the hearing and therefore the court denied the request of the defendant to allow them to appear as witnesses.

The witnesses FC and PR who were presented by the public prosecutor said that they arrested the defendant at the scene of the crime because of information provided by the Baucau PNTL Commander that a person (the defendant) was manipulating the price of government subsidized rice and selling it at \$13 per sack. The witnesses stated that they confiscated \$3002 from the defendant at the scene of the crime as evidence. The confiscated money was returned to the defendant except for \$300 which was still being held at the Baucau Police Station.

In his final recommendation of sentence the public prosecutor summarized the evidence produced during the trial, for example the confession of guilt by the defendant and acknowledgement that he had acted based on his own free will. The prosecutor confirmed that there was lack of documentary evidence to support the indictment, however the prosecutor was endeavoring to provide receipts of the transactions conducted by the defendant to provide documentary evidence for this case.

The defence rejected the recommendation of the prosecutor and stated that his client had no intent to benefit financially as stated in the charges. The defence also stated that the defendant had sold the aforementioned rice with the intention of helping the local community. The defence also stated that the elements of the charge had not been established and therefore requested for the court to acquit the defendant.

BAUCAU, 18/03/2009....(IV)
No. 162/Crm.C/08/TDB

The court did not allow JSMP to monitor this case because of its sensitive and confidential nature (sexual assault) which is closed to the public. However, JSMP was able to hear the reading of the indictment by the judge in the court room. The indictment stated that prior to the incident the defendant had a romantic relationship with the victim in 2001. At the end of March 2003 the defendant threatened the victim to have sexual intercourse with him. The indictment also mentioned that the defendant committed the aforementioned criminal offence when the victim was 12 years old. The defendant was charged with Article 287 of the Indonesian Penal Code.

BAUCAU, 18/03/2009....(V)
No. 62/Crm.C/08/TDB

The public prosecutor charged the defendant HB under Article 338 and Article 53 of the Indonesian Penal Code for the criminal act of attempted murder against the victim AA. The prosecutor charged the defendant based on evidence showing that the defendant had thrown a stone that struck the victim on the head, nose and eye. According to the prosecutor the defendant committed the aforementioned act based on his own free will. However during the hearing the defendant defended his actions saying that the victim had initially been carrying a machete and running towards him with the intention of striking him with the machete. In response to the actions of the victim the defendant took two stones and threw them at the victim and struck the victim on the head causing injury. The

prosecutor stated that the defendant admitted his actions. In addition the victim told the court that there was no clear reason why the defendant had thrown stones at him. Due to the fact that no clear motive had been established the court adjourned the trial until the 6 April to hear testimony from witness (M) who is in Indonesia.

BAUCAU, 18/03/2009....(VI)
No. 49/Crm.C/08/TDB

On Wednesday 18/3 the Baucau District Court read out a decision in a case of serious maltreatment. This was the final decision issued by the court of first instance after considering all of the facts presented during the trial. The decision read out by Judge Edite P stated that the defendant had prior convictions. During Indonesian times the defendant committed the criminal act of murder against the victim's husband.

In September 2005 the defendant also cut off the left hand of the victim (M). In that case the defendant was sentenced to 9 years imprisonment from the Baucau District Court however after serving only 3 years of his sentence the defendant was pardoned by the President of the Republic in 2008 and was released back into the community.

In relation to the more recent case the public prosecutor charged the defendant under Article 351.1 and Article 356.1 of the Indonesian Penal Code. When reading out its decision the court also accepted and assessed the testimony provided in a previous hearing.

After considering the actions of the defendant the court considered the appropriate articles because the defendant committed the criminal act against the victim who was his own wife. Therefore the court decided to increase the punishment by half and sentence the defendant to 6 years and two months imprisonment.

The court also decided that there were aggravating circumstances and sentenced the defendant to serve a minimum sentence of four years but released him from court costs.

BAUCAU, 18/03/2009....(VII)
No. 35/Crm.C/08/TDB

On Wednesday 18 March the Baucau District Court read out its decision in a case of serious maltreatment committed by the defendant R against the victim (.....). The public prosecutor charged the defendant with Article 354.1 after considering that the defendant struck the victim on the forehead and temple with a machete causing the victim to suffer a serious injury requiring seven stitches.

The defendant expressed regret for his actions and had already spent three months in detention. The defendant had also reached an amicable settlement with the victim and provided a horse as compensation. According to the decision the defendant had no prior convictions.

After considering the aforementioned facts the court decided to sentence the defendant to 1 year and four months imprisonment. The court did not order the defendant to pay for court costs.

BAUCAU, 19/03/2009....(VIII)
No. 72/Crm.C/08/TDB

At the opening of the hearing the judge stated that this case was open to the public. However after reading out the indictment the judge asked those in the court room to leave because of the sensitive nature of the case (sexual assault) which is closed to the public. The only people allowed to attend were court officials or the parties directly involved in the case. For this reason JSMP was unable to monitor this hearing

BAUCAU, 19/03/2009....(IX)
No. 138/Crm.C/07/TDB

This matter was adjourned because the witness who was supposed to provide testimony was not present. Due to the non-attendance of the witness the court adjourned the trials until 14 April to hear testimony from the witnesses listed in the indictment. The trial was adjourned after the victim JE was presented.

BAUCAU, 19/03/2009....(X)
Case Number. 09/TDB

The court conducted an expedited trial in a case of damage of property. The trial was adjourned until the 23 March to hear victim and witness testimony because they had failed to attend the first hearing. Based on monitoring conducted by JSMP, the defendant was escorted from Lospalos District by PNTL. The defendant was taken to court to attend the expedited hearing before the expiry of the 72 hour period of detention due to concerns about the mental wellbeing of the defendant who was being held in police detention. The defendant was caught in the act of damaging property.

The investigative report provided by the Lospalos police stated that the police arrested the defendant at the scene (Fuiluro, Lospalos) when he was in possession of stones that he intended to throw at the victim's house. The police arrived at the scene after receiving information from the victim. The indictment also mentioned that the defendant had previously been convicted for the same type of offence (damage to property). The prosecutor charged the defendant with Article 406.1 of the Indonesian Penal Code on destruction of property. The defendant exercised his right to remain silent. The court adjourned this trial until 23 March to hear testimony from the victim and witness who were not present.

For further information please contact:
Luis de Oliveira Sampaio
Executive Director of JSMP
Email: luis@jsmp.minihub.org
Telephone: 3323883