



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

### SUMMARY

Period : April 2009  
Issue : 2009

### HEARINGS AND THE ANNOUNCEMENT OF DECISIONS IN CRIMINAL CASES

This case summary is based on monitoring conducted at the Baucau District Court over four days. JSMP managed to monitor hearings in both minor and serious criminal cases. Minor crimes were dealt with by a single judge who presided over the entire trial including the announcement of the decision, whereas serious crimes were presided over by a panel of three judges. Therefore, in order for a hearing of a serious criminal case to proceed, all members of the panel had to be present.

Based on a schedule issued by the Baucau District Court, 12 criminal cases (both minor and serious) and an additional civil case (land dispute) were scheduled for trial during the several days that JSMP was present. The court conducted hearings into the aforementioned cases by examining testimony from witnesses and defendants, as well as announcing decisions.

The court also used this opportunity to postpone the trials of several cases because the defendants and witnesses were not present in court. During a four day period between 13-16 April the Baucau District Court managed to conduct hearings in six of the 12 criminal cases scheduled for trial. Of these 12 cases, the court conducted hearings in two minor criminal cases and also postponed decisions in two other minor criminal cases. In addition to the aforementioned 4 minor criminal cases, there were also 8 cases that were scheduled to be tried before by a panel of judges. Whilst presiding over hearings into the aforementioned cases the panel of judges also managed to hear oral recommendations in three cases and announced decisions in three other cases.

One of the serious criminal cases related to sexual assault, but JSMP was unable to monitor this case because it was closed to the public. Also the court adjourned the trial of one serious criminal case because the defendant did not attend the court without a clear explanation.

On Monday 13/4 the court also adjourned a civil case because not all members of the panel were present. The adjourned cases will be continued at a later date as set out in the judges' schedule.

Some of the aforementioned cases originated from 2002 and 2007.

The chronology of events and other relevant information in relation to the aforementioned cases are described in detail below.

### **Baucau, 13/409**

The Baucau District Court adjourned civil case No 19/P.Civ.Pi/08/TDB because the panel who were supposed to handle this case were unable to attend court on the day of the scheduled hearing. Also a national lawyer who was appointed by the plaintiff as his legal representative was also absent. According to court monitoring conducted by JSMP at the aforementioned court, the parties, the plaintiff and respondent had been waiting at the court since 2pm, however judge Edite P. who was the presiding judge of the panel that was supposed to try the case finally informed the parties that the hearing could not be conducted because not all members of the panel were in attendance. For this reason, the trial was adjourned until 11 May 2009 to hear witness testimony from both parties. At the same time the judge requested for the plaintiff to inform his legal representative to find out the date and be at the court for the next hearing, because the plaintiff had sought out and selected his own lawyer, who had not been appointed by the court. Therefore a request was made for the lawyer to attend the trial on the scheduled date because that would be the final scheduled hearing to try the matter.

On the same day, the court also tried Case No. 170/Crm.S/08/TDB. The trial of this case did not correspond with the schedule issued by the court clerk. The defendant ZF and victim JS had to wait patiently for three hours for their hearing. This was because the presiding judge only arrived at the court at 5pm after travelling from Dili.

Although the hearing was delayed, it still took place. The defendant and the victim exercised their right to remain silent and did not want to comment on the charges laid by the public prosecutor. Because the parties chose to remain silent the judge asked the prosecutor to make his final recommendations and the public defender to make his final plea.

In this case the public prosecutor charged the defendant for the criminal act of serious maltreatment which caused the victim to suffer injuries and bleeding. The prosecutor charged the defendant for his actions pursuant to Article 351 (1) of the Indonesian Penal Code.

In his final recommendation the prosecutor stated that although the parties had exercised their right to remain silent, the indictment outlined that the defendant had committed serious maltreatment against the victim and therefore the defendant, as a member of society, should be taught a lesson that his actions were criminal and against the law. Therefore the prosecutor requested for the court to issue a suspended sentence against the defendant.

The public defender did not say much in his final plea because the parties had exercised their right to remain silent. Therefore he requested for the court to decide this case based on good conscience and in the interests of justice.

### **Baucau, 14/4/09**

This case of serious maltreatment (No. 16/Crm.C/09/TDB), was not conducted in accordance with the schedule previously set for 10am, and therefore the hearing only started at 11.30am. In the court room the judge read out the indictment of the public prosecutor against the defendant MF. The indictment claimed that there was sufficient proof that the defendant had committed the criminal act of serious maltreatment against the victim of his own free will. The actions of the defendant caused the death of the victim MG. Based on these facts the public prosecutor charged the defendant for violating Article 351 (3) of the Indonesian Penal Code.

Based on the observations of JSMP, the motive for this crime of maltreatment emerged after an argument over access to water in a local school located near their homes, and the two individuals started insulting each other and the defendant threw a rock that hit the victim on the left side of his head.

The first witness (AN) stated that he was standing not far from the victim and the defendant when the incident occurred and he witnessed it directly. The second witness also corroborated the testimony of the first witness by stating that although he was not at the scene of the crime and did not personally see the defendant throw a stone at the victim, he still managed to see the victim lying on the ground and covered with blood, and after that he ran to the home of the village chief and reported the incident. The second witness came to the scene of the crime after being summoned by the first witness to assist the victim.

In the hearing the defendant admitted his actions. He also explained that after throwing a stone at the victim he immediately handed himself in to the local police (Baquia) and was detained in a police cell for 3 days. The victim, who was suffering from a serious injury, was immediately taken to the Baucau public hospital, but could not be saved and he passed away on the 24 April 2008. Based on the medical report quoted by the public prosecutor, the victim died as a consequence of bleeding to the brain and because of the injuries he suffered.

The family of the defendant tried to reconcile with the family of the victim by providing a buffalo as a sign of condolence but the family of the victim rejected this offer.

In his final recommendation the public prosecutor drew the conclusion that based on the evidence presented during the trial the defendant had admitted the facts and honestly testified before the court. However the defendant only spoke about some of the facts. Therefore the public prosecutor placed more faith in the validity and credibility of the witness testimony rather than the testimony of the defendant. The public prosecutor felt that the actions of the defendant were serious and thus emphasized that there were no excuses for the defendant,

because the defendant's actions had caused the death of the victim. For these reasons the public prosecutor requested to the court to issue a sentence proportional to the actions of the defendant and sentence him to no less than five years imprisonment.

The defence strongly rejected the charges of the public prosecutor and argued that the defendant had truly admitted his guilt before the court. The defence also mentioned other facts as an attempt to mitigate the defendant's actions. For example, the defendant is old and has four children. The defence also reiterated that the actions of the defendant caused the death of the victim but this did not mean that the defendant had the intent and premeditation to kill the victim, rather the incident happened spontaneously because the defendant was unable to control his emotions when he heard the victim abusing him. Therefore the defence requested to the panel to carefully consider the circumstances of the case based on their own conscience and ensure that justice prevails.

On the same day the aforementioned court also announced a second adjournment in a case of attempted murder (Case No. 138/Crm.C/07/TDB). The first adjournment occurred on 17/3/2009 because the witness did not attend the hearing. The second adjournment was for the same reason, because the same witness failed to appear without an explanation. The defendant JD and the victim JE waited patiently from 10am to 2.30pm because they wanted to court to establish the real truth about this case, however in the end the court decided to adjourn the hearing until another day. Before the hearing was closed the public prosecutor requested for the court to hear testimony from two witnesses in the following hearing. The public prosecutor considered these witnesses to be integral to the case because the charges are so serious. The judge also stated that if the witnesses failed to attend the next hearing they would be fined and the court would provide a summons to the police to take them to court and attend the hearing.

The court also announced a decision in a case of violence between the rival martial arts groups PSHT and "77" (Case No. 02/Crm.C/09/TDB) that occurred on 24 April 2008 in Baucau and resulted in the deaths of victims N and B. The decision was announced by the Baucau District Court on Monday 13/4. Based on court monitoring conducted by JSMP, the defendants were handcuffed when they were led into the court room to hear the decision in their case. The decision was lenient on eight defendants, except for JL who was sentenced to 10 years in jail. The defendants were each charged with attempted murder and damage to property. Of the eight defendants, JD, TT, JX and DD were acquitted from the charges because their guilt had not been proven in this case. The motive for the murder arose after the defendant JL and JB were wrestling and threw each other to the ground landing on some dog feces. After that incident JB

sought the help of his friends to beat up JL. This ignited a fight between the two groups (PSHT and 77) which resulted in the deaths of victims N and B.

After examining the circumstances surrounding this case, the court ordered defendants JB, BD, JD and PM to pay court costs. Defendants BD and JX were each sentenced to 3 years imprisonment, with a reduction for time spent in detention, for the charge of attempted murder. Defendants PM and JB were respectively sentenced to 11 months and 11 bulan 17 days, with a reduction for time spent in detention. In addition to sentences of imprisonment, the court also ordered the defendants PM and JX to compensate the material loss of the victim T, amounting to \$112.00. The defendant JL was sentenced to 10 years imprisonment by the Baucau District Court because, according to the Prosecutor's indictment, he was the main perpetrator and mastermind of the fight that took place between PSHT and 77 which resulted in the deaths of the victims N and B and damage to the property of the victim T.

#### **Baucau, 15/4/09**

On 15/4 the Baucau District Court conducted a hearing in a criminal case involving minor maltreatment (Case No. 164/Crm.S/08/TDB). This was a continuation of the trial that had been previously adjourned due to the non-attendance of the victim at the court. Based on information obtained by the court the victim's serious psychological state meant it was necessary to adjourn the trial. The victim also did not attend the second hearing for the same reason, namely due to an unstable psychological state. The public prosecutor argued that the evidence presented during the trial in the form of testimony from witnesses and defendants was sufficient and therefore it was not necessary to hear from the victim.

However, to ensure that the truth shall prevail, the defence requested to the court to consider if it was possible to summon the victim to appear before the court to establish the victim's psychological state. The defence made this proposal because no medical report had been presented to show that the victim was actually suffering from a psychological condition.

After considering the requests of both parties the court gave an opportunity to both sides to present their final arguments. The public prosecutor concluded that there was sufficient evidence that the two defendants had committed the assault as described in the indictment and that the two defendants had in fact assaulted the victim. The defence stated that page 62 of the indictment showed that the evidence presented during the trial was insufficient to convict the two defendants. Therefore the defence requested for the court to acquit the defendants.

On the same day (15/4) the court also announced a decision against the defendant MB in a murder case (Case No. 142/Crm.C/08/TDB). According to

the charges made by the public prosecutor, on 15/10/2008 at approximately 8pm in Baucau the defendant MB took a machete and slashed the victim on the head and neck causing the death of the victim. Based on the actions of the defendant the public prosecutor stated that the attack committed by the defendant caused the death of the victim. The prosecutor also stated that the defendant committed this act of his own free will. The defendant also admitted this fact when providing testimony to the court. The public prosecutor emphasized that the medical report explained that the victim died from bleeding to the brain as the result of his injuries. In addition to the aforementioned charge, the defendant also had previously been convicted in a murder case (the victim was his wife). Therefore the court found the defendant guilty and sentenced him to 10 years imprisonment pursuant to Article 338 of the Indonesian Penal Code.

The court also announced a decision on 15/4 in a case of maltreatment (Case No. 15/Crm.C/08/TDB). According to the Prosecutor's indictment the incident occurred on 17/10/2008 within the jurisdiction of Baucau when the two defendants (D and F) committed an attack against the victim without a clear motive. In its decision the court referred to the charges made against the two defendants, namely that they attacked the victim with a knife and stabbed him in the chest and fingers. The two defendants were charged pursuant to Articles 335 and 53 (1) of the Indonesian Penal code. The defendants committed their actions of their own free will. The court acquitted the defendant D, but ordered him to pay court costs. The court sentenced the defendant F to 3 years imprisonment and ordered him to pay court costs because he was deemed the main perpetrator in this case.

### **Baucau, 16/4/09**

At 2.30pm the Baucau District Court conducted a hearing in Case No. 25/Crm.C/09/TDB relating to illegal gambling (Totor Timor Drow) involving the defendant JM as the main perpetrator. The defendant testified to the court that he had sold SDSB coupons in his own house. Each coupon was sold at the price of \$1. After selling these coupons he gave the money to the owner of the coupons in Dili. The defendant received 10 cents for each coupon sold. In response to the illegal gambling the police conducted a raid and arrested the defendant in his house where the coupons were being sold. A witness (police officer) testified that the police conducted a raid against illegal gambling such as SDSB, *Bola Guling* and *Kuru-Kuru* because of an instruction issued by their superiors. The police seized several coupons and money totaling \$20 from the defendant. The public prosecutor charged the defendant pursuant to Article 303 (1) of the Indonesian Penal Code which carries a maximum sentence of 10 years imprisonment.

Although the defendant's actions were classified as illegal and criminal the defendant testified to the court that no public official at the national level had

been able to provide information that these types of gambling were illegal. The defendant also testified that there were many other types of gambling conducted in various locations but the police never conducted raids, especially against the chief organizers.

In his final recommendation the public prosecutor concluded that the defendant had admitted his actions. The public prosecutor also stated that based on the testimony of the witness (police officer) the defendant had been caught in the act. Therefore he requested for the court to convict the defendant.

The defence strongly rejected the recommendation of the public prosecutor and stated that although the defendant had admitted his actions and although the government considers such gambling to be illegal and criminal, there had been absolutely no efforts to inform the public about such gambling. He also stated that these types of gambling were extremely common in rural areas and therefore the victims of such games were ordinary citizens. The government had no other way of breaking the gambling rings or prohibiting them or completing shutting them down. Therefore the defence once again requested for the court to consider the important points mentioned above in order to serve justice in the aforementioned case.

#### **Case No (06/Crm.C/02/TDB).**

On 16/4 the Baucau District Court heard witness testimony in an ongoing trial into a case involving the defendant who exploded a bomb in the Triloka region of Baucau on 27/2/2002 which injured four victims (J, AB, ID and AD). In the aforementioned hearing the court heard testimony from the two witnesses (H and ...) who were presented by the public prosecutor. In their testimony the witnesses stated that they did not see the defendant CS when the incident occurred. They only heard the name of the defendant from the victims of the explosion. The witnesses also said that a lady (MB) told them that on two occasions the defendant had been spying on the witnesses when they met with other members of their group.

In his final recommendation the public prosecutor requested for the court to find the defendant guilty of exploding a bomb that caused injuries to four victims. The public prosecutor maintained his charge pursuant to Article 340 of the Indonesian Penal Code.

Before the hearing was concluded the presiding judge Edite P. asked the defendant to make a concluding statement in his own defence. The defendant used this opportunity to say that when the incident occurred he was at home with his son who was sick. He also rejected the testimony of the witnesses who said that he carried the bomb and exploded the bomb causing injuries to the victims. The defendant claimed that he only ran to the scene of the crime after the bomb exploded and he heard people screaming. The defence asked the court to decide the case in the interests of justice because none of the facts had been

proven, including the testimony of witnesses who stated that they were not at the scene of the crime when the bomb exploded.

For further information please contact;

Luis de Oliveira Sampaio

Executive Director JSMP

E-mail: [luis@jsmp.minihub.org](mailto:luis@jsmp.minihub.org)

Landline: 3323883