



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

Case Summary

Period : May 2012

Edition : 12 June 2012

**Summary of the trial process at the Dili District Court in May
2012**

Introduction

In May 2012 JSMP continued to monitor trials at the Dili District Court.

JSMP managed to observe 13 criminal cases as part of its monitoring activities. There were 4 cases of ordinary maltreatment, 1 case of domestic violence, 1 case of maltreatment of a spouse, 1 case of property damage, 1 case of aggravated murder, 1 case of ordinary fraud, 1 case of fraud and falsification of documents, 1 case of misuse of state assets, 1 case of misuse of authority, falsification of documents, and maladministration and 1 case of serious maltreatment.

From the aforementioned 13 cases, a final decision has been rendered in one case, the court has validated agreements in two cases and the other ten are still being processed.

Similar to previous editions, this Case Summary aims to disseminate and provide up to date information to the public about trials conducted at the Dili District Court.

The following information summarizes trials observed at the aforementioned court:

1. Crime of Ordinary Maltreatment, No. 101/C.Ord/2011/TDD.

On 3 May 2012 the Baucau District Court was unable to conduct a hearing in a case involving Ordinary Maltreatment which was registered as Case No. 101/C.Ord/2011/TDD. The trial was adjourned because the victim and witnesses did not appear in court although they had already been summoned. The three defendants were present in court.

The hearing to adjourn the trial was presided over by judge António Helder Viana do Carmo, and the Public Prosecution Unit was represented by Angelina Joaninha Saldanha, whilst the defendant was represented by public defender Manuel Exposto.

The trial was adjourned until 5 June 2012 at 9am.

2. Crime of aggravated murder, Case No. 209/C.Ord/2012/TDD.¹

On 4 May 2012 the Dili District Court conducted a hearing to read out its final decision in a case of aggravated murder registered as Case No. 209/2012/TDD. The crime was committed by the convicted person Jose Carlos against the victim Maria Carlos (deceased) who was the wife of the convicted person. This case allegedly occurred in Aisirimou Village, Aileu on 01/12/2011.

The hearing to announce the decision was presided over by a judge representing the panel, namely Antonino Goncalves. The Public Prosecution Service was represented by Felismino Cardoso and the defendant was represented by public defender Olga Barreto Nunez.

After examining and assessing all of the evidence presented the panel of judges handed down a sentence of 18 years imprisonment against the convicted person. The court did not order the defendant to pay compensation and court costs.

3. Crime of Ordinary Fraud, Case No. 54/C.Ord/2012/TDD.

On 7 May 2012 the Dili District Court conducted a hearing in a case registered as Case No. 54/C.Ord/2012/TDD. This crime was allegedly committed the defendant FdC against 4 victims (AM, OS, AS and DM) in 2007, in Caicoli, Dili. Although one of the victims (DM) did not appear in court, the hearing continued.

This hearing was presided over by judge Ana Paula Fonseca. The Public Prosecution Service was represented by Domingos Barreto, and the defendant was represented by public defender José da Silva.

In his indictment the public prosecutor stated that in 2007 the defendant came to the homes of the victims in Caicoli and promised to give them credit to the value of US \$5,000 each. In order to obtain the credit each person had to hand over a guarantee of US \$ 25, except one victim who only gave US \$13. Therefore the total amount of money involved was US \$ 88. But after the money was handed over the victims did not receive what the defendant had promised.

In the aforementioned trial the court tried to reach an amicable settlement and in the end the victims were willing to end this case but they asked the defendant to return their money totaling US \$ 88. The defendant agreed to the victims' request but he asked for the court to give him time to settle this debt. Therefore the court adjourned the trial for 3 months so the defendant would have enough time to raise money and pay back the victims.

The court adjourned the trial until 1 August 2012 at 2.30pm.

¹ Full information is available on the JSMP Website: www.jsmp.minihub.org, under Publications, Press Releases, Edition: 09 May 2012, Period: May 2012.

4. Crime of Ordinary Maltreatment, Case No. 370/C.Ord/2011/TDD.

On 7 May 2012 the Dili District Court conducted a hearing in a case involving Ordinary Maltreatment which was registered as Case No. 370.C.Ord/2011/TDD. This crime was allegedly committed by 3 defendants, namely Fransisco António (father), Rita Antonia (daughter) and Matilda de Jesus (daughter) against the victim, Dulce Soares, in Manleuana, Dili on 16 December 2009.

The incident occurred because the parties were arguing about a tap that provided clean water. At that time the daughter of the victim was going to attach a pipe to the tap, but the two defendants did not allow her. The victim went to attach the pipe but the two defendants did not provide any water. The actions of the defendants led to a dispute between the parties and finally the defendant Fransisco approached the victim and held her two arms allowing the other two defendants to pull her hair and scratch her on the back.

In his final recommendations, the public prosecutor requested for the court to validate an agreement and settle the case and the public defender agreed with the final recommendations of the public prosecutor. Before the court validated this matter the victim and the defendants reached an amicable settlement before the court. The court validated this settlement and closed the case by acquitting the 3 defendants from the charges.

5. Crime of fraud and falsification of documents, Case No. 576/C.Ord/2011/TDD.

On 8 May 2012 the Dili District Court conducted a hearing in a case registered as Case No. 576/C.Ord/2011/TDD. This case involved the three defendants FdCR, DCDC and HGCS. At that time the defendant FdCR was the Principal in a Junior High School in Dili. The other two defendants DCdC and HGCS were treasurers at the aforementioned school. The defendants were charged with committing a crime against the government of Timor Leste, which was suspected of being carried out between 2008 and 2009.

The hearing was led by a panel of judges comprising Judge Jacinta Correia (presiding), José Maria de Araújo and Ana Paula Fonseca. The Public Prosecution Service was represented by José Ximenes and the defendants were represented by public defenders Fernando Carvalho, Marcia Sarmiento and Laura Valente Lay.

The hearing was conducted to hear testimony from the 2 witnesses GdC and JdS who were employed as teachers at the aforementioned school.

The witnesses GdC and JdS testified that they found out about the amounts of US \$ 7,610 and US \$ 12,336 from the defendant FdCR during a meeting at the school. Nevertheless, they did not know how all of the money was used. The witness GdC only knew about the use of money for the installation of electricity which cost about US \$ 300 and money spent when they ate together three times when the teachers had a meeting.

The witness JdS added that although he was the Chief of Logistics, the key to the warehouse was in the possession of the defendant FdCR who was the principal of the school.

The trial will continue on 4 June at 2pm to hear testimony from other witnesses.

6. Crime of Ordinary Maltreatment, Case No. 174 /C.Ord/2011/TDD

According to the court schedule the Dili District Court was supposed to conduct a hearing in a case involving Ordinary Maltreatment which was registered as Case No. 174 /C.Ord/2011/TDD. However the hearing did not eventuate because the parties (defendant and victim) did not appear in accordance with the schedule, even though the parties had already been summoned by the court.

Due to this obstacle the court adjourned the trial until 4 June 2012.

7. Crime of aggravated falsification of documents, Case No. 58/C.Ord/2011/TDD.

On 9 May 2012 the Dili District Court conducted a hearing in a case involving the falsification of documents that was registered as Case No. 58/C.Ord/2011/TDD. This case involved the defendant AdAF who was the main perpetrator in a matter relating to a tender that was issued by the Ministry of Justice in 2008.

This hearing was presided over by a panel of judges comprising Duarte Tilman, João Ribeiro and António Gomes (international). The Public Prosecution Service was represented by Felismino Cardoso and Angelina Saldanha, the defendant was represented by public defender Fernando de Carvalho.

In his indictment the prosecutor stated that in 2008 the defendant was the president of the evaluation committee within the Ministry of Justice for a construction project to rehabilitate the Becora Prison buildings with a budget of US \$ 70,870 allocated for four buildings, with each building costing US \$ 17,340.

The process for tendering this project did not comply with the proper procedure. At that time the defendant contacted the owner of the company and also defendant falsified documents because the evaluation committee did not evaluate the process, and the defendant demanded for the evaluation committee to sign the documents relating to the rehabilitation of the Becora Prison buildings.

According to the prosecutor, the defendant committed the crime of falsifying document as set out in Article 263 (subsections 1 and 2) of the Indonesian Penal Code as well as Article 304 of the Timor-Leste Penal Code. The defendant was also complicit in the crime of abuse of power and maladministration as set out in Indonesian Law No. 31/1999, Article 3, regarding Eradication of the Crime of Corruption which in the Timor-Leste Penal Code is set out in Article 297 (subsections 1 and 2).

In his testimony the defendant stated that the charges of the prosecutor were not true, especially regarding the falsification of documents. He said that at that time all of the members of the evaluation committee agreed on the Zoro Construction company, and then they agreed to sign

the documentation. The defendant totally denied the allegation that he phoned the owner of the company.

According to the defendant, the Zooro Construction company met the requirements that were established by a consultant from the Department of Public Works, such as having a company license, borrowing arrangements, bank accounts etc that had all been verified. In addition the bid submitted by the Zooro Construction company was lower than the other two companies.

The witness EV testified that in 2008 he was the director of the Zooro Construction company. He received a call from Dili informing him that there was a project to rehabilitate the Becora Prison buildings and if he wanted to compete for the tender then he could come to Dili to purchase the bidding documents from the Procurement Section.

When he came to purchase the bidding documents from Procurement the witness also contacted two of his friends to take part in the tender. At that time his friends didn't come, so the witness filled out their documents and submitted them to Procurement but included bids that were higher than the bid in his own documentation. After three weeks the witness received information that he had won the project.

When the project was completed the witness collected money from the ANZ Bank but it was lower than the amount determined by the consultant from the Public Works Department. Nevertheless the witness did not ask about it or take issue with this discrepancy.

The trial will continue on 29 May at 2pm to hear testimony from other witnesses.

8. Crime of Ordinary Maltreatment, Case No. 608/C.Ord/2011/TDD.

On 22 May 2012 the Dili District Court validated a settlement and closed a case involving ordinary maltreatment which was registered as Case No. 608/C.Ord/2011/TDD. The incident was allegedly committed by the defendant Samuel da Costa against the victim Fidelia de Fatima in 2010 in Becora Village, Cristo Rei Sub-District, Dili District.

The hearing to validate the resolution of this case was presided over by single judge Edite Palmira, and the Public Prosecution Service was represented by Hipólito Santa, and the defendant was represented by public defender Cância Xavier.

The court decided to validate an agreement in this case because the victim agreed to an amicable settlement with the defendant, because the victim said that they were relatives and after the aforementioned incident they had reconciled.

9. Crime of misuse of state property and falsification of documents, Case No. 24/C. Ord/2012/TDD.

On 22 May 2012 the Dili District Court conducted a hearing in a case involving the crime of misuse of state assets registered as Case No. 24/C. Ord/2012/TDD. This incident was allegedly

committed on 2 May 2010 by the defendant JAS against the victim SF who was the owner of the Auto Timor vehicle maintenance workshop.

The hearing was presided over by a panel of judges comprising José Maria de Araújo, António Helder de Carmo, and António Gomes (international). The Public Prosecution Service was represented by Angelina Saldanha, and the defendant was represented by public defender José da Silva.

In his indictment the public prosecutor stated that in 2010 the defendant was the Chief of the Finance Department at the Ministry of Security and he was ordered by his director to go to the Auto Timor workshop to pay because the workshop had repaired their Hilux vehicle. The vehicle was involved in an accident in Balibo. The defendant was carrying US \$ 2,000. However the defendant used the money for personal interests.

The prosecutor stated that the defendant violated Article 295.1 of the Penal Code which carries a sentence of 3-10 years imprisonment.

Before the court the defendant admitted that he committed the crime in accordance with the charges of the public prosecutor, but the defendant was willing to repay the money that he had spent as soon as possible and the defendant also stated that he regretted his actions.

Because the defendant admitted his actions the court decided not to hear testimony from any other witnesses.

In his final recommendations the public prosecutor requested for the court to apply a suspended sentence against the defendant if the defendant was able to settle the debt before the final decision was to be announced.

The final decision will be announced on 6 June 2012 at 3pm.

10. Crime of abuse of power, falsification of documents and maladministration, Case No. 580/C.Ord/2011/TDD and 622/C.Ord/2011/TDD

On 23, 24, 25, 28 and 30 May 2012 the Dili District Court continued a trial by hearing testimony in a case involving abuse of power, falsification of documents and maladministration that was registered as Case No. 580/C.Ord/2011/TDD and 622/C.Ord/2011/TDD. This case involved the defendants LMBFL and AdAF and was based on strong suspicion of their involvement in an incident in 2008. 16 witnesses were summoned by the court, namely: EA, HdOX, NCS, AMC, PdC, RS, AdR, AFR, HG, EJF, NM, AdC, IJV, JADOX, ML and JAB. From these witnesses only JAB chose to exercise his right not to provide testimony before the court.

The hearing was presided over by a panel of judges comprising Edite Palmira, José Maria de Araújo and Paulo Teixeira (international). The prosecution was represented by Angelina Saldanha, Felismino Cardoso and José Ximenes. The defendant LMBFL was represented by Sergio de Jesus Hornai and Cândio Xavier, whilst the defendant AdF was represented by public defender Fernando de Carvalho.

According to the witnesses NCS, AMC, HG, and EJF, who were members of an evaluation committee for the construction of a Civil Registry Office in Lautem District, they did not recommend for the Zoro Ltd Company to win the contract because its bid was higher (US \$ 199,124). The witnesses said that the estimated budget submitted by the evaluation committee totaling US \$ 154,298.00 was not used without clear justification. In addition they also stated that at that time the defendant AdF asked them to quickly sign documents stating that the Zoro Company was the winner because the Minister of Justice was about to go overseas. Then they signed the documents without reading their contents.

According to other witnesses, AdR was employed as an advisor at the Ministry of Finance, AFR was the owner of *Perkiki Unipessoal Ltd*, and NM was a representative of *Lie-Chao Unipessoal Ltd*, and he stated that they were not happy with the final result that announced that the Zoro Company had won the tender because they believed that the Zoro Company had not fulfilled the requirements established by the Procurement Section of the Ministry of Justice, such as having sufficient funds, or having approximately 3 years of operational experience and had also submitted a bid that was higher than the others.

In addition, the witness RS was part of an evaluation committee for the construction of a Civil Registration Office in Aileu District, and he testified that at that time the evaluation committee recommended three companies that had the lowest bids but in the end *Levi Unipessoal Ltd* was announced as the winner even though it had submitted a higher bid. Therefore, the witness JADOX who is the owner of *Maferdi Ltd*, a company that was recommended by the evaluation committee to win the contract, was not happy with the decision to grant the contract to *Levi Ltd*.

The witness IJV who is currently employed as the Vice Minister of Justice stated that he did not have knowledge about the Civil Registry Office and has never carried out an inspection regarding the quality of the newly constructed office.

Another witness HdOX is the National Director for the Civil Registry testified that in 2009 he was the National Director and he estimated that the funding required for the aforementioned project would be US \$ 150,000 for each office. Regarding the amount of US \$ 200,000 he sent a letter to the Ministry of Justice although no response has been given to date.

Also the witness PdC who is employed as the Director of Finance at the Ministry of Justice testified that in 2009 the total funding required for each Civil Registry Office was US \$ 200,000 but he didn't know how the funds were used.

The witness EA is the owner of Zoro Construction and he testified that at that time his company together with another company took part in the competition to win the project to construct the Civil Registration Office in Lautem District. In the end his company won the tender for the aforementioned project with a bid of US\$ 199, 124.

In addition to witnesses that testified about the construction of Civil Registration offices in Lautem and Aileu Districts, the public prosecutor presented several witnesses to testify regarding

the provision/procurement of uniforms such as trousers, shirts, shoes etc for prison staff at Becora and Gleno prisons.

The witness AdC, who is an officer at Becora Prison testified that in 2008 the defendant handed over goods in the form of trousers, shirts, shoes etc to prison officers at the Ministry of Justice.

In 2008 the witness ML was carrying out the functions of a civil servant at the Finance Administration Section at the national level. Regarding the goods that included uniforms for prison staff, the witness was not directly involved because the inspection process had been decentralized to each ministry and therefore the Ministry of Justice would be carrying out the inspection.

Based on the facts and the testimony provided by witnesses, in his final recommendations the public prosecutor maintained his charges in relation to these two cases and requested for the court to sentence the defendant LMBFL to 12 years imprisonment and the defendant AdAF to 9 years imprisonment.²

11. Crime of Ordinary Maltreatment and Property Damage, Case No. 121/C.Ord/2012/TDD.

On 23 May 2012 the Dili District Court conducted a hearing in a case involving Ordinary Maltreatment and Property Damage which was registered as Case No. 121/C.Ord/2012/TDD. This case involved the 3 defendants MdR, LS and FA who allegedly committed the crime against the victims AC and MS on 9 August 2009 in Manleuana, Dili District.

The hearing was presided over by judge Ana Paula Fonseca, the Public Prosecution Service was represented by Nelson Carvalho, and the defendants were represented by public defender Olga Barreto Nunes.

In this case, the public prosecutor charged the defendants pursuant to Article 145 of the Penal Code. Nevertheless, in this hearing the two victims decided to withdraw this case because the two parties had reconciled and prepared an amicable agreement at the local police office.

The court gave the two parties five days to prepare the amicable agreement. The court will validate the amicable agreement and close the case.

12. Crime of maltreatment of a spouse, Case No. 199/C.Ord/2012/TDD.

On 25 May 2012 the Dili District Court conducted a hearing in a case involving the crime of maltreatment of a spouse that was registered as Case No. 199/C.Ord/2012/TDD. This case involved the defendant FGdS who allegedly committed the crime against the victim AA (his wife). This incident allegedly occurred on 3 September 2010, in Surik-Mas, Dili District.

² For complete information regarding the charges of the Public Prosecution Service, see JSMP Website: www.jsmp.minihub.org, under Press Releases, Period: May 2012, Edition: 31 May 2012.

The hearing was presided over by a panel of judges comprising Ana Paula Fonseca, António Gomés and Julio Fontes (2 of the judges are internationals). The Public Prosecution Service was represented by Mateus Nesi and the defendant was represented by public defender Manuel Sarmento.

In his indictment the public prosecutor stated that on 3 September 2010 the defendant committed the crime of domestic violence and property damage (cupboard and chair) because the defendant was suspicious because the victim frequently travelled to the districts and overseas. The victim works in a Ministry in Dili.

In his statement the defendant rejected some of the facts mentioned in the indictment. According to the defendant it was true that he damaged the cupboard when they were arguing but he did not hit the victim. The victim testified that the prosecutor's charges were correct and that the defendant was suspicious of the victim because she frequently travelled to the districts and overseas in relation to her job.

The two witnesses are the children of the defendant and the victim and they testified that their parents often argued and the defendant often would get angry at the victim when the victim returned at night from the districts or from overseas. At the time of the incident the defendant and the victim abused each other and finally the defendant damaged a cupboard and chair, but in relation to the allegation that the defendant hit the victim, they did not see this or know about it.

The hearing will continue on 29 May 2012 to hear more witness testimony.

In addition, another witness SG who is the village chief testified that he did not see the defendant hit the victim, but he received information from the victim that the defendant punched her twice in the face and smashed a cupboard and chair. This is what the witness reported to the police.

In his final recommendations, the public prosecutor maintained his charges and requested for the court to apply a fair punishment in accordance with Article 154 of the Penal Code as well as Article 35 of the Law Against Domestic Violence.

However, the public defender in his final recommendation requested for the court to apply a more proportional punishment against the defendant because the defendant was a first time offender. In addition, the defendant also has three children who are still young and need a father to provide for their daily needs.

The final decision will be announced on 11 June 2012 at 2pm.

13. Crime of Ordinary Maltreatment, Case No. 616/C.Ord/2011/TDD.

On 25 May 2012 the Dili District Court conducted a hearing in a case involving Ordinary Maltreatment which was registered as Case No. 616/C.Ord/2011/TDD. This crime was allegedly committed by the defendant FA against the victim BdCP on 24 June 2011 di Mota Ulun, Becora, Dili.

The hearing was presided over by a panel of judges comprising António Helder Viana do Carmo, António Gonçalves and Julião Fontes (international). The Public Prosecution Service was represented by Baltazar Monteiro. The defendant was represented by public defender José da Silva.

According to the indictment of the public prosecutor on 24 June 2011 at approximately 5pm, the victim (aged 88) went to buy some vegetables in Becora, Mota Ulun. Without any clear reason the defendant suddenly hit the victim twice causing the victim to fall down. The victim suffered an injury to his forehead and received treatment at the Guido Valadares National Hospital. In addition, the victim was not able to work for more than two months.

In response to the charges the defendant stated that the indictment was correct as well as the testimony of the victim.

In his final recommendations, the public prosecutor requested for the court to punish the defendant in accordance with Article 146 of the Penal Code because the defendant had admitted his guilt as charged by the public prosecutor.

The public defender requested for the court to acquit his client from the charges because the defendant had cooperated with the court and had admitted his crime and was a first time offender.

The final decision will be announced on 8 June 2012 at 2pm.

For more information, please contact:

Luis de Oliveira Sampaio

Executive Director of JSMP

Email: luis@jsmp.minihub.org

Landline: 3323883