



JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

SUMMARY

Period : June 2009

Issue : June 2009

Summary of Cases Tried in the Baucau District Court Between 08-11-June 2009

Baucau, 8/6/09

The public has eagerly awaited the outcome of the Watulari case and on Monday 8/6 the Baucau District Court read out its decision. The close friends and family of the defendants were present in court, and PNTL and UNPOL officers were on standby to deal with any disturbances or undesirable incidents. JSMP noted that in addition to the close friends and family of the defendants, several observers from international and national NGOs were also present. These observers arrived several hours early in anticipation of the announcement of the decision. As this is a serious matter, a wide range of people have been focusing on the case.

The four page sentence was read out by presiding judge Edite Palmira in Tetum to the five defendants who were sitting in a row facing the panel of judges. The decision referred to the facts revealed during the trial and testimony provided by the parties and witnesses. The court found that some of the five defendants were involved in a riot in Viqueque that resulted in the burning of hundreds of houses and other significant losses of property. As a result victims suffered other material losses and some had to flee to safer locations.

The court also mentioned that on 8 August 2007 the defendants were present at the scene of the crime and inciting others to burn houses and damage the property of others.

However, in the end the court found that it had not been proven that all of the five defendants damaged property and committed arson during the Viqueque incident. The court was only able to conclude that three of the defendants had been found guilty as the main perpetrators in this case. Therefore, the court decided to sentence the defendants LP, MG, and D to three years imprisonment. The other defendants HC and GD were acquitted from all charges relating to this case.

Each of the defendants had been charged by the Public Prosecutor pursuant to Article 170 and Article 187 of the Indonesian Penal Code. However after completing the trial the panel found that the actions of the defendants did not fulfill the elements of the criminal act set out by Article 170. Therefore, the court only referred to Article 187 of the Indonesian Penal Code in relation to the sentencing of the three convicted persons.

JSMP monitored this case and believes that the decision is more lenient than the recommendation of sentence made orally by the public prosecutor during the last hearing on 6 May 2009. During the last hearing the prosecutor asked the court to sentence the defendants GD and D in accordance with the severity of their crime, and recommended a sentence of no less than five years and six months imprisonment. The prosecutor also recommended that the remaining defendants be given more lenient sentences not in excess of 5 years imprisonment.

In addition to the three year imprisonment handed down against the defendants, the court also ordered them to pay court costs of \$5. After hearing the decision the defendants left the court room, spoke with their lawyer Dr. Arlindo Sanches and were advised to return to their respective homes.

JSMP has not yet confirmed if the convicted persons intend to lodge an appeal or if they will accept their three year sentences. On the other hand, JSMP believes that the public prosecutor was not satisfied with the decision, and may lodge an appeal.

On the same day the court also handed down a decision in a case of attempted murder committed by the defendant JD against the victim

Judge Ana P informed the defendant that the court had decided to acquit the defendant because during the trial the defendant, victim and witnesses had not provided any testimony. Rather they had chosen to remain silent and therefore the court could not obtain any evidence during the trial. The court noted that while this did not mean that the defendant did not carry out an act of violence against the victim, the court had to conclude that no reliable evidence had been produced to convict the defendant. Therefore the court acquitted the defendant, also noting the fact that his case had exceeded the statute of limitations and had been pending for a long time.

A hearing in criminal case No. 19/Crm.S/09/TDB involving the defendant MD and others was postponed because the main perpetrator was unable to attend court. The court had been informed in advance about the reasons why he was unable to attend the hearing, in which a decision was due to be handed down.

Baucau, 9/6/09

On Tuesday 9 June the Baucau District Court had an extended session in order to hear four cases scheduled for that day. JSMP observed that according to the court schedule, one case was supposed to start at 9.30am, but was delayed until 11.50am because the judge did not arrive on time. The other three cases were scheduled one after the other during the afternoon, at 2pm, 2.30pm and 3.15pm.

In a case of maltreatment committed by the defendant AA against the victim MS the public prosecutor charged the defendant with violating Article 351 of the Indonesian Penal Code, which carries a sentence of 2 years and 8 months jail. However, after hearing testimony from the defendant, the presiding judge immediately ended the hearing because the judge felt that this testimony was sufficient. The trial was adjourned until 15/6 to

await the results of an agreement made by the victim and the defendant. The court will then decide if the agreement can be legally validated in accordance with the new Timor Leste Criminal Code which entered into force on 8 June.

In the case of the defendant M and others, the court decided to acquit the defendants from criminal charges, finding that they had not been proven guilty. The judge stated that the defendants had all chosen to remain silent during their trial, as had the victim. The court stated that it had been difficult to gather evidence during the trial, and to establish whether the defendants were guilty or not.

In addition to the two cases mentioned above, another case involving a minor criminal offence was also scheduled for the same day. The defendant was charged by the public prosecutor for possessing a bomb that nearly took the life of the defendant himself. According to the indictment read out by the judge the defendant exploded the bomb near his house and the defendant suffered serious injuries. The defendant testified to the court that he found the item on 16/6/08 near his plantation, which is located some distance from the community. When he saw the item he took it to his house and placed it in a cave near his home, but he did not report it to the authorities or anyone else. The bomb exploded because because the defendant was trying to cut the bomb with a saw so that he could use it to bomb fish in the ocean. However, when the bomb suddenly exploded, the defendant was injured. He suffered a serious injury to his right leg, and to his left arm which is now paralyzed.

In his final recommendation, the public prosecutor suddenly requested that the court make an acquittal, perhaps out of sympathy for the defendant who has now been paralyzed and disabled. The lawyer for the defendant did not comment at length, except to say that he agreed with the prosecutor, and to ask that the defendant be acquitted.

Note: A witness summoned by the court did not testify in this case because the summons was not sent to the right person, and the witness who was summoned was not at the scene of the crime when the incident occurred. The witness who appeared in court explained that he did not witness the incident because he was not there and did not manage the crime scene. He added that an UNPOL officer and another PNTL officer should have been summoned as witnesses because they managed the crime scene and took the defendant to the Baucau hospital.

JSMP believes that the public prosecutor did not conduct a thorough investigation to ascertain which witnesses could provide accurate testimony in this case. This type of mistake can prevent the court from obtaining credible evidence to establish the truth in criminal matters.

Investigations and other efforts to reveal the material facts of a matter need to be carried out thoroughly and in a precise manner to avoid mistakes that can render a court's decision null and void. Witness testimony is an integral part of gathering evidence to charge a defendant based on the material facts of a matter. As no witness provided testimony in this case, the court decided to acquit the defendant of all charges, despite the

fact that the defendant was in possession of goods prohibited by law as set out in UNTAET Regulation No. 15/2001, Section 4 (7) which strictly prohibits civilians from possessing guns or explosives.

NB: the decision was handed down on 15/6

In a criminal case of murder, the defendant S was originally charged with infanticide by the public prosecutor for violating Article 342 of the Indonesian Penal Code by killing her child. However, after hearing testimony from all of the parties, including witnesses, the court found that the actions of the defendant did not constitute infanticide. The judge concluded that the elements of Article 342 had not been fulfilled, and substituted the charge for that of Article 338 of the Indonesian Penal Code, namely murder, carrying a 4 year prison sentence.

JSMP believes that the aggravating circumstance in this case was that the defendant did not express regret for her actions. After reading out the decision the defendant met with her lawyer to seek an appeal because the defendant believed that the sentence was too severe.

Baucau 10/06/09

On Wednesday 10/6 the Baucau District Court held a hearing in a case involving the defendant and others who were charged with damaging private and public property on 16/11/2009 at approximately midnight in Waikua, Vemasse. The Defendant C burned down a primary school building, a traditional house, a fishermen's hut on the beach, and a training centre. According to the defendant's testimony, he committed these acts because \$100 was stolen from his wallet by an unknown person.

The public prosecutor charged the defendant as the main perpetrator in this case. The defendant admitted that he burned the four houses in question because he had lost some money. He also clearly stated that after committing the arson he ran to the forest and spent one night there, and the following morning went to the home of his brother and then handed himself in to the police.

The victims did not provide testimony that supported the charge, because at the time of the event they were not at the scene of the crime. Only the witness SP told the court that he and four friends saw the defendant burning the houses. However the witness said that he only saw the defendant burn the training centre near his house. The witness then said that after the defendant burned that building he fled to the forest and the witness and his friends could not catch him. The public prosecutor charged the defendant under Article 187 of the Indonesian Penal Code, which carries a maximum penalty of 12 years jail.

In his final recommendation of sentence the public prosecutor said that there was no doubt that the defendant had burned the four buildings, because the defendant had admitted his actions in both the first hearing and the present hearing. The defendant's motivation for the crime was the loss of \$100 from his wallet, but that based on his own testimony he did not know who had taken the money.

The public prosecutor asked the court to carefully consider the facts before issuing a decision that upheld the interests of justice. The defence counsel echoed the request of the public prosecutor.

Baucau 23/6/09, 2pm.

The public prosecutor charged the defendant CX under Article 351(1) of the Indonesian Penal Code because the defendant slashed the victim C and severed his ear. The slashing was triggered by a trivial incident at the scene of the crime in Wailili village when the victim called out to the defendant who was taking five coconuts (it was unclear who they belonged to). Suddenly the defendant reacted angrily and cut off the ear of the victim. After the incident the defendant was immediately taken to the Baucau Police Office. After hearing testimony from both parties it appeared that there was absolutely no motive for the criminal act of the defendant.

One fact that emerged during the trial deserves special mention. When the defendant handed himself in to the police station and was taken to Baucau hospital for medical attention the police officer who accompanied him told the medical staff not to attend to the defendant because he was a suspect in a criminal case of maltreatment. Therefore the defendant was not given medical assistance.

Oral recommendation of sentence:

In his recommendation of sentence the public prosecutor stated that he had serious doubts about the truth of the testimony provided by the defendant. According to the public prosecutor, the defendant did not speak frankly during the trial about some facts in his case. Therefore the public prosecutor requested that the charge to be maintained, but that the defendant be sentenced in accordance with Article 3(3) of the new Criminal Code which carries a minimum sentence of two years jail for the crime of murder.

At this stage an argument occurred between the prosecutor and the legal representative of the defendant. The argument related to the fact that two lawyers were defending the defendant, which the public prosecutor Jose Ximenes thought was abnormal. The prosecutor took issue with a public defender and a private lawyer both providing legal defence to the same defendant. The prosecutor stated that the two lawyers served different functions, and that it was therefore inappropriate for them to provide representation in the same case.

JSMP believes that the debate between these two court actors, which resulted in the final plea being adjourned, was inappropriate. The public prosecutor should have requested that the judge carefully consider the circumstances and authorise one lawyer to represent the defendant. The judge handling this matter did not pay sufficient attention to the representation of the defendant during the trial. In principle, the court must appoint a lawyer, either a public defender or private lawyer, to represent a suspect or defendant. The debate occurred because insufficient attention was given to how authority was delegated in the handling of this case.

As a result of this debate the judge halted proceedings and announced that the final recommendation of sentence and final plea would be continued on 23/6.

On the same day, the court decided a minor criminal matter involving the defendant M and others by validating an amicable settlement reached between the defendant and the victim that was made before village elders, village authorities and other witnesses. The validation of the settlement reached by the parties was made pursuant to the new Timor Leste Criminal Code which allows for minor criminal matters to be settled amicably, however such settlements must be validated by a court to provide evidence that the matter has been settled in accordance with the law.

For more information please contact:

Luis de Oliveira Sampaio

Executive Director of JSMP

Email: luis@jsmp.minihub.org

Landline: 3323883