



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

### Summary February 2009

#### Summary of Criminal Cases Tried by the Baucau District Court in February 2009

JSMP conducted monitoring for five days at the Baucau District Court (BDC) during the first week of January 2009. JSMP observed that the BDC conducted hearings in relation to 9 cases that occurred within the jurisdiction of this court.

On 12 January the court tried two cases relating to the criminal act of maltreatment. In both cases the court only heard testimony from the defendants and heard the final statements of both sides that were delivered orally.

On 13 January the second case of maltreatment was tried and once again both sides presented their final statements orally. A final decision will be issued on 20 January.

On 14 January the BDC was scheduled to try two criminal cases. The first case was registered as Case No. 137/Crm.C/08/PDB. This criminal matter was supposed to be tried before a panel, but the hearing was adjourned because one of the judges was absent. The other criminal case was also adjourned because the defendant did not attend the trial. Therefore both cases were adjourned and the court will notify the parties about when subsequent hearings will take place.

On 15 January the BDC issued final decisions in two criminal cases, namely Case No. 161/Crm.S/08/TDB and Case No.148/Crm.S/08/TDB.

On 16 January the BDC conducted three separate hearings. The court issued a final decision in criminal Case No. 122/Crm.S/08/TDB and heard the final recommendation of sentence in Case No. 119/Crm.S/08/TDB. The court also conducted a trial into criminal Case No. 20/Crm.C/08/PDB involving the defendant GD. This trial will be continued on 19 January at the Manatuto Police Station with the examination of testimony provided by witnesses appearing for the defence.

More information has been provided below on the criminal trials that were observed by JSMP between 12 January and 16 January 2009 at the Baucau District Court.

**Case No. 157/Crm.S/ 08/TDB**

On Monday (12/01) the Baucau District Court tried a case of maltreatment involving the defendant CVC. According to charges presented to the court, on 6 July in Lacro, Manatuto the defendant CVC kicked the victim in the neck causing the victim to fall to the ground unconscious. This incident took place in a rice field because the son of the defendant had cut down a tree that was being used to secure rope around the rice field.

As a result of this incident the victim was unable to move his left leg and fell unconscious. He required medical attention at the Manatuto Hospital for one week.

Based on statements provided to the police the defendant was immediately arrested and placed in detention for 72 hours.

The prosecution charged the defendant for committing the aforementioned act under Article 351.2 of the Indonesian Penal Code. However, after hearing testimony from the victim during the trial, the prosecution amended the charge to Article 351.1 of the Indonesian Penal Code and recommended that the defendant be given a suspended sentence and a fine of US\$ 50.00.

The defence asked the court to issue a fair decision in accordance with the facts and with consideration shown to the admission made by the defendant and his expression of remorse. A final decision in this case will be issued on 20 January 2009.

**Case No. 421 Crm.S/ 08/TDB**

On Monday (12/01) the Baucau District Court issued a suspended sentence of one year and six months imprisonment against the defendant LO pursuant to Article 351 of the Indonesian Penal Code in accordance with the recommendation of sentence made by the prosecution for committing the act of maltreatment against the victim GC. The defendant was found guilty of the prosecutor's charge after striking the victim four times after the victim returned home from playing soccer. As a consequence of this violent act the victim suffered an injury to his eye and received three stitches. In addition to hitting the victim the defendant also went to the victim's home and damaged a door.

In response to the aforementioned evidence the defendant expressed remorse and stated that he had replaced all of the goods that he had damaged. The defendant also told the court that he and the victim had reconciled.

In relation to the evidence presented the prosecution recommended for the court to issue a suspended sentence against the defendant to educate him.

**Case No. 154/Crm.S/ 08/TDB**

The Baucau District Court tried a case of domestic violence (maltreatment) that occurred between the defendant JM and his wife (the victim ML). The prosecution alleged that the incident occurred because the victim asked the defendant to hold their baby so that the victim could finish her work (in the house). However the defendant did not accept what the victim said to him and immediately hit the victim. Based on a statement provided the victim summoned up her courage to report the incident to the authorities because as a result of the maltreatment the victim suffered a wound on her back and her arm was grazed. As a consequence of the incident the victim received medical attention at the hospital.

The defendant and the victim testified that after the incident they immediately reconciled and they stayed together.

The prosecution charged the defendant with Article 725 of the Indonesian Penal Code. In his final recommendation of sentence that was delivered orally the prosecutor asked that the defendant be given a suspended sentence of eight months imprisonment based on the act committed and also taking into account the fact that the victim regretted the incident and that no other incidents have occurred. The decision in this case will be read out on 20 January 2009.

**Case No. 131/Crm.S/ 08/TDB**

Based on the indictment read out by the court against the defendant DA, on 10/9/2003 in Buikai Viqueque the defendant deliberately approached the victim who was in a plantation and struck the victim on the head and back with a stick. The defendant also kicked the victim once in the stomach. The victim could not do anything in response because at the time of the incident the victim was sitting by a campfire with the witness AG.

The defendant testified that he committed the act after hearing that the victim had been saying unsavory things about the defendant.

The prosecution charged the defendant under Article 351.1 of the Indonesian Penal Code and recommended a sentence of 2.5 years imprisonment.

All parties also testified in court that after they received a summons from the court on 7 July 2008 they immediately took the initiative of reconciling. As part of the reconciliation the defendant gave two pigs to be eaten together by the two families including the village chief and customary elders.

In his final statement the defendant admitted that after the incident the defendant was immediately placed in jail (temporary detention) for six months.

After hearing testimony from the defendant the judge announced that the court did not require any further witness testimony because the defendant admitted the acts that he committed against the victim.

The prosecution made a final recommendation of sentence and asked the judge to give a suspended sentence against the defendant. The prosecution reinforced the charge made pursuant to Article 351.1.

The defence asked the court to carefully consider all factors in sentencing and to issue a decision that would educate the defendant. The final decision will be read out on 20/1/2009.

#### **Case No. 119/Crm.S/08/TDB**

This case of light maltreatment was committed by the defendant AA against the victim DS. According to the charge the incident occurred in October 2003 in Ma'abat village, Manatuto. The prosecution charged the defendant with maltreatment against the victim (kicking and punching) because the victim danced with the mother of the defendant during a party at the home of the victim to end a period of mourning.

In response to the charge the defendant admitted that he did in fact commit the act described in the indictment. The defendant also testified that he committed the act because he felt uncomfortable when the victim asked the mother of the defendant to dance. As a consequence of the defendant's actions the victim was injured and received three stitches.

A mitigating factor for the defendant was the presentation of several testimonies in relation to this case stating that they had reconciled on 4 September 2008 before the village council.

Based on all of the testimony provided to the court the prosecution maintained its charge under Article 351.1 of the Indonesian Penal Code. The prosecution was confident that this article could be proven due to the existing evidence and the deliberate intent of the victim which was clearly evident (that the victim clearly had the intention of committing violence against the victim because the victim danced with his mother). The defendant also referred to the transcript and the testimony provided by the defendant to the court and asked the court to carefully consider all factors in order to issue a truly fair decision.

The court issued its final decision and sentenced the defendant to six months imprisonment to be suspended for one year.

The court also ordered the defendant to pay a fine of US\$ 5 in accordance with Article 358 of the Criminal Procedure Code.

**Case No. 119/Crm.S/08/TDB**

This was the second time the court convened to hear this case of maltreatment because during the first hearing the court only heard testimony from the defendant FC and at the time the victim did not attend the hearing. In this final hearing the court heard evidence from the victim to clarify what act the defendant committed against the victim based on the charges made by the prosecution against the defendant.

Before the judge the victim testified that the defendant hit the victim because at that time the defendant (PNTL) was taking the victim to a holding cell at the Baucau police station. The victim explained that the defendant was carrying a large baton about one meter long that was normally used by the police. The defendant struck the victim once on the thigh with his baton. As a result of the defendant's action the victim suffered a large bruise and swelling.

When the judge asked why the defendant struck the victim, the victim responded that the motive was to get information from the victim about a gun (pistol). The defendant used this method to get information because he was a member of PNTL and heard that a person with the initial A had a gun. However the victim testified that he did not know anything about this information.

The court decided that the testimony of the victim was sufficient and therefore asked the prosecution to orally submit its final recommendation of sentence. In its final recommendation of sentence the prosecution stated that there was sufficient evidence to convict the defendant under Article 422 of the Indonesian Penal Code which carries a maximum sentence of four years imprisonment because the defendant admitted all of the evidence and the witness MF and the victim also provided testimony that corresponded with the charge.

The prosecution stated that based on the aforementioned evidence the defendant carried out the criminal act on his own free will and violated the law, namely Article 422 of the Indonesian Penal Code. Therefore the prosecution recommended that the defendant be given a sentence in proportion to the act committed. The defence made a final plea and asked the court to carefully consider all factors to ensure that justice prevails.

For further information please contact:

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