



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Case Summary

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Summary of trials conducted at the Baucau District Court during the second and third weeks of March 2012

Introduction

During the second and third weeks of March 2012 JSMP conducted monitoring activities of trials at the Baucau District Court. These monitoring activities took place between 12-15 March 2012 and 19-22 March 2012.

During the aforementioned two week period JSMP monitored 15 cases. The aforementioned cases included 2 cases of sexual violence, 3 cases of Ordinary Maltreatment, 6 cases of Domestic Violence (5 cases involved Ordinary Maltreatment and 1 case involved Violence against a Spouse), 1 case of Aggravated Murder, 1 case of Manslaughter and 2 cases of Attempted Murder.

Of these 15 cases, 6 were adjourned by the court or no trial took place because the parties did not observe the summons issued and because there were not enough judges to establish a panel. However 4 cases have already been decided by the court and the remaining matters will be dealt with in accordance with the normal procedures. Of the four cases that have been decided, all of the punishments handed down were suspended sentences ranging from 6 months up to 3 years imprisonment, including in the case involving maltreatment of a spouse (domestic violence).

Just like previous editions, this case summary intends to disseminate and provide up to date information about the trial process in all jurisdictions, with a particular focus on the Baucau District Court.

The following information provides a detailed summary of each matter brought to trial:

1. Crime of sexual violence, No. 117/Crm.C/2011/TDB.

In accordance with the trial schedule of the Baucau District Court, a hearing was set for 12 March 2012 in a case involving the crime of sexual violence which was registered as Case No.

117/Crm.C/2012/TDB. The defendant in this case JSM was charged with committing the crime against the victim MF. The crime allegedly occurred on 13 April 2011, in Mulia Sub-Village, Uaitame Village, Quelecai Sub-District, Baucau District.

Although the matter was scheduled to be heard, the hearing could not take place because the defendant did not appear in court even though he had been summoned. Therefore the court, through judge Angela Faria Belo, adjourned the hearing until 23 April 2012 at 14:30.

2. Crime of Ordinary Maltreatment, No. 13/Crm.S/2010/TDB.

On 13 March 2012, the Baucau District Court attempted to achieve an amicable settlement in a case of ordinary maltreatment which was registered as Case No. 13/Crm.S/2010/TDB. This case involved three defendants, namely: Cosme de Jesus, Antonio Coelho and Alito Coelho, who allegedly committed the crime against the victim Mariano Menezes. This case allegedly occurred on 03 November 2008, di Ossomali Sub-Village, Uani Uma Village, Uatucarbau Sub-District, Viqueque District.

The attempt to achieve an amicable settlement in this case was led by single judge Antonio Fonseca. The public prosecution service was represented by Pascasio de Rosa Alves, and the defendant was represented by public defender Gregorio de Lima.

During the aforementioned process the victim requested for the defendants to provide compensation in the form of one cow so that the victim could withdraw the complaint and settle this matter in accordance with customary practices. After hearing the request from the victim, the defendants agreed to provide a cow as a symbol of reparation for the suffering of the victim because they are relatives.

In the end the court validated the settlement that was reached in this case.

3. Crime of Ordinary Maltreatment, No. 22/Crm.S/2012/TDB.

On 13 March 2012 the Baucau District Court conducted a hearing in a case involving Ordinary Maltreatment characterized as domestic violence. The aforementioned case was registered as Case No. 22/Crm.S/2012/TDB allegedly committed by the defendant CdA against his spouse AS. The crime allegedly occurred on 03 February 2011, in Hukalele Sub-Village, Luca Village, Viqueque Sub-District, Viqueque District.

The trial of this case was presided over by single judge Afonso Carmona SH. The public prosecution service was represented by Pascasio de Rosa Alves, and the defendant was represented by public defender Gregorio de Lima.

The hearing commenced with the reading out of the charges by the public prosecutor. The indictment stated that on 03 February 2011 at approximately 23:00 the defendant committed maltreatment or physically assaulted the victim by punching the victim on the right ear twice,

and punching the victim once in the mouth causing the victim to fall to the ground. When the victim fell to the ground the defendant grabbed the victim's head and pushed her into a fire, and then the defendant dragged the victim outside and used the lid of a drum to hit her all over her body, as well as insulting the victim with offensive words and saying bad things to the victim.

As a result of the defendant's actions the victim experienced swelling on her right ear, swelling on her head and an injury to her left foot. Consequently the victim had to receive treatment at the Viqueque Health Centre. This incident occurred because the victim hit their children.

In relation to the aforementioned incident the public prosecutor charged the defendant under Article 145 of the Penal Code as well as Article 2.2 of the Law Against Domestic Violence.

In the aforementioned trial the defendant stated that he committed the act because the victim did not cook food for their children and hit their children when they asked for food. However the defendant regretted his actions and promised not to commit similar acts in the future.

The victim stated that the defendant did commit the acts as described in the indictment. The victim also stated that the defendant had committed such acts on numerous occasions, however in this case the victim ran out of patience and reported the incident to the police.

After hearing testimony from all parties the final recommendations were heard. In his final recommendation the public prosecutor requested for the court to order the defendant to pay compensation. The public defender requested for the court to acquit the defendant from the charges because the defendant regretted his actions, was responsible for three children and had promised not to repeat his behavior in the future.

The decision will be read out on 28 March 2012.

4. Crime of Ordinary Maltreatment, No. 15/Crm.S/2012/TDB.

In accordance with the schedule of the Baucau District Court, a hearing was set for 13 March 2012 in a case involving Ordinary Maltreatment (domestic violence) which was registered as Case No. 15/Crm.S/2012/TDB. This case involved the defendant RJP who allegedly committed the crime against the victim DdC. This case allegedly occurred on 19 January 2011, in Boleha Sub-Village, Laga Sub-District, Baucau District.

However the trial of this matter did not eventuate because the parties (defendant, victim and witnesses) did not respond to their summons and did not appear in court. Based on information that JSMP obtained from a court clerk, the trial has been adjourned until 02 May 2011.

5. Aggravated Murder, No. 07/Crm.C/2012/TDB.

In accordance with the trial schedule of the Baucau District Court, a hearing was set for 14 March 2012 in a case involving the crime of murder which was registered as No.

07/Crm.C/2012/TDB. There were three defendants in this case, namely AMS with two accomplices who allegedly committed the crime against the victim AM. This case allegedly occurred on 22 September 2011 in Laclubar Sub-District, Manatuto District.

However the trial could not take place because the defendant did not receive the summons because his address was unclear.

Therefore the judge presiding over this case, Antonio Fonseca, decided to adjourn the hearing until 09 May 2012 at 10:00.

6. Crime of Ordinary Maltreatment, No. 157/Crm.S/2011/TDB.

On 14 March 2012 the Baucau District Court conducted a hearing to read out its decision in a case involving ordinary maltreatment characterized as domestic violence. This case was registered with the court as Case No. 157/Crm.S/2011/TDB. The defendant in this case was Julio de Oliveira who allegedly committed the crime against his spouse Marilia Alves. This case allegedly occurred on 19 September 2011 in Marabubu Sub-Village, Baucau Sub-District, Baucau District. This trial was presided over by single judge Antonio Fonseca. The public prosecution service was represented by Benvinda da Costa do Rosario, and the defendant was represented by public defender Gregorio de Lima.

Based on all of the evidence presented during the trial the court was convinced that the defendant was guilty of committing ordinary maltreatment (domestic violence). In relation to the actions of the defendant the court concluded that the defendant had violated Article 145.1 of the Penal Code as well as Article 2.2(a) of the Law Against Domestic Violence. After the court examined all of the evidence and the circumstances, the court decided to hand down a prison sentence of 6 months imprisonment, however it was suspended for 1 year.

7. Crime of maltreatment against a spouse, No. 72/Crm.C/2011/TDB.

On 15 March 2012 the Baucau District Court conducted a hearing to read out its final decision in a case of maltreatment of a spouse. This case was registered with the court as Case No. 72/Crm.C/2011/TDB. This case involved the convicted person Jacob Moreira Ximenes who allegedly committed the crime against his spouse Pascoela Ximenes. This case allegedly occurred on 02 March 2011 in Lebenei Sub-Village, Letemumo Village, Quelecai Sub-District, Baucau District.

The announcement of the decision was led by judge Angela Faria Belo who appeared on behalf of the panel of judges. The public prosecution unit was represented by prosecutor Benvinda da Costa do Rosario SH, and the defendant was represented by public defender Marçal Ximenes Guterres, a private lawyer from ECM.

Based on hearings conducted on 13 February and 27 February 2012 the court was convinced that the defendant was guilty of committing the crime of maltreatment against a spouse, pursuant to Article 154 of the Penal Code. In relation to the actions of the defendant the court decided to hand down a sentence of 3 years imprisonment, however it was suspended for 3 years.¹

8. Crime of Ordinary Maltreatment, No. 13/Crm.S/2012/TDB.

On 15 March 2012 the Baucau District Court conducted a hearing to read out its decision in a case involving light maltreatment (domestic violence). The aforementioned case was registered as Case No. 13/Crm.S/1012/TDB. This case involved the convicted person Manuel Guterres who allegedly committed the crime against his spouse Domingas Guterres. This case allegedly occurred on 23 Augustus 2011 di Uailili Village, Venilale Sub-District, Baucau District.

The announcement of the decision was led by single judge Antonio Fonseca. The public prosecution service was represented by Benvinda da Costa do Rosario, and the defendant was represented by public defender Gregorio de Lima.

Based on the evidence presented during the trial, the court was convinced that the defendant was guilty of striking the victim in the eye with his machete, however the victim defended herself with her arm and as a result she suffered injuries to a finger on her left hand and her eye. In relation to the actions of the defendant the court concluded that the defendant had violated Article 145 of the Penal Code as well as Article 2.2(a) of the Law Against Domestic Violence.

In relation to the aforementioned evidence the court decided to hand down a sentence of 6 months imprisonment against the defendant, however it was suspended for 1 year.

9. Crime of Ordinary Maltreatment, No. 139/Crm.C/2010/TDB.

On 15 March 2012 the Baucau District Court was unable to conduct a hearing in a case involving Ordinary Maltreatment which was registered as Case No. 139/Crm.C/2010/TDB. This case involved the defendant MdS who allegedly committed the crime against the victim LS. This case allegedly occurred on 08 May 2009 at the new market in Lospalos.

Based on information that JSMP obtained from a court clerk the trial could not be held because the parties did not respond to the court summons. Therefore the judge presiding over this case, Antonio Fonseca, decided to adjourn the hearing until 26 April 1012 at 10:00.

¹ Please refer to JSMP Press Release dated 30 March 2012 - "Court hands down 3 year suspended sentence against defendant in a case involving maltreatment against a spouse" on the JSMP Website: www.jsmp.minhub.org;

10. Crime of sexual violence, No. 103/Crm.C/2010/TDB.

In accordance with the trial schedule of the Baucau District Court a hearing was set for 19 March 2012 in a case involving the crime of sexual violence which was registered as Case No. 103/Crm.C/2010/TDB. This case involved the defendant HM who allegedly committed the crime against the victim ACM who was the adopted child of the defendant. This case allegedly occurred on 06 June 2008 in Buruma Village, Baucau Sub-District, Baucau District. However the hearing could not take place because the court was unable to establish a panel of judges.

Through judge Angela F. Belo the court adjourned the aforementioned trial until 07 May 2012 at 14:30.

11. Crime of Manslaughter, No. 144/Crm.S/2011/TDB.

On 20 March 2012 the Baucau District Court conducted a hearing to read out its decision in a case involving Manslaughter which was registered as Case No. 144/Crm.S/TDB. This case involved the defendant Luis Pinto who allegedly committed the crime against the victim Octavio Siko (deceased). This case allegedly occurred on 07 April 2011, in Kaiwati Village, Ossu Sub-District, Viqueque District.

The hearing to announce this decision was presided over by single judge Afonso Fonseca. The public prosecution service was represented by Pascasio de Rosa Alves, and the defendant was represented by public defender Gregorio de Lima.

The Baucau District Court acquitted the defendant from the charges after analyzing all of the evidence produced during the trial and also the testimony of a witness. The witness Jose Sico Elu told the court that he was summoned by the court to provide testimony during the trial, and he stated that when the car was climbing a steep hill in Kaiwati Village, Ossu Sub-District, the defendant who was the driver told all of the passengers to get out of the car, because it was raining heavily and there were thick clouds covering the road that they were travelling on.

However the passengers did not want to get out of the vehicle. When the car started to climb the hill the car fell into a hole because the defendant could not see properly and at that time the car was not properly balanced and did not have enough power so that it started sliding backwards and then flipped over and squashed the victim to death.

12. Crime of Attempted Murder, No. 80/Crm.C/2009/TDB.

On 20 March 2012 the Baucau District Court was unable to conduct a hearing in a case involving the crime of attempted murder which was registered as Case No. 80/Crm.C/2009/TDB. This case involved the defendant TG who allegedly committed the crime against the victim ABdC. This case allegedly occurred on 21 March 2009, di Bahú Village, Kota Lama Baucau.

Based on information that JSMP obtained from a court clerk the trial of this case could not take place because the defendant did not respond to his summons. The court has not yet set a date to continue this trial.

13. Crime of Attempted Murder, No. 152/Crm.C/2011/TDB.

In accordance with the trial schedule of the Baucau District Court, a hearing was set for 21 March 2012 in a case involving attempted murder which was registered as Case No. 152/Crm.C/2011/TDB. This case involved the defendant MX who allegedly committed the crime against the victim TS. This case allegedly occurred on 10 April 2011 in Kaidavalari, Abere Sub-Village, Luro Village, Luro Sub-District, Lautem District.

The trial was presided over by a panel of judges comprising Antonio Fonseca, Afonso Carmona and José Gonçalves. The public prosecution service was represented by Adérito Tilman and the defendant was represented by public defender Gregorio de Lima.

The hearing commenced with the reading out of the charges by the public prosecutor. The indictment stated that on 10 April 2011 at approximately 06:00 the defendant attacked and slashed the victim on the head twice, and also slashed the victim once on the back and once also on the right hand. As a consequence of the defendant's actions the victim suffered serious injury to the head, the back and a broken hand. Now the victim is physically handicapped.

This case allegedly occurred because the victim and his brother went to cut down some bamboo in the plantation of the defendant without the permission of the defendant.

During the trial the defendant accepted all of the evidence and regretted his actions. As the defendant admitted all of his actions, pursuant to Article 268.4 of the Criminal Procedure Code the court decided that it was not necessary to hear testimony from the victim. In relation to the aforementioned provision the court proceeded to hear final recommendations. In his final recommendation the public prosecutor requested for the court to sentence the defendant in accordance with the actions committed by the defendant.

The public defender in his final recommendation requested for the court to hand down a lenient sentence to his client because the defendant had admitted and regretted his actions and the defendant was the head of the family and has to provide for his two children.

The decision will be read out on 28 March 2012 at 14: 00.

14. Crime of Ordinary Maltreatment, No. 20/Crm.S/2011/TDB.

On 21 March 2012 the Baucau District Court conducted a hearing in a Crime of Ordinary Maltreatment (domestic violence). This case was registered as Case No. 20/Crm.S/2011/TDB. The defendant TFA allegedly committed the crime against his spouse CMF. The incident

allegedly occurred on 24 August 2010 in Lutumutu Sub-Village, Trilolo Village, Baucau Sub-District, Baucau District.

This trial was presided over by single judge Antonio Fonseca. The public prosecution service was represented by Benvinda da Costa do Rosario, and the defendant was represented by public defender Gregorio de Lima.

The hearing commenced with the reading out of the charges by the public prosecutor. The indictment stated that on 24 August 2010 at 06:00 in Lutumutu Sub-Village, the defendant choked the victim, pulled the victim's hair and slammed her against the wall. In addition the defendant also took a piece of wood and hit the victim once on the head and five times on the leg. As a result of the defendant's actions the victim suffered injuries to her head, swelling to her neck and the overall physical health of the victim was seriously affected.

This case allegedly occurred because the defendant suspected that the victim gave money to another man and hid the other man inside the house. During the trial the defendant used his right to remain silent. The victim testified that all of the charges of the public prosecutor were true. In addition, the witness summoned to give testimony in this case also used his right to remain silent because he was the son-in-law of the defendant.

Because the defendant and the witness used their right not to testify the public prosecutor requested for the court to summon other witnesses to provide testimony to the court.

The trial was adjourned until 19 April 2012 to hear testimony from other witnesses.

15. Crime of ordinary maltreatment, No. 09/Crm.S/2011/TDB.

On 22 March 2012 the Baucau District Court conducted a hearing in a case involving ordinary maltreatment which was registered as Case No. 09/Crm.S/2011/TDB. This case involved the defendant AdS who allegedly committed the crime against the victim AXS on 03 October 2010 in Lulibau Sub-Village, Uai-Oli Village, Venilale Sub-District, Baucau District.

This trial was presided over by single judge Antonio Fonseca. The public prosecution service was represented by Adérito Tilman, and the defendant was represented by public defender Gregorio de Lima.

The hearing commenced with the reading out of the charges by the public prosecutor. The indictment stated that on 03 October 2010 in Lulibau Sub-Village the defendant grabbed the victim and threw the victim into the gutter. As a result of the defendant's actions the victim suffered an injury to the right knee and calf. According to the indictment of the prosecutor this case allegedly occurred because of conflict over issues relating to traditional arrangements between the families of the husband and wife.

During the trial the defendant stated that all of the charges made against him by the public prosecutor were true. Because the defendant accepted all of the evidence the court continued the trial and heard final recommendations and decided not to hear the testimony of the victim and witnesses pursuant to Article 268.4 of the Criminal Procedure Code.

In his final recommendation the public prosecutor requested for the court to sentence the defendant in accordance with the actions committed against the victim.

The public defender asked the court to hand down a suspended sentence because the defendant had admitted all of the charges, cooperated with the court and had felt remorse for his actions.

The final decision will be announced on 27 March 2012 at 14:00.

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