



Case Summary

March 2013

Summary of the trial process at the Baucau District Court Period: March 2013

In March 2013 JSMP continued regular monitoring activities at the Baucau District Court.

During this period JSMP managed to observe 15 cases. These cases comprised 1 case of minor theft, 2 cases of sexual violence, 6 cases involving simple offences against physical integrity characterized as domestic violence, 1 case of ordinary maltreatment, 1 case of serious maltreatment. In addition there was 1 case of manslaughter, 1 case of aggravated murder, 1 case of aggravated property damage and 1 case of making threats.

The majority of these cases were settled by the court with the issuance of suspended sentences. This included cases of domestic violence. However, in one case of sexual abuse of a minor and one case of aggravated murder the court handed down jail sentences. In addition 1 case of domestic violence and one case of aggravated property damage were adjourned because the parties did not respond to summons issued by the court.

The cases decided by the court included a case registered as Case No. 97/pid.s/2012/TBC, related to manslaughter that was very interesting and deserving of in-depth analysis. JSMP observed that the examination of evidence in this case was not very thorough. There were a number of inconsistencies between the testimony given by the defendant and the witnesses. For example the defendant stated that when he sounded his horn 3 times, the victim did not hear it and continued walking behind the car and smacked his head on the back of the car. On the other hand the two witnesses sitting beside the defendant in the front of the car testified that the defendant tried to cross/turn his car to avoid another car coming from the opposite direction and the body of the car struck the victim's head and caused his death.

JSMP believes that manslaughter is a very serious charge and should not result in acquittal, especially when there are a number of facts that contradict each other. Actually the court should have punished the defendant with a prison sentence or applied another sentence because the negligence of the defendant caused another person to lose his life. The crime of negligence is not included in the categories of crimes that can have their unlawfulness excluded under Article 43 of the Penal Code.

The information below outlines the hearings conducted:

1. Crime of minor theft, Case No.136/Pid.S/2012/TDB.

Baucau District Court	
Composition of judges	:Single
Judge	: José Gonçalves
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Rui M. Guterres
Conclusion	: Ordered to pay a fine

On 04 and 18 March 2013 the Baucau District Court conducted a hearing and then proceeded to read out its decision in a case of minor theft allegedly committed by the defendants Paul Pinto and Felix doCarmoLemos against the State (Manatuto District Power Plant) in 2009.

The trial was conducted in Manatuto District via the mobile court. The public prosecutor alleged that there were two incidents - firstly in 2009 (the defendants could not recall the date) and secondly on 07 November 2009.

In his indictment the public prosecutor stated that the defendants took 30 liters of diesel from the Manatuto Power Plant and then sold it to residents of Manatuto. Then the defendant Paul Pinto took another 20 liters, however at that time the police saw him and immediately arrested this defendant. The public prosecutor charged the two defendants under Article 251 of the Penal Code on the crime of theft.

In court the defendants admitted all of the evidence alleged by the public prosecutor against them. Therefore, the public prosecutor requested for the court not to hear the testimony of witnesses because there was already sufficient evidence. The court accepted this request and proceeded to hear final recommendations.

In his final recommendations the public prosecutor requested for the court to sentence the defendants to a 3 years suspended sentence. The public defender requested for a lighter sentence for the defendants because they had confessed and regretted their actions and were responsible for supporting their families.

This trial was concluded on 18 March 2013 via the mobile court in Manatuto District which handed down a prison sentence of 6 months that was suspended for 1 year, and they were ordered to pay compensation to the State of \$ 30. The defendants were also ordered to pay court costs of US\$10 per person.

2. Crime of sexual abuse of a minor, Case No.113/Pid.C/2012/TDB

Baucau District Court	
Composition of judges	: Panel
Judge	: Jose Gonçalves (representing a panel of judges)
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Paulino da Costa Alves
Conclusion	: Court issued a suspended sentence

On 05 March 2013 the Baucau District Court announced its decision in a case of sexual assault against a minor that was allegedly committed by the defendant Rui da Silva against the victim FMR. This case allegedly occurred on 07 August 2010 in Lautem District.

The public prosecutor charged the defendant with Article 177 of the Penal Code with aggravating circumstances as set out in Article 182.1 (a) of the Penal Code.

The court was convinced of all of the facts put forward by the public prosecutor that confirmed that the defendant had in fact covered the mouth of the victim and committed sexual abuse against a minor.

Based on the facts that were proven and the examination of the circumstance of this case, the court decided to punish the defendant with a prison sentence of 7 years and 6 months.

3. Crime of simple offence against physical integrity, Case No.116/Pid.S/2012/TDB

Baucau District Court	
Composition of judges	: Single
Judge	: Afonso Carmona
Public Prosecutor	: Aderito Tilman
Public defender	: Rui M. Guterres
Conclusion	: Suspended sentence

On 6 and 19 March 2013 the Baucau District Court conducted a hearing and handed down a punishment in a case involving a simple offence against physical integrity characterized as domestic violence. This case involved the defendant Manuel Soares and the victim Maria Joana (his wife). The incident allegedly occurred on 22 February 2012 in Aitehe Sub-Village, Aiteas Village, Manatuto Sub-District, Manatuto District.

In his indictment the public prosecutor stated that the defendant verbally abused and punched the victim in the eye, and also punched the victim in the mouth and back. These actions caused the victim to suffer an injury to her mouth and bruising around her eye.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code as well as Article 35 of the Law Against Domestic Violence.

In the aforementioned trial, the defendant corroborated the charges of the public prosecutor. However the defendant explained that the defendant regretted his actions.

In his final recommendations the public prosecutor requested for the court to hand down a sentence of 6 months imprisonment to be suspended for 1 year. On the other hand, the public defender requested for the court to hand down a minor sentence against the defendant because the defendant admitted and regretted his actions had no previous convictions and is responsible for his family.

This court concluded this case on 19 March 2013 and sentenced the defendant to 3 months imprisonment that was suspended for 6 months, and to pay court costs of \$ 20.

4. Crime of manslaughter - Case No.97/Pid.S/2012/TDB

Baucau District Court

Judge composition : Single

Judge : António Fonseca Monteiro

Public Prosecutor : Aderito Tilman

Public Defenders : Rui M. Guterres

Conclusion : Acquitted

On 6 and 20 March 2013 the Baucau District Court conducted a hearing and acquitted the defendant Manuel da Costa Neto who was charged with committing the crime of manslaughter against the victim Julieta Soares. This case allegedly occurred on 4 May 2011 in Hostico, Vemasse, Baucau.

The indictment of the public prosecutor stated that on 4 May 2011 the defendant was driving a car bearing the number plate 50568, carrying a load of sand from Vemasse heading to Hostico. The defendant was driving at high speed and when he arrived at the road heading to Hostico the defendant lost control and struck the victim who was walking on the side of the road. At that time the defendant was concentrating on the main road because there was another vehicle coming.

The public prosecutor charged the defendant with manslaughter pursuant to Article 140 of the Penal Code.

The defendant testified that the victim was walking towards the car and struck his head on the victim even though the defendant sounded his horn three times. At that time the attention of the defendant was on the main road because there was another vehicle coming. The defendant also stated that he gave US\$ 2000 to the family of the deceased to buy a coffin, rice and other necessities.

The witnesses Pascoal Celestino da Silva Ximenes and Saturnino da Costa Belo corroborated the testimony of the defendant that the car driven by the defendant was avoiding an oncoming car and that the defendant had previously sounded his horn three times, however the victim continued walking towards the car and finally the vehicle struck the victim.

The witnesses Augusto Freitas and Emilia Freitas (child of the victim) testified that they did not see the incident, however after the incident they immediately came to the scene.

In his final recommendations the public prosecutor requested for the court to punish the defendant with a prison sentence of 2 years to be suspended for 3 years. On the other hand the public defender requested for the court to acquit the defendant because he stated that the incident occurred because of the negligence of the victim.

On 20 March 2013 the court read out its final decision and acquitted the defendant Manuel da Costa Neto from all charges. The court believed that the charge of negligence made by the public prosecutor against the defendant had not been proven.

5. Crime of Serious Offence against Physical Integrity, Case No.166/Pid.C/2011/TDB

Baucau District Court

Composition of judges	: Panel
Judges	: José Gonsalves, Afonso Carmona and Angela F. Belo
Public Prosecutor	: Pascasio de Rosa Alves
Public defender	: Rui M. Guterres
Conclusion	: Ongoing

On 07 and 14 March 2013 the Baucau District Court conducted a trial against the 5 defendants DSP, DSL, JG, FSG and JSP who were accused of committing serious maltreatment against the victim AM (a police officer). This case allegedly occurred on 27 November 2010 in Caraubalu Village, Viqueque Sub-District, Viqueque District.

In his indictment the public prosecutor stated that on 27 November 2010 at a party to end a period of mourning (*kore-metan*) the defendants punched and kicked the victim knocking his teeth out, bruising his cheek and caused other injuries. This incident occurred because of the claim that the victim had hit the younger brother of the defendant MB. In relation to these acts the public prosecutor charged the defendants with Article 146 of the Penal Code regarding a serious offence against physical integrity.

During the trial the defendants used their right to remain silent. On the other hand the victim stated that all of the facts alleged by the public prosecutor against the defendants were true and stated that the defendants also took away his baton and kicked his pistol away.

The witness OX testified that on 27 November 2010 at approximately 1am the victim attended a disturbance/affray that was taking place inside and outside a large marquee and he hit the defendant DSP and then all of the defendants attacked the victim.

The trial was adjourned until 05 April 2013 to hear testimony from other witnesses.

6. Aggravated Property Damage - Case No.195/Pid.C/2012/TDB

Baucau District Court

Composition of judges	: Single
Judge	: Ângela F. Belo
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Gregório de Lima.
Conclusion	: Trial adjourned

On 08 March 2013 the Baucau District Court adjourned a trial in a case of aggravated property damage because the witnesses did not appear in court. The court set the 13th September 2013 to continue the trial of this case.

This case involved the defendant ISM who allegedly committed the crime against the victim ECP on 28 October 2011 in Baucau.

7. Crime of simple offence against physical integrity, Case No.153/Pid.S/2012/TDB

Baucau District Court	
Composition of judges	: Single
Judge	: Antonio Fonseca
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Gregório de Lima.
Conclusion	: Court issued a suspended sentence

On 11 March 2013 the Baucau District Court conducted a hearing against the defendant Pedro Manuel do Santos for his involvement in a case of simple maltreatment against physical integrity characterized as domestic violence against his wife Mariana de Jesus. This case allegedly occurred on 15 October 2011 in Rasa Village, Lospalos Sub-District, Lautem District.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code as well as Article 35 of the Law Against Domestic Violence.

In his charges the public prosecutor testified that on 16 October 2011 the defendant and the victim had an argument about their plantation. At that time the defendant suddenly punched/hit the victim twice on her left and right cheeks causing the victim to suffer pain and bruising.

Before the court the defendant admitted that the charges were true and that he regretted his actions. The defendant also explained that now they were living together normally as husband and wife.

In his final recommendations the public prosecutor requested for the court to punish the defendant with a prison sentence of 6 years to be suspended for 1 year. The public defender requested for the court to acquit the defendant because the defendant admitted his actions, was regretful and the defendant was elderly.

After hearing the final recommendations the court immediately read out its decision and found that the defendant had committed domestic violence against the victim, but because the defendant confessed, regretted his actions and was elderly, the court settled this case and handed down a sentence of 3 months imprisonment, to be suspended for 6 months.

8. Crime of simple offence against physical integrity – Case No.07/Pid.S/2011/TDB

Baucau District Court	
Composition of judges	: Single

Judge	: José Gonçalves
Public Prosecutor	: Aderito Tilman
Public Defenders	: Gregório de Lima.
Conclusion	: Trial adjourned

On 12 March 2013 the Baucau District Court adjourned a trial in a case of ordinary maltreatment characterized as domestic violence involving the defendant VG and the victim ACG (his wife).

The trial was adjourned because the defendant was not summoned, and even though the victim and witnesses were summoned they did not appear in court.

The trial was adjourned until 30 April 2013.

9. Crime of sexual abuse of a minor, Case No.76/Pid.C/2012/TDB

Baucau District Court	
Composition of judges	: Panel
Judges	: José Gonsalves, Afonso Carmona and Angela F. Belo
Public Prosecutor	: Aderito Tilman
Public Defenders	: Gregório de Lima.
Conclusion	: Court issued a suspended sentence

On 12 March 2013 the Baucau District Court read out its decision against Domingos dos Santos who was the defendant in a case of sexual violence against an under aged victim (EmdJ). This case allegedly occurred on 07 March 2011 in Lautem District.

Previously the public prosecutor charged the defendant with Article 172 of the Penal Code on rape however after the court examined all of the evidence linked to this case, the court replaced Article 172 of the Penal Code with Article 177 of the Penal Code on sexual abuse of a minor with aggravating circumstances as set out in Article 182.1 of the Penal Code.

The court concluded that the defendant was guilty of taking the victim into some bushes to have sexual intercourse with her. The court also found that the defendant used his hand to cover the mouth of the victim so that the victim would not try and scream, the defendant ran away and left the victim not because of his own intention but because the father of the victim was walking towardsthe location because he heard the scream of the victim.

Based on all of this evidence the court concluded the trial by handing down a punishment of 7 years and 6 months imprisonment.

In response to this decision the public prosecutor raised an objection and indicated that he would lodge an appeal because the punishment handed down by the court against the defendant was not proportional to the act committed by the defendant.

10. Crime of simple offence against physical integrity – Case No.132/Pid.S/2010/TDB

Baucau District Court	
Composition of judges	: Single
Judge	: Afonso Carmona
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Gregório de Lima.
Conclusion	: Court issued a suspended sentence

On 12 and 22 March 2013 the Baucau District Court conducted a trial and handed down a suspended sentence in a case involving simple offence against physical integrity characterized as domestic violence that was allegedly committed by the defendant Jacinto Ximenes against the victim Maria Soares (his wife). This case allegedly occurred on 20 April 2010 in Caibada, Uaimua, Baucau.

The public prosecutor alleged that on 20 April 2010 the victim and the defendant were arguing because the victim was unhappy because the defendant had been walking with another woman. Therefore, the defendant kneed the victim on the right side of her body and thigh causing the victim to fall into some bushes and thorns. The defendant grabbed the arm of the victim and pulled her onto the main road. As a result of these actions the victim suffered bruising and pain on her thigh and all over her body.

The defendant told the court that all of the charges were true and he regretted his actions.

In his final recommendations the public prosecutor requested for the court to hand down a sentence of 3 months imprisonment to be suspended for 1 year. On the other hand, the public defender in his final recommendations requested for the court to apply a proportional punishment because the defendant had confessed, expressed regret and was responsible for his family.

On 22 March 2013 the court read out its final decision against the defendant and punished the defendant to 6 months imprisonment to be suspended for 1 year. In addition, the court also ordered the defendant to pay court costs of US\$ 30.00.

11. Crime of simple offence against physical integrity – Case No.92/Pid.S/2012/TDB

Baucau District Court	
Composition of judges	: Single
Judge	: Afonso Carmona
Public Prosecutor	: Aderito Tilman
Public Defenders	: Gregório de Lima.
Conclusion	: Court issued a suspended sentence

On 12 March 2013 the Baucau District Court read out its final decision against the defendant relating to the crime of a simple offence against physical integrity characterized as domestic violence. This case involved the defendant Afonso dos Reis and the victim Adelia Pereira (his wife). This incident allegedly occurred on 15 March 2012 in Uatukarbau, Viqueque District.

This court sentenced the defendant to 3 months imprisonment that was suspended for 6 months, and ordered the defendant to pay court costs of \$ 20.

This sentence was handed down against the defendant after examination of the evidence indicated that the defendant had indeed committed a simple offence against the physical integrity of his wife. The act was committed by pushing the victim out of her chair onto the ground causing pain and injuring the victim's foot.

12. Crime of simple offence against physical integrity – Case No.172/Pid.S/2012/TDB

Baucau District Court

Composition of judges : Single

Judge : Afonso Carmona

Public Prosecutor : Pascasio de Rosa Alves

Public Defenders : Gregório de Lima.

Conclusion : Court issued a suspended sentence

On 13 and 22 March 2013 the Baucau District Court conducted a hearing and read out its final decision against the defendant Jacob Sarmento Alves for his involvement in the crime of a simple offence against physical integrity against the victim Mario Sarmento. This case allegedly occurred on 06 January 2012 in Manehat Sub-Village, Caraubalu Village, Viqueque Sub-District, Viqueque District.

The indictment stated that on 06 January 2012 the defendant and the victim had an argument/misunderstanding because the victim was accused of choking the brother of the defendant because he had accused the victim of being a black magic practitioner. At that time the defendant punched the victim once in the mouth causing injury and bruising to the victim's mouth.

In relation to the aforementioned act, the public prosecutor charged the defendant with Article 145 of the Penal Code on a simple offence against physical integrity.

During the trial the defendant admitted all of the charges leveled by the public prosecutor against him and the defendant expressed regret at his actions.

In his final recommendations the public prosecutor requested for the court to hand down a sentence of 3 months imprisonment to be suspended for 1 year. On the other hand the public defender requested for the court to acquit the defendant because his client had confessed and expressed regret, had no prior convictions and was responsible for his family.

On 22 March 2013 the court read out its verdict against the defendant and sentenced him to 6 months imprisonment to be suspended for 1 year, and also ordered the defendant to pay court costs of \$ 20.

13. Aggravated murder, Case No.170/Pid.C/2012/TDB

Baucau District Court	
Composition of judges	: Panel
Judge	: Jose Gonçalves (representing a panel of judges)
Public Prosecutor	: Pascasio de Rosa Alves
Public Defenders	: Gregório de Lima
Conclusion	: Court hands down sentence of imprisonment

On 14 March 2013 the Baucau District Court read out its decision in a case of aggravated murder that allegedly occurred on 23 August 2012 in Osogori, Venilale, Baucau. This case involved the defendant Idelfonso Guterres and the victim Mariano Ximenes (deceased).

The public prosecutor charged the defendant as the perpetrator in a case of aggravated murder as set out in Article 138 of the Penal Code as well as Article 139.g of the Penal Code.

The court was convinced that the defendant was guilty of murdering the victim by using a cane to strike the victim on the head causing him to fall to the ground then taking a large stone and smashing it on the head of the victim causing the victim to suffer a major injury and lose a lot of blood. This act caused the victim to die instantly at the scene of the crime. The incident occurred because the defendant accused the victim of stealing a packet of cigarettes.

Based on the evidence that had been proven and the circumstances relating to this process, the court resolved the case and sentenced the defendant to 15 years imprisonment.

14. Crime of making threats – Case No.83/Pid.S/2012/TDB

Baucau District Court	
Composition of judges	: Single
Judge	: José Gonçalves
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Gregório de Lima
Conclusion	: Amicable settlement validated by the court

On 19 March 2013 the Baucau District Court tried to reach an amicable settlement between the defendant Aderito da Costa Correia and the victim Maria do Carmo. This case allegedly occurred on 15 July 2012 in Baucau District.

During the trial the attempt to get the victim and the defendant to reach an amicable settlement and the victim was willing to withdraw the charges in this case.

With reference to the amicable settlement and the request from the parties the court resolved the case.

15. Crime of simple offence against physical integrity – Case No.194/Pid.S/2012/TDB

Baucau District Court	
Composition of judges	: Single

Judge	: Afonso Carmona
Public Prosecutor	: Baltazar Ramos
Public Defenders	: Gregório de Lima
Conclusion	: Court issued a suspended sentence

On 20 March 2013 the Baucau District Court conducted a trial and then read out its decision in the case involving the defendant Joaquim Lopes who was accused of a simple offence against physical integrity against the victim Rosalina Aekluan (his wife). This case allegedly occurred on 12 September 2012 in Irabin de Baixo Village, Uatucarbau Sub-District, Viqueque District.

The public prosecutor charged the defendant as the perpetrator in a case of a simple offence against physical integrity characterized as domestic violence as set out in Article 145 of the Penal Code as well as Article 35 of the Law Against Domestic Violence.

The indictment of the public prosecutor stated that on 12 September 2012 the defendant was startled and woke up, took a cane and hit the victim twice on the hand and twice on her leg. As a consequence of the defendant's action the victim suffered an injury and bruising to her hand and foot.

The indictment stated that this case allegedly occurred because the victim slapped the defendant who was asleep, but only in a joking manner.

During the trial the defendant admitted all of the evidence presented by the public prosecutor and regretted his actions.

In his final recommendations the public prosecutor requested for the court to hand down a sentence of 1 month's imprisonment to be suspended for 1 year. The public defender requested for the court to acquit the defendant from this case because the defendant confessed, admitted guilty and was responsible for his family.

After examining the evidence the court concluded this case and handed down a sentence of 3 months imprisonment suspended for 6 months.

This decision is based on the evidence that shows that the defendant did in fact commit the act against the victim.

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