



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Case Summary

Dili District Court

Summary of the trial process at the Dili District Court November 2013

Introduction

In November 2013 JSMP observed 12 cases at the Dili District Court. These 12 cases comprised 2 cases of simple offences against physical integrity, 4 cases of simple offences against physical integrity characterized as domestic violence, 1 case of maltreatment against a spouse, 1 case of infanticide, 1 case of disobeying a lawful order, 1 case of manslaughter, 1 case of making threats and 1 case of abuse of power.

From the aforementioned cases, 4 have been decided (with suspended sentences handed down in three of these cases, and a sentence of imprisonment in the other case), in 1 case the defendants were acquitted, in 2 cases agreements were validated and 5 cases are still ongoing.

Each of these cases are summarized below:

1. Crime of infanticide, Case No. 517/C.Ord/2011/TDD

Composition of judges	: Panel
Judges	: Jose M. de Araujo, Julio Gantes, Fransisca Cabral
Public prosecutor	: Glória Alves
Public defender	: Cância Xavier
Conclusion	: Acquitted

On 05 and 26 November 2013 the Dili District Court conducted a hearing to decide a case of infanticide involving the defendant FS, in Becora, Dili District.

The public prosecutor alleged that on the evening of 10 February 2004 the defendant gave birth to a boy then allowed the child to pass away (die) because the defendant did not cut the umbilical cord. After the baby died the defendant wrapped up the body of the baby in a cloth and put it in a plastic bag and tied the bag tightly.

On 11 February 2004, at approximately 09:00am, the defendant took the body of the baby to dispose of it in the rubbish. This case allegedly occurred because the defendant was embarrassed to face her family and neighbors.

The public prosecutor charged the defendant for violating Article 142 of the Penal Code on infanticide that carries a sentence of 3 - 10 years imprisonment.

The defendant told the court that all of the charges alleged by the public prosecutor were true.

According to the statement of a witness, based on the results of an autopsy the cause of death was not known, for example if the victim was choked or if a sharp object was used to injure/kill the victim.

The witness confirmed his statement that the victim passed away because the defendant placed the baby into a plastic bag which caused the death of the baby.

Also, another witness, who was the boyfriend of the defendant, stated that when the defendant carried out the act he did not know about it, because they were not living together. However the witness admitted that they had previously had sexual intercourse.

Based on the circumstances and facts that were established during the trial, the public prosecutor requested for the court to sentence the defendant to 1 year's imprisonment, to be suspended for 2 years.

The public defender was of the view that the defendant was a first time offender, and therefore requested for the court to acquit the defendant. However if case the court decides otherwise, the public prosecutor requested a sentence of imprisonment for 6 months, to be suspended for 1 year.

After hearing testimony from the defendant and the witnesses and the final recommendations from the public prosecutor and the public defender, on 26 November 2013 the court decided the matter and acquitted the defendant from all charges.

The court decided that the evidence produced during the trial was insufficient and the court had doubt about convicting the defendant. Therefore the court acquitted the defendant.

2. Crime of simple offences against physical integrity – Case No. 173/C.Ord/2013/TDD

Composition of judges	: Single
Judge	: Ana Paula Fonseca
Public Prosecutor	: Vicente Brites
Public Defender	: Cândia Xavier
Conclusion	: Acquitted

On 6 November 2013 the Dili District Court acquitted the defendant in a case of simple offences against physical integrity involving the defendants Caetano da Silva Cardoso and Leonito da

Silva Cardoso who allegedly committed the offence against their father Luis Cardoso. This case allegedly occurred on 13 September 2010 in Hera, Dili District.

During the trial the defendants admitted that were drinking palm wine with their father. While they were drinking the palm wine the two defendants and their father had an argument and then the two defendants hit their father. The defendant Caetano choked the victim, and the defendant Leonito took a piece of wood and struck the victim on the shoulder.

In this case the court consulted with the parties about the incident and asked if there was any shared economic dependence between them. However the two defendants stated that they did not have any economic dependence on the victim, so the court amended Article 35 of the Law Against Domestic Violence and replaced it with Article 145 of the Penal Code.

Because this article is a crime on complaint the victim can withdraw the case, and in this matter the victim decided to withdraw the case.

On the same day the court validated an agreement in this case and requested for the two defendants to not reoffend in the future.

3. Crime of simple offence against physical integrity, Case No. 207/C.Ord/2013/TDD

Composition of judges:	: Single
Judge	: Antonio Gonçalves
Public Prosecutor	: José Landim
Public Defender	: Amado de Almeida
Conclusion	: Sentenced to 1 year and 6 months' imprisonment, suspended for 3 years.

On 6 and 26 November 2013 the Dili District Court conducted a trial and sentenced the defendant GCdS to 1 year 6 months imprisonment, suspended for 3 years. This decision was linked to the trial of the case where the defendant was found guilty of committing the crime of simple offences against the physical integrity of his wife.

The public prosecutor alleged that on 4 January 2013 the victim asked the defendant to massage her head. The defendant agreed but he became angry and massaged her head very roughly. The victim felt pain and yanked her arm away which struck the mother of the defendant who was beside them. The defendant became very angry when he saw this and punched the victim in the eye.

During the trial the defendant stated that he did not punch the victim in the eye, but just slapped her. However the victim insisted that the defendant did in fact punch her in the eye. The victim also stated that this was not the first time that the defendant has committed violence against her.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 2 or 3 year's imprisonment. The public defender requested for the court to acquit the defendant.

After hearing the recommendations of the parties the court concluded the matter and sentenced the defendant to 1 year 6 months imprisonment, suspended for 3 years.

4. Crime of simple offences against physical integrity – Case No. 316/C.Ord/2013/TDD

Composition of judges	: Single
Judge	: Zulmira Barros da Silva
Public Prosecutor	: Remizia da Silva
Public Defender	: Cezaltina Freitas da Conceicao
Conclusion	: Ongoing

On 19 July 2013 the Dili District Court conducted a hearing in a case of ordinary offences against physical integrity characterized as domestic violence, involving the defendant AA and her husband AFdC. This case allegedly occurred on 19 April 2012 in Dili.

The indictment of the public prosecutor stated that the defendant received a call from another woman who she suspected of having a special relationship with her husband. Therefore, the defendant became angry and took their child to the victim's work place to hear an explanation from the victim. Upon arrival at the victim's work place the victim refused to explain about the suspect phone call. Therefore, the defendant became angry and roughly grabbed the victim on the shoulder.

At that time, the victim released his arm and his arm struck the baby that was being held by the defendant and the baby fell out of her hands. When she saw their child fall down, the defendant slapped the victim across the cheek. The defendant wanted to do more but she was blocked by the security guards.

During the trial the victim stated that she went straight to his work place and punched the victim twice in the face and kicked the victim three times in the stomach.

The defendant stated that she went to the victim's work place with the aim of asking for an explanation about the phone call from the woman who had a relationship with her husband. However because the victim did not want to speak about the phone call the defendant became angry and slapped the victim.

After hearing from the parties the court decided to continue the trial on 3 December 2013 to hear witness testimony.

5. Crime of failing to obey an order - Case No. 310 /C.Ord/2011/TDD

Composition of judges	: Single
Judge	: Jaçinta Correia
Public Prosecutor	: Oscar Tavares
Public Defender	: Jose da Silva
Conclusion	: Ongoing

On 19 November 2013 the Dili District Court conducted a hearing in a case involving three defendants CdJF, JdS, and TM who were accused by the public prosecutor of committing the crime of failing to obey a court order.

Previously the court ordered the defendants to vacate the land that they were living on because it did not belong to the three defendants. The land is located in Bairopite, Dili.

The public prosecutor alleged that on 10 August 2010 the Dili District Court decided that the three defendants had no rights to the land that was in dispute. Therefore, the court ordered them to stop building on the land which belonged to the witnesses GC, CA and MGA who won a civil case against the three defendants. At that time, the defendants had already signed the court order.

However, on 29 January 2011 the three defendants continued to lay bricks, install doorframes and windows in the three houses to open up a kiosk and canteen.

In relation to these acts the public prosecutor charged the defendants for violating Article 244 of the Penal Code regarding failure to obey a lawful order.

Previously, the court conducted an inspection and saw that the defendants were still building on the land even though they had been instructed to stop any form of construction.

In court the defendants admitted that they had signed the decision issued by the court. However, the defendant CdJF stated that at the time the decision was issued he had built the house and a kiosk to store his goods because there was no other place for him to use.

The defendant JdS stated that he built a small house with corrugated iron walls as a place for his younger siblings to stay. In addition, the defendant TM stated that he had no other place to stay so he continued the construction on the land because he was forced to do so.

The three witnesses GC, CA and MGA who are the rightful owners of the land stated that before a court decision was issued, with an order to halt any construction on the land, the defendants were building a house but it was not finished yet. After the court decision established that the

land did not belong to the defendants they continued to build the house and a kiosk and a smaller house on the land.

In his final recommendations, the public prosecutor stated that the defendants had continued to defy or refuse to obey the court order. Their actions are very serious because the defendants did not adhere to the court decision and this is not a good example for others. Therefore the public prosecutor requested for the court to sentence the defendants to 2 years imprisonment, to be suspended for 3 years.

On the other hand, the public defender argued that the defendants continued to build the house on the land in dispute because they were forced to. At that time, they had been forced out of the housing estate that previously belonged to the Indonesian Mobile Police Brigade (*Brimob*) and they did not have another house.

After hearing the recommendations of the parties, the court decided to adjourn the trial until 2 December 2013 at 11am to announce its final decision.

6. Crime of manslaughter and simple offences against physical integrity – Case No. 202/C.Ord/2013/TDD

Composition of judges	: Single
Judge	: Jaçinta Correia
Public Prosecutor	: Jacinto Babo
Public Defender	: Cândia Xavier
Conclusion	: Ongoing

On 19 November 2013 the Dili District Court conducted a hearing to hear the final recommendations in a case of manslaughter involving the defendant MS (member of PNTL) against JM. This case allegedly occurred on 21 January 2012 on the Main Market Road in Comoro Dili.

The public prosecutor stated that this case allegedly occurred without the premeditation of the defendant. Therefore, he requested for the court to consider the assistance given by the defendant to the family of the victim. Meanwhile the other victim JAG did not make a complaint to the authorities so it was deemed that there was no case to pursue.

The public defender believed that the incident or accident occurred because the parents did not show caution when providing the victim with a motorcycle for him to use, even though the victim (deceased) is underage to ride a motorcycle.

The public defender also requested for the court to consider the good intent of the defendant to help the family of the deceased. In addition, the defendant had regretted his actions, therefore the

public defender requested for the court to hand down a suspended prison sentence of less than 1 year.

Previously, the public prosecutor alleged that on 21 January 2012 on the main road to the Comoro Market the defendant was traveling in a car that collided with the victim JM (deceased) and JAG was riding a motorcycle at that time. The accident caused the immediate death of JM and JAG suffered a broken leg.

The defendant explained that he had helped the family of the deceased by providing them with \$ 3,679.00 and the PNTL institution had helped by giving \$ 1,340.00.

After hearing the recommendations of the parties, the court decided to adjourn the trial until 2 December 2013 to announce its final decision.

7. Crime of simple offences against physical integrity – Case No. 477/C.Ord/2013/TDD

Composition of judges	: Single
Judge	: Jaçinta Correia
Public Prosecutor	: Nelson de Carvalho
Public Defender	: Laura Lay
Conclusion	: Ongoing

On 21 November 2013 the Dili District Court conducted a hearing in a case involving the crime of ordinary offences against physical integrity characterized as domestic violence involving the defendant DdC who allegedly committed the offence against his wife. This case allegedly occurred on 15 June 2013 in Ermera District.

The public prosecutor alleged that on 15 June 2013 the defendant hit the victim on the right cheek with a broom and caused the victim to suffer an injury to her cheek.

This case allegedly occurred because the defendant was yelling at their child about a broken radio and the victim intervened and asked the defendant to stop being angry and go and eat something.

In the trial the defendant stated that the facts were true, he regretted his actions, and promised to not reoffend in the future. On the other hand the victim corroborated the facts set out in the prosecutor's indictment.

The court then adjourned the trial until 3 December 2013, at 3pm to hear the final recommendations.

8. Crime of making threats – Case No. 440/C.Ord/2013/TDD

Composition of judges	: Single
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Judge : António do Carmo
Public Prosecutor : Nelson de Carvalho
Public Defender : Manuel Sarmiento
Conclusion : Sentenced to 3 months imprisonment, suspended for 6 months

On 22 November 2013 the Dili District Court read out its decision and sentenced the defendant Gilberto Soares to 3 month's imprisonment, suspended for 6 months because he was found guilty of committing the crime of making threats against the victim, Fransisco Soares in Kuluhun, Dili, in 2013.

This case occurred because the defendant did not agree with the actions of the victim who was cleaning up by trimming the branches along the side of the road. The defendant threatened the victim by saying things like: *"If you keep on cutting the branches I will kill you, you will be bathed in blood and will die"*. These actions made the victim feel very afraid, while he was at home or outside his home.

Based on the facts established during the trial the court proved that the defendant's actions had fulfilled the elements of the crime of making threats, as alleged by the prosecutor. Therefore, the court sentenced the defendant to 3 months imprisonment, suspended for 6 months.

9. Crime of abuse of power - Case No. 362/C.Ord/2013/TDD

Composition of judges : Panel
Judges : Jacinta Correa, Jumiati Freitas, Julmira da Silva
Public prosecutor : Vicente Brito
Public defender : Fernando de Carvalho
Conclusion : Ongoing

On 26 November 2013 the Dili District Court tried a case of abuse of power involving the defendant ASM. This case allegedly occurred on 30 February 2012 in Hatulia Sub-District, Ermera District.

The public prosecutor alleged that on 30 February 2012 the Ministry for Social Solidarity sent 4 trucks carrying 25kg bags of rice, with a total of 3,039 sacks of rice to be distributed to the poor in Hatulia Sub-District, Ermera.

The defendant was the Sub-District Administrator and had the authority to distribute the rice; however the defendant used his authority to give 200 sacks of rice to rent a warehouse belonging to a businessman.

The defendant did not store the rice at the Hatulia Sub-District Office. Before renting the warehouse the defendant did not consult with the Ministry of Social Solidarity at the national level, which is the main authority responsible for the rice.

In relation to these acts, the public prosecutor charged the defendant for violating Article 297 of the Penal Code on abuse of power.

During the trial the defendant stated that when the rice was being taken to his village at that time it was raining heavily and the local Sub-District Office did not have enough space to store the rice. Therefore, as the Sub-district Administrator of Hatulia he requested the assistance of a businessman AdS to provide a location to store the rice. He paid for the warehouse with 200 sacks of rice because he had no money.

However the remaining rice was distributed by the defendant to the poor who are self-employed.

The witness RFC stated that he received 50 kg of rice from the Sub-District Administrator that had been stored at the warehouse of AdS.

The witness AdS who was the owner of the warehouse stated that the defendant requested his assistance to store the rice in the warehouse for 4 months with a payment of 200 sacks of rice because the defendant did not have any money. The witness also stated that normally his warehouse was rented out at a price of \$250 per month.

According to the testimony of APP and AA, the former who is an official from the Ministry and the latter who is the Regional Manager of National Funds from the Ministry, the defendant did not consult with them before renting the warehouse to store the rice. Only after the rice was stored in the warehouse did the defendant inform them.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 2 year's imprisonment, to be suspended for 4 years. In addition, the public prosecutor requested the court to sentence the defendant to pay a fine of \$ 4,000 to the State.

The public prosecutor then stated that based on witness testimony the defendant had used his authority and had not coordinated with the regional and national representatives of the Ministry.

The public defender requested for the court to impose a fine matching the price of rice originating from the Ministry of Trade and Industry at \$ 6.00 or \$ 7.00 a sack, which is different to the price of the rice that he sold to the businessman.

After hearing the recommendations of the parties, the court decided to adjourn the trial until 11 December 2013 at 11am to announce its final decision.

10. Crime of simple offences against physical integrity – Case No. 404/C.Ord/2011/TDD

Composition of judges : Single
Judge : Jacinta Correia
Public Prosecutor : Jacinto Babo Soares
Public Defender : Rui Manuel Guterres
Conclusion : Sentenced to 1 years imprisonment, suspended for 2 years

On 27 November 2013 the Dili District Court conducted a hearing to read out its decision in a case of simple offences against physical integrity characterized as domestic violence involving the defendant CL who allegedly committed the offence against his wife and younger sibling (LdS). This case allegedly occurred on 28 October 2011, in Bazartete, Liquica District.

Based on the evidence produced during the trial the defendant was found guilty of using a crowbar to strike his wife and cause her to suffer bleeding from her right eye. The court also found the defendant guilty of throwing the victim LdS into the wall of the house and causing him to suffer pain all over his body.

Based on this evidence the court concluded the matter and sentenced the defendant to one year's imprisonment, suspended for 2 years. If during the period of the suspended sentence the defendant commits another crime, then he will have to serve the prison sentence of 1 year.

11. Crime of maltreatment against a spouse - Case No. 25/2013/TDD

Composition of judges : Single
Judge : Julmira da Silva (representing the panel)
Public Prosecutor : Jacinto Babo Soares
Public Defender : Sergio Quintas
Conclusion : Sentenced to 2 years and 6 months' imprisonment.

On 27 November 2013 the Dili District Court read out its decision in a case involving maltreatment of a spouse and sentenced the defendant JS to 2 years 6 months imprisonment for committing violence against his wife in Dili.

The public prosecutor alleged that in 2001 the defendant beat the victim. He repeated these acts in 2007 and 2008 and then on 31 December 2013 the defendant choked the victim and threw her on the ground. Then on 15 April 2010, at approximately 10.00 am these acts occurred again. On 4 May 2010 the defendant hit the victim once on her left cheek and took a knife and threatened to kill the victim.

Then on 14 and 23 February 2012 the defendant threatened to kill the victim, verbally abused the victim by calling her a witch, prostitute and being shameless and ordered the victim to leave his house.

Then on 11 and 21 March 2012 the defendant repeated the same acts against the victim, and the victim could not take it anymore and left to go and live with her family.

On 16 July 2012 at 07:00 am the defendant went to the home of the victim's parents and abused and insulted the victim. In addition, on 17 August 2012, at 9.00am the defendant hit the victim twice on the head and verbally abused the victim again.

These acts caused the victim to suffer pain over her entire body and she was treated in hospital. In addition, the victim was traumatized because she was terrorized and the defendant threatened to kill her.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant admitted and confirmed all of the facts set out in the charges. Then the victim and the witness testified that the defendant had committed the crimes against the victim.

Based on the facts established during the trial, the court settled the matter and sentenced the defendant to 2 years 6 months imprisonment.

12. Crime of simple offences against physical integrity – 181/C.Ord/2012/TDD

Composition of judges	: Single
Judge	: António Gonçalves
Public prosecutor	: Mateus Nessi
Public Defender	: Manuel Sarmiento
Conclusion	: Validation of an agreement

On 27 November 2013 the Dili District Court validated a case of ordinary maltreatment involving the defendant Vitorino Soares (member of PNTL), because the victim wanted to withdraw the complaint. This case allegedly occurred in 2013, in Masçarenhas Dili.

The victim stated that they were neighbors, but they have since reconciled and he wanted to withdraw the complaint.

This case allegedly occurred because the victim argued with his brother in law after losing at gambling. They were arguing in loud voices and the defendant felt annoyed so he came and hit the victim.

In relation to these acts, the public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding simple offences against physical integrity.

However, during the trial the parties agreed to reconcile, so the court concluded this case and validated the agreement.

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