



Introduction

In June 2014 the Women's and Children's Justice Unit (WCJU) of JSMP continued to monitor cases involving gender based violence at the Dili District Court and Baucau District Court. This edition summarizes 11 cases that were heard at these courts. There cases included 9 cases heard at the Dili District Court and 2 cases at the Baucau District Court.

From these 11 cases, 4 cases involved mistreatment of a spouse, 6 cases involved simple assault characterized as domestic violence, and 1 case involved rape. In 3 cases fines were imposed, 1 case resulted in a suspended prison sentence and 7 cases are ongoing.

JSMP is concerned about the case registered as No. 130/2014/TD Dili, because the court did not consider the exceptional circumstances such the victim's capacity to secure evidence, as well as threats and pressure from the defendant after the crime was committed.

JSMP believes that it is very difficult for victims of sexual violence who live in isolated rural areas to have a good understanding of legal requirements, such as a medical report from a hospital. This case was very difficult for the victim because she was threatened by the defendant, and the threats meant that the victim had no option of seeking support from someone else.

JSMP believes that this decision does not reflect the difficulties that victims face and has failed to protect them, especially child victims of sexual violence. JSMP encourages judicial actors to be sensitive to the social reality of Timor-Leste and the ability of victims to secure evidence in accordance with legal requirements, which are often far beyond the capacity of the victims to understand.

The information below summarizes each of the cases observed:

1. Mistreatment of a spouse - Case No. 298/2013/TD Dili

Composition of judges	: Panel
Judges	: Julio Gantes, Francisca Cabral, Jumiati Freitas
Public Prosecutor	: Angelina Saldanha
Public Defender	: Rui Manuel Guterres
Conclusion	: Ongoing

On 12 June 2014 the Dili District Court tried the defendant MP for committing the crime of mistreatment of a spouse in Dili District.

The public prosecutor alleged that on 19 July 2012 the defendant and the victim had an argument. The defendant punched the victim in the chest, choked her and slammed the victim's head into a chair. These acts caused the victim to suffer pain and swelling to her neck and chest. This incident allegedly occurred because the defendant's second wife verbally abused the victim via a text message (SMS).

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code for the mistreatment of a spouse, in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant denied the charges of the public prosecutor and said he did not choke the victim or punch the victim in the chest. The defendant testified that the victim choked the defendant and tried to remove the defendant's pants. The court sought confirmation with the victim, and the victim corroborated the facts contained in the indictment and testified that the defendant committed physical violence against her.

After hearing the testimony of the defendant and the victim, the court adjourned the trial until 2 July 2014 at 3pm to hear witness testimony.

2. Crime of mistreatment of a spouse - Case No. 80/2013/TD Dili

Composition of judges	: Panel
Judges	: Julio Gantes, Francisca Cabral, Zulmira da Silva
Public Prosecutor	: Remizia Fatima
Public Defender	: José Pedro Camões
Conclusion	: 2 years 6 months in prison, suspended for 3 years.

On 12 June 2014 the Dili District Court read out its decision in a case involving mistreatment of a spouse involving the defendant FSSC in Dili District.

The public prosecutor alleged that on 15 March 2011 the defendant choked the victim and damaged goods in the home. This incident occurred because the defendant and the victim had a misunderstanding during a discussion. Then on 13 April 2012 the defendant slapped the victim across the cheek and struck the victim's head.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code for the mistreatment of a spouse in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts set out in the indictment, regretted his actions and stated that he has reconciled with the victim. Due to the defendant's confession, the court did not need to hear testimony from the victim and the court proceeded to hear the final recommendations of the parties.

In her final recommendations the public prosecutor mentioned that the defendant had confessed and regretted his actions, has reconciled with the victim and is responsible for their family. Based on these factors the public prosecutor requested the court to sentence the defendant to 1 year 6 months in prison, to be suspended for 3 years.

The public defender argued that the defendant cooperated with the court, regretted his actions and has reconciled with the victim, therefore he requested for the court to hand down a lenient suspended sentence against the defendant.

After examining the facts revealed during the trial, the court concluded this case and sentenced the defendant to 2 years 6 months in prison, suspended for 3 years.

3. Crime of simple offences against physical integrity characterized as domestic violence -Case No.375/Crm.S 2013/TDB.

Composition of judges : Single
Judge : Afonso Carmona
Public Prosecutor : Aderito Tilman
Public defender : Americo Luis Freitas
Conclusion : Ordered to pay a fine.

On 17 June 2014 the Baucau District Court conducted a hearing to announce its decision in a case of domestic violence involving the defendant MS who committed the offence against his wife in Manatutu District.

The public prosecutor alleged that on 4 April 2013 the defendant used a stick to hit the victim numerous times on her back. These acts caused the victim to suffer pain and redness to her body. This case occurred because the defendant and the victim had a misunderstanding during a discussion.

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.

After examining the facts revealed during the trial, the court decided the matter and punished the defendant with a fine. The court also issued an alternative punishment of 40 days imprisonment if the defendant fails to pay the fine.

4. Crime of Rape - Case No.0514/2012/TD Baucau

Composition of judges : Panel
Judges : Hugo da Cruz Pui, José Gonçalves, Afonso Carmona
Public Prosecutor : Luis Hernani Rangel
Public Defender : Jonas Henrique da Costa
Conclusion : Ongoing

On 18 June 2014 the Baucau District Court tried the defendant CV for allegedly committing the crime of rape on 15 October 2012 in Baucau District.

The public prosecutor alleged that on 15 October 2012 the defendant went into the home of the victim, embraced her, forcefully removed her clothing, then carried the victim and laid her on the ground. The then defendant used force to have sexual intercourse with the victim until he ejaculated. After having sexual intercourse the defendant threatened the victim and told her not to tell anyone else.

The public prosecutor charged the defendant with violating Article 172 of the Penal Code on rape.

During the trial the defendant denied some of the facts and testified that he did have sexual intercourse with the victim, but did not use force and threats, and that the sexual intercourse occurred with mutual consent. The defendant testified that after removing the victim's clothes, the defendant told the victim to put the clothes on again, but the victim did not want to so the defendant and the victim had sexual intercourse.

On the other hand the victim testified that the defendant used force to remove her clothes, laid her on the ground and had sexual intercourse with her. After the incident the victim immediately told her mother (EC) and aunty (FV).

During the trial, the witnesses EC and FV testified that they did not see the incident, however the victim was crying while she told them about the incident.

In his final recommendations the public prosecutor stated that, based on the partial confession of the defendant as well as the testimony of the victim and witnesses, the defendant had been proven guilty of using force to have sexual intercourse. Therefore, he requested the court to sentence the defendant to 12 years in prison.

The public defender requested for the court to acquit the defendant as there were doubts about this case and there was no medical report showing that the defendant had forced the victim to have sexual intercourse.

After hearing the final recommendations of the parties, the court adjourned the trial to announce its decision on 2 July 2014 at 2pm.

5. Crime of simple offences against physical integrity characterized as domestic violence –Case No.642/2013/TD Dili

Composition of judges	: Single
Judge	: Antonino Gonçalves
Public Prosecutor	: Matias Soares
Public Defender	: José da Silva
Conclusion	: Ongoing

On 23 June 2014 the Dili District Court tried the defendant GCR for committing the crime of domestic violence against his wife in Dili District.

The public prosecutor alleged that on 26 June 2013 the defendant burnt the victim's hand with a cigarette butt, punched the right jaw of the victim, choked her and pushed her into a wall. These acts resulted in injury to the victim's hand, pain, and swelling of her jaw and throat. The incident occurred because the victim suspected the defendant of having a relationship with another woman.

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 the facts in the indictment expressed his regret, and stated that he had reconciled with the victim. The victim confirmed that they had reconciled and, until now, the defendant had not repeated this behavior against her.

In his final recommendations the public prosecutor stated that the defendant had been found guilty of committing the crime of domestic violence against the victim, and therefore he requested the court to sentence the defendant to 1 year in prison, suspended for 2 years.

The public defender requested the court to consider the mitigating circumstances as the defendant had cooperated with the court to find the truth, expressed remorse, had reconciled with the victim and is responsible for his family. Therefore he requested the court to issue the defendant with an admonishment.

After hearing the final recommendations of the parties, the court adjourned the trial to announce its decision on 14 July 2014 at 5pm.

6. Crime of mistreatment of a spouse and simple offences against physical integrity - Case No. 584/2013/TD Dili

Composition of judges : Panel
Judges : Duarte Tilman, José Maria de Araujo, Zulmira da Silva
Public Prosecutor : Matias Soares
Public Defender : Manuel Sarmento
Conclusion : Ongoing

On 13 June 2014, the Dili District Court tried the defendant ACM for committing the crime of domestic violence against his daughter in Liquica District.

The public prosecutor alleged that on 21 December 2010 the defendant struck his wife's hand with a piece of wood because the victim was holding the defendant's hand phone.

On 11 January 2011, the defendant punched the victim in the mouth because she came home from her mother's house at 08.00pm. On 11 February 2011 the defendant punched the victim five times in the head and back, and pulled her hair.

Then, on 12 August 2013, the defendant argued with the victim (his wife) and punched the victim's body numerous times. The defendant's daughter went to separate them but the defendant also punched his daughter in the head, throat and back. The incident occurred because the defendant suspected his wife of having a relationship with another man.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse and Article 145 on simple offences against physical integrity, in conjunction with Article 35 of the Law Against Domestic Violence.

During the trial the defendant used his right to remain silent, however the two victims corroborated the allegations that the defendant committed physical violence against them and now they are living separately from the defendant.

In his final recommendations the public prosecutor stated that the defendant was guilty of committing the crimes of mistreatment of a spouse and simple assault against his wife and daughter. Therefore, he requested the court to sentence the defendant to 2 years 6 months in prison, suspended for 3 years.

The public defender concluded that although the defendant used his right to remain silent, in his final statement the defendant testified that they had reconciled, although they are no longer living together and that the defendant regretted his actions and was a first time offender. Therefore he requested the court to give a lenient suspended sentence against the defendant.

After hearing the final recommendations of the parties, the court adjourned the trial to announce its decision on 7 July 2014 at 2pm.

7. Crime of Rape - Case No.130/2014/TD Dili

Composition of judges : Panel
Judge : Jose Maria de Araújo (representing a panel of judges)

Public Prosecutor : Ambrogio Rangel
Public Defender : José da Silva
Conclusion : Acquitted

On 24 June 2014 the District Court conducted a hearing to announce its decision and acquitted the defendant LA from the charge of rape that was allegedly committed in Ermera.

The public prosecutor alleged that on 8 September 2013 the defendant embraced the victim, groped her genitals, covered the victim's mouth so the victim could not scream. After that, the defendant removed the victim's clothing, laid on top of the victim and raped her. After the incident, the defendant threatened the victim not to tell what the defendant had done to the victim, or otherwise the defendant would kill her. The defendant assaulted the victim when the victim was collecting firewood.

The public prosecutor charged the defendant with violating Article 172 on rape in conjunction with Article 173 of the Penal Code on aggravation.

During the trial the defendant denied the allegations of the public prosecutor and said that he did not rape the victim.

On the other hand, the victim stated that she lost her virginity and suffered an injury to her genitals. However, the victim was able to walk to school and home again, and only after three days she made a complaint at the police station.

The court considered that the facts in the indictment and the testimony of the victim raised some doubt, and also the absence of a medical report, so the court decided to acquit the defendant.

8. Crime of simple offences against physical integrity characterized as domestic violence -Case No.325/2014/TD Dili

Composition of judges : Single
Judge : Zulmira da Silva
Public Prosecutor : Ivonia Maria Guterres
Public Defender : Cândia Xavier
Conclusion : Ongoing

On 25 June 2014 the Dili District Court tried the defendant FC for committing the crime of domestic violence against his wife in Dili District.

The public prosecutor alleged that on 17 March 2013 the defendant pulled the victim's hair and grabbed the victim and threw her on a bed. These acts caused the victim to suffer pain to her stomach and bleeding from her genitals. The incident occurred because the victim suspected the defendant of having a relationship with another woman.

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 denied the allegations of the public prosecutor and testified that he did not punch the victim. He stated that the victim felt embarrassed and left the house and until now has not returned. The defendant also testified that the victim was having a relationship with another man so they had an argument.

On the other hand, the victim testified that the defendant did pull the victim's hair and threw her on the bed which caused her to suffer pain to her body and bleeding from her genitals.

After hearing testimony from the victim, the court adjourned the trial to hear witness testimony on 27 June 2014 at 9.30 am.

9. Crime of mistreatment of a spouse - Case No.567/2013/TDDIL

Composition of judges	: Panel
Judges	: José Maria de Araujo, Duarte Tilman and Zulmira da Silva
Public Prosecutor	: Gloria Alves
Public Defender	: Manuel Exposto
Conclusion	: Ongoing

On 25 June 2014 the Dili District Court tried the defendant CJ from committing the crime of mistreatment of a spouse in Liquica District.

The public prosecutor alleged that on 6 May 2009 the defendant was drunk and argued with the victim, verbally abused her, punched and kicked the victim's body numerous times, and damaged goods in the home. In March 2008 the defendant struck the victim in the thigh causing an injury. In 2006, in Atabae, the defendant repeatedly struck the victim but the victim did not report it.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse as well as Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial, the defendant testified that on 6 May 2009, the defendant did not punch the victim he only damaged the goods in the home. The defendant also stated that in 2008, the defendant did not strike the victim with a piece of iron, but the defendant had thrown away his walking stick, and by coincidence the victim was passing and the walking stick struck her on the thigh.

Nevertheless, the victim testified that while they were living together the defendant was always drunk and when he was drunk, he always argued and fought with her, but she did not report it. The victim also testified that they are now living separately.

The witnesses TSP, RM and TA (neighbors of the victim and the defendant) testified that they did not see the defendant punch the victim, but on 6 May 2009 the witnesses heard the defendant and the victim arguing.

In her final recommendations the public prosecutor considered the facts revealed during the trial fulfilled the elements of the crime of mistreatment of a spouse, so she requested for the court to hand down a prison sentence against the defendant.

The public defender stated that it had not been proven that the defendant punched and kicked the victim on 6 May 2009 but the facts proved the incidents in 2008 and 2006, therefore he requested the court to hand down an appropriate sentence.

After hearing the final recommendations of the parties, the court adjourned the trial to announce its decision on 10 July 2014 at 3.30pm.

10. Crime of simple offences against physical integrity characterized as domestic violence – Case No.217/2014/TDD

Composition of judges : Single
Judge : José Maria de Araujo
Public Prosecutor : José Elu
Public Defender : Sérgio Paulo Dias Quintas
Decision : Fine imposed

On 26 June 2014 the Dili District Court tried the defendant ZZ for committing the crime of domestic violence against his wife in Dili.

The public prosecutor alleged that on 18 May 2013 the defendant choked the victim, pulled her hair and slammed her into a wall. This incident occurred because the defendant and the victim had a misunderstanding during a discussion.

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.

In court the defendant admitted all of the facts in the indictment, expressed regret for his actions and promised not to reoffend against the victim in the future. The victim stated that during the trial they have reconciled and the defendant would not repeat this behaviour.

In his recommendations the public prosecutor requested the court to sentence the defendant with prison in accordance with Article 145 of the Penal Code because the defendant had admitted the facts and expressed regret. The public defender requested the court to apply a sentence that would not limit the freedom of the defendant.

The court evaluated the facts established during the trial and found that the defendant was guilty of committing the crime. The court concluded this process and sentenced the defendant to a fine of US\$ 240. The court also handed down an alternative punishment of 80 days in prison if the defendant does not pay the fine. The court also ordered the defendant to pay court costs of US\$ 75.

11. Crime of simple offences against physical integrity characterized as domestic violence – Case No. 66 / 2014/ TDDIL.

Composition of judges : Single
Judge : Francisca Cabral
Public defender : Matias Soares
Public defender : Cândio Xavier
Conclusion : Ongoing

On 18 April 2014 the Dili District Court conducted a trial of the defendant for committing domestic violence against his child in Dili District.

The public prosecutor alleged that in September 2013 the defendant punched the victim once in the head, once in the leg and 3 times on the back. This incident occurred because the victim caused her younger sibling to fall from a bicycle on the main road.

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 all of the facts in the indictment. Therefore, the public prosecutor said there was no need to hear the victim's testimony because the defendant had confessed before the court.

In his final recommendations the public prosecutor requested the court to issue the defendant with an admonishment. The public defender requested for the court to acquit the defendant.

After hearing the final recommendations of the parties, the court adjourned the trial to announce its decision on 11 July 2014 at 4pm.

For further information please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP
E-mail: luis@jsmp.minihub.org
info@jsmp.minihub.org
Telephone: 3323883 | 77295795
Website: www.jsmp.tl
Face book: www.facebook.com/timorleste.jsmp
Twitter: @JSMPtl