



**JUDICIAL SISTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZASAUN DO SISTEMA JUDISIAL**

Case Summary

Period : June 2012
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**Summary of the trial process at the Suai District Court
First and second weeks of June 2012**

Introduction

In the first and second weeks of June 2012, namely between the 5th and 14th June 2012, JSMP continued to monitor trials at the Suai District Court.

During this aforementioned two week period JSMP managed to monitor 12 cases. Of this total, there were 7 cases involving ordinary maltreatment, 1 involving infanticide, 2 involving domestic violence, 1 involving minor damage and 1 involving sexual acts with an adolescent.

Some of these cases went to trial and some of them reached the final stage of the process and the court resolved these matters by validating amicable agreements. In addition, several cases were suspended because the parties did not appear in court without clear justification. The parties included defendants, witnesses and victims who were officially summoned by the court.

Just like previous editions, this summary aims to disseminate up to date information about the legal process taking place at the Suai District Court.

1. Crime of Ordinary Maltreatment, Case No.53/PEN/2012/TDS.

On 5 June 2012 the Suai District Court validated an amicable settlement in a case of ordinary maltreatment which was registered as Case No.53/PEN/2012/TDS. The defendant in this case MCA was accused of committing the crime against the victim RdL on 16 December 2011 in Maudemo Village, Tilomár Sub-District, Covalima District, Suai.

The hearing to validate the agreement was led by single judge Álvaro Maria Freitas. The Public Prosecution Unit was represented by Zélia Trindade and the defendant was represented by public defender Marçal Mascarenhas.

Before the hearing commenced the court gave the parties time to reach an amicable agreement, pursuant to Article 145.2 of the Penal Code and Article 262 of the Criminal Procedure Code.

As a result of an amicable agreement, the victim testified to the court that he was willing to withdraw his complaint and it was not necessary to continue with proceedings, however the victim requested for the defendant to provide compensation.

Before the court the defendant testified that he was willing to provide compensation to the victim in the form of one pig, one *tais* (traditional cloth) and money totaling US\$ 50.

Based on the aforementioned testimony, and pursuant to Articles 106, 107 and 109 of the Penal Code, the court decided to acquit the defendant from the charges of the public prosecutor.

2. Crime of infanticide, Case No.59/PEN/2011.

On 6 June the Suai District Court conducted a hearing in a case involving infanticide which was registered as Case No.59/PEN/2011/TDS. The defendant in this case DMN was suspected of committed the crime of murdering a newborn baby. This case allegedly occurred di Taimea Sub-Village, Malilait Village, Bobonaro Sub-District, Bobonaro District on 10 February 2011.

The trial was conducted by a panel of judges comprising judge Constâncio Barros Basmerly (presiding) with judges Álvaro Maria Freitas and Florença Freitas. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and the defendant was represented by public defender João Henrique de Carvalho.

According to the indictment of the public prosecutor, in 2008 the defendant had separated from her husband, and then in 2009 she had a relationship with another man that resulted in her becoming pregnant. On 10 February 2011 at exactly 9:00am the defendant went to get some firewood from the garden and in that location the defendant gave birth to a baby and the baby was crying very loudly, so the defendant choked the baby until the baby died. Then the defendant took the body of the baby and placed it below a banana tree and placed a large rock on top of the baby's grave.

In relation to the aforementioned incident, the public prosecutor charged the defendant with Article 142 of the Penal Code relating to the crime of infanticide that carries a sentence of 3 - 10 years imprisonment.

The defendant testified to the court and admitted that the charges of the public prosecutor were true, however the defendant stated that she did not actually commit the aforementioned acts, but the defendant felt embarrassed towards her family and neighbors because during her pregnancy nobody was aware of her situation.

In relation to the evidence revealed during the trial, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 3 years imprisonment, to be suspended for 3 years.

However the public defender requested for the court to hand down a suspended sentence of two years, because the defendant admitted all of the evidence in this case and demonstrated regret for the aforementioned act and promised not to reoffend in the future. In addition the defendant also has a young child aged just 2 months old.

The reading out of the decision in this case will take place on 20 June 2012 at 10am.

3. Crime of Ordinary Maltreatment, Case No.93/PEN/2011/TDS.

On 8 June 2012 the Suai District Court was unable to conduct a hearing in a case of ordinary maltreatment which was registered as Case No. 93/PEN/2011/TDS. The trial was adjourned because only one of two defendants in this case (BdS) was present and the other defendant (JT) did not appear in court, even though they had been officially summoned by the court.

The adjournment was led by judge Florença Freitas, and the Public Prosecution Service was represented by Oscar Silva Tavares and the defendant was represented by private lawyer Hipólito Moniz.

Based on the aforementioned facts, the court adjourned the trial until 23 August 2012 at 9am.

4. Crime of Ordinary Maltreatment, Case No.13/PEN/2012/TDS.

On 8 June 2012 the Suai District Court was unable to conduct a hearing in a case of ordinary maltreatment which was registered as Case No.13/PEN/2012/TDS. This case was adjourned because the defendant did not appear in court without justification.

The adjournment was led by Judge Constâncio Barros Basmerly. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and the defendant was represented by private lawyer Hipólito Moniz.

In relation to the aforementioned interruption to proceedings the public prosecutor requested for the court to order the defendant to pay court costs for not providing justification to the court for this interruption.

According to the observations of JSMP, despite being summoned the defendant did not appear in court, however the victim was present in accordance with the schedule that had been set by the court.

The trial of this case will continue on 13 June 2012 at 10am.

5. Crime of Domestic Violence, Case No. 52/PEN/2012/TDS

On 8 June 2012 the Suai District Court conducted a hearing in a case of domestic violence which was registered as Case No.52/PEN/2012/TDS.This incident was allegedly committed by the defendant Joni Bragança on 18 July 2011 in Bobonaro District.

The trial was led by Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by private lawyer Vasco Kehi.

The hearing commenced with the reading out of the indictment by the public prosecutor.According to the charges of the public prosecutor, on 18 July 2011 a misunderstanding occurred between the defendant and the victim in relation to an amount of money totaling US\$ 20. When the defendant asked for an explanation about the money the victim stated that she didn't know and hadn't seen it.The defendant felt annoyed and hit the victim twice on the cheek and punched the victim in the chest causing the victim to suffer physical pain.

In relation to the aforementioned incident the public prosecutor charged the defendant under Article 145.1 of the Penal Code as well as Articles 2.1, 3(a), 35 and 36 of Law No 07/2010 Against Domestic Violence.

In his testimony before the court the defendant admitted the charges of the public prosecutor; however the defendant rejected a number of facts contained in the charges.The defendant stated that it was true that the defendant slapped the victim but he did not kick and punch the victim as stated in the charges and after the incident the defendant and the victim had been living amicably and normally as husband and wife.

In the aforementioned hearing the victim did not appear in court so the public prosecutor told the court that although the victim was absent the defendant was truly guilty of committing the aforementioned crime in accordance with the charges.The public prosecutor believed that the defendant himself had admitted his actions and therefore the court did not require testimony from witnesses.

Pursuant to the aforementioned evidence, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 2 years imprisonment, to be suspended for 3 years.The public prosecutor took this stance based on the testimony of the defendant himself and the contents of the indictment.

However the public defender in his final plea requested for the court to apply a suspended sentence against the defendant, because the defendant had confessed and demonstrated regret for his actions.In addition, the defendant was a first time offender and promised to the court that he would not reoffend in the future.

After hearing the final recommendations of the public prosecutor and the public defender, the court informed the parties that a final decision could be immediately rendered in this case.

Based on the evidence produced during the trial the court was convinced that the defendant was guilty of committing the crime of ordinary maltreatment characterized as domestic violence.

In reference to the aforementioned evidence the court concluded that the defendant had violated Article 145.1 of the Penal Code as well as Article 2.1, Article 3 (a), Article 35 and Article 36 of the Law Against Domestic Violence.

Finally the court decided to sentence the defendant to 1 year and 6 months imprisonment, to be suspended for 3 years.

6. Crime of Domestic Violence, Case No. 43/PEN/2012/TDS

On 8 June 2012 the Suai District Court conducted a hearing in a case of domestic violence which was registered as Case No.43/PEN/2012/TDS. The defendant in this case Bendito Ximenes was accused of committing the crime against the victim Maria Almeida de Carvalho in Aitaman Sub-Village, Maudemo Village, Tilomár Sub-District, Covalima District on 4 November 2011.

The hearing was led by Judge Constâncio Barros Basmery. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and the defendant was represented by private lawyer Hipólito Moniz.

According to the indictment of the public prosecutor, on 4 November 2011 at some time during the evening (exact time unknown) the defendant committed the crime of ordinary maltreatment against his wife. The defendant allegedly choked the victim and threw her on the ground and sat on her, and asked the victim “*do you love me or not?*” Despite her position the victim answered that she loved the defendant. Then the defendant said to the victim if she truly loved him she didn’t need to report the incident to the police.

In relation to the aforementioned incident the public prosecutor charged the defendant under Article 145 of the Penal Code as well as Articles 2.1, 3(a), 35 and 36 of Law No 07/2010 Against Domestic Violence. In this hearing the defendant chose to exercise his right to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code. However, in her testimony before the court the victim corroborated the evidence described in the indictment. Also the victim testified in detail that the defendant had frequently committed maltreatment against her; however the victim could not report the incidents because the defendant always threatened her.

Then the witness AdS testified to the court that on the evening of 14 November 2011 he heard the victim scream “*help me otherwise I am going to die*”. After hearing the screams of

the victim the witness came to the scene and saw the defendant grab the victim and throw her to the ground, then the witness provided assistance and took the victim away from the scene.

In relation to the aforementioned evidence, in his final recommendations the public prosecutor requested for the court to sentence the defendant to pay compensation within a 30 day period. He recommended for the defendant to pay US\$ 3 per day, amounting to US\$ 90 in total.

The public defender agreed and requested for the court to sentence the defendant to pay compensation because the defendant was a teacher in a primary school in Fatululik Sub-District, Covalima District.

After hearing the final recommendations of the public prosecutor and public defender, the court told the parties that a decision would be immediately rendered in this case.

In its decision the court stated that it was convinced that the defendant had in fact committed the crime of maltreatment characterized as domestic violence. Then the court explained that the actions of the defendant had fulfilled the elements of Article 145.1 of the Penal Code as well as Article 35 of Law No 07/2010 Against Domestic Violence.

After assessing the entire process and existing circumstances, the court ruled that an order to pay compensation would be most appropriate for the defendant. Therefore the court sentenced the defendant to pay compensation of US\$ 90 (ninety dollars) pursuant to the request of the public prosecutor. The compensation must be paid within 30 days at a rate of US\$ 3 per day.

7. Crime of Ordinary Maltreatment, Case No.11/PEN/2012/TDS.

On 8 June 2012 the Suai District Court conducted a hearing in a case of ordinary maltreatment which was registered as Case No. 11/PEN/2012/TDS. This case involved the defendant Leonia Gusmão who allegedly committed the crime against the victim Ana Maria on 17 June 2011 in Busa Kukun Sub-Village, Debos Village, Suai Sub-District, Covalima District.

The trial was led by single judge Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by private lawyer Vasco Kehi.

According to the indictment of the public prosecutor, on 17 June 2012 at exactly 6am the defendant went to the home of the victim and shouted "*Why have you been gossiping about my daughter?*" When the victim came out of the house the defendant immediately choked the victim and threw her to the ground. As a result of the defendant's actions the victim suffered a bruised neck.

In relation to the aforementioned incident the public prosecutor charged the defendant under Article 145.1 of the Penal Code.

In her testimony the defendant told the court that the charges were true. However the defendant argued that the incident should not have occurred but she had heard from another person that the victim was gossiping about her daughter and that is why the maltreatment occurred.

In her testimony the victim corroborated the evidence and chronology of events described in the indictment of the public prosecutor. Then the witness MdA testified that he saw the defendant yell out in a loud voice and choke the victim and throw the victim on the ground. The witness took the initiative to help the victim; however the defendant also reacted towards the witness and punched the witness in the chest.

In addition, the witness NE corroborated the testimony and evidence that had been given by MdA.

In relation to the aforementioned evidence the public prosecutor charged the defendant with Article 145.1 of the Penal Code. Pursuant to these charges the public prosecutor recommended for the defendant to be sentenced to 2 years imprisonment to be suspended for 3 years.

In his final plea the public defender requested for the court to hand down a suspended sentence against the defendant, because she was a first time offender and the defendant regretted her actions and promised not to reoffend in the future.

After hearing the final recommendations of the public prosecutor and the public defender the court decided to immediately issue a decision in the matter.

In its decision the court stated that the defendant was guilty of committing ordinary maltreatment. This case allegedly occurred when the defendant choked the victim and threw the victim to the ground, and as a consequence of the aforementioned actions the victim suffered bruising and swelling on her neck.

In relation to the entire process and evidence presented the court decided that the actions of the defendant had fulfilled the elements of Article 145 of the Penal Code that carries a sentence of up to 3 years imprisonment or compensation.

After carefully considering the validity of the aforementioned evidence the court sentenced the defendant to 1 year's imprisonment to be suspended for 2 years.

8. Crime of Ordinary Maltreatment, Case No. 03/PEN/2012/TDS

On 13 June 2012 the Suai District Court conducted a hearing to announce its decision in a case of ordinary maltreatment which was registered as Case No.03/PEN/2012/TDS. This case involved the defendant Danilo Amaral who allegedly committed the crime against the victim Rimundo Amaral on 6 June 2012 di Seran Kotek Sub-Village, Debos Village, Sub- Suai District, Covalima District.

The hearing to announce the decision was led by single judge Álvaro Maria Freitas. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and the defendant was represented by public defender João Henrique de Carvalho.

The judge announced in his decision that the defendant was guilty of committing the crime of ordinary maltreatment. This case allegedly occurred when the defendant punched the left eye of the victim. As a result of this incident the victim's eye was bruised and swollen.

In accordance with the entire process and the aforementioned evidence the court was convinced that the actions of the defendant had fulfilled the elements of Article 145 of the Penal Code. Therefore the court handed down a prison sentence of 4 years imprisonment, suspended for 1 year.

9. Crime of Ordinary Maltreatment, Case No.13/PEN/2012/TDS.

On 13 June 2012 the Suai District Court validated an amicable settlement in a case of ordinary maltreatment which was registered as Case No. 13/PEN/2012/TDS. There were two defendants involved in this case. The defendants JD and SM were accused of committing the crime against the victim DM. This case allegedly occurred on 7 May 2011, in Wedau Bere Village, Alas Sub-District, Manufahi District.

The hearing to validate a settlement in this case was led by Judge Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by João Henrique de Carvalho from the Office of the Public Defender.

Before the hearing commenced the parties were given an opportunity to reconcile, in accordance with Article 145.2 of the Penal Code as well as Article 262 of the Criminal Procedure Code.

The victim told the court that the victim was willing to withdraw the case and not pursue proceedings, however the victim requested for the court to order the defendant to pay compensation of US\$ 500.

In their testimony before the court the two defendants stated that they were willing to pay the compensation requested by the victim on 20 June 2012.

The court agreed to the request of the victim, and then validated the agreement and acquitted the defendants from the charges.

10. Crime of Ordinary Maltreatment, Case No. 48/PEN/2012/TDS

On 13 June 2012 the Suai District Court conducted a hearing in a case of ordinary maltreatment which was registered as Case No.48/PEN/2012/TDS. The defendant in this case MG (PNTL officer) was accused of committing the crime against the victim CdA on 11 August 2011, in Ritabou Village, Maliana Sub-District, Bobonaro District.

The hearing to validate a settlement in this case was led by single judge Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by João Henrique de Carvalho from the Office of the Public Defender.

According to the indictment of the public prosecutor, on 11 August 2010 at approximately 10am, a misunderstanding occurred between the victim and his two sons about a house. This caused the victim to become angry and to start removing belongings from his house, and the victim reported this to the police.

The victim was in the act of removing belongings from his house when the defendant and other members of the police arrived. The defendant asked the victim to come out of the house. However the victim said that he was removing belongings from his own house, therefore no one could stop him.

After hearing this statement the defendant became angry and threatened to shoot the victim with his pistol. Immediately after this statement the defendant slapped the victim on the cheek and hit the victim four times on the back with a belt and punched the victim once in the chest. The aforementioned action caused the victim to fall to the ground and to suffer bruising on his back.

In relation to the aforementioned incident the public prosecutor charged the defendant under Article 145.5 of the Timor-Leste Penal Code.

Before the court the defendant admitted the charges of the public prosecutor, however the defendant rejected some of the evidence presented. The defendant explained that he slapped the victim once on the cheek and hit the victim twice on the back with a belt; however the defendant did not use his pistol to threaten the victim and did not punch the victim in the chest as stated in the indictment.

However, the victim testified to the court and corroborated the evidence and the chronology of events described in the indictment of the public prosecutor.

The witness FdA testified to the court that it was true that the defendant had slapped the victim once on the cheek and had hit the victim twice with a belt, however he did not punch the victim in the chest and did not threaten the victim with his pistol.

Then the witness FM provided further corroborating evidence that the defendant had slapped the victim once and had only hit the victim with a belt, but did not use his pistol to threaten the victim. In addition, another witness JdA testified that it was true that the defendant had committed the aforementioned acts. However the victim spoke to the defendant in a very angry manner and this provoked the defendant to commit the aforementioned acts.

After hearing all of the testimony from the defendant and the witnesses, the public prosecutor in his final recommendations charged the defendant under Article 145 of the Penal Code.

Pursuant to the aforementioned evidence, in his final recommendations the public prosecutor requested for the court to sentence the defendant to 2 year's imprisonment, to be suspended for 3 years, as well as paying compensation of US \$ 150.

However the public defender in his final plea requested for the court to apply a suspended sentence against the defendant of six months imprisonment, because the defendant had demonstrated regret for his actions and also because the defendant was a first time offender.

The final decision will be announced on 20 June 2012 at 2.30pm.

11. Minor Property Damage, Case No.92/PEN/2012/TDS

On 14 June 2012 the Suai District Court conducted a hearing in a case of minor property damage which was registered as Case No. 92/PEN/2012/TDS. The defendant in this case DV was accused of committing the crime against the victim JC in 2012, in Ritabou Village, Maliana Sub-District, Bobonaro District.

This hearing was led by single judge Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by João Henrique de Carvalho from the Office of the Public Defender.

The hearing started with the reading out of the indictment by the public prosecutor. According to the indictment of the public prosecutor, in 2010 the defendant used a chainsaw to cut down four coconut trees and one mango tree and damaged the home of the victim.

In his testimony the defendant admitted some of the facts mentioned in the indictment as well as rejecting other facts. The defendant claimed that he only cut down one coconut tree and one mango tree. The defendant also stated that the aforementioned criminal act occurred because the victim's child lost a motorcycle belonging to the defendant.

After hearing testimony from the defendant, the court could not continue with the trial to hear statements that the victim and witnesses had previously made before the public prosecutor because all of them did not appear in court without providing any clear explanation to the court.

Based on the aforementioned evidence, the court adjourned the trial until 02 July 2012 at 10am.

12. Crime of sexual acts with an adolescent, Case No. 37/PEN/2012/TDS

On 14 June 2012 the Suai District Court conducted a hearing in a case involving sexual acts with an adolescent which was registered as Case No. 37/PEN/2012/TDS. The defendant FB was accused of committing the crime against the victim RP. This case allegedly occurred in 2008, in Hola Rua Village, Tirlolo Sub-District, Manufahi District.

This hearing was led by single judge Constâncio Barros Basmery. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by João Henrique de Carvalho from the Office of the Public Defender.

The hearing started with the reading out of the indictment by the public prosecutor. The public prosecutor stated in his indictment that in 2008 the defendant and the victim had a romantic relationship. The defendant told the victim that he would marry her and the defendant had sexual intercourse with the victim. In 2010 the defendant was still in a sexual relationship with the victim who became pregnant, and after the victim became pregnant the defendant did not admit that the child was his, so the victim reported the matter to the police. After this incident the defendant admitted that the child was his.

The defendant admitted to the court that the indictment of the public prosecutor was correct; however the defendant also testified that after the incident the defendant had been living together with the victim as husband and wife and that they had a child.

In his testimony before the court the victim stated that after the incident the victim and the defendant had been living together as husband and wife and had a child. The witness DP, who is the mother of the victim, also agreed with all of the aforementioned evidence.

In relation to the evidence produced during the trial, the public prosecutor in his final recommendations requested for the court to acquit the defendant from all charges.

The public defender also requested for the court to acquit the defendant from all charges.

After hearing the final recommendations of the public prosecutor and the public defender the court immediately issued its final decision. The court confirmed that the actions of the defendant did not fulfill the elements of Article 178 of the Penal Code, and therefore the court acquitted the defendant from all charges.

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