



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

Case Summary

Period: April 2012

Edition: 10 May 2012

Summary of the trial process in Baucau District Court

Introduction

In the month of April 2012, specifically between the 10th and 24th, JSMP continued to carry out monitoring activities at the Baucau District Court.

During this three week period, JSMP managed to monitor 17 cases. These cases comprised 6 cases of domestic violence, 4 cases of ordinary maltreatment, 1 case of crime of aggravated property damage, 1 case of minor damage, 1 case of aggravated murder, 1 case of attempted rape, 2 cases of sexual abuse of a minor and 1 case of serious maltreatment of a spouse.

Amongst these aforementioned cases, some are still being processed and some have already been resolved with the issuance of a final decision and definitive punishment, whilst several minor cases were settled through mediation. In addition, several cases could not be heard because the parties did not adhere to the summons and one other case was adjourned because of an issue at the court and that case was rescheduled.

As stated above, JSMP notes that domestic violence was the most prevalent type of crime heard by the Baucau District Court during the aforementioned month.

Similar to previous editions, this summary is aimed at disseminating information about the trial process at the Baucau District Court.

The information below outlines the hearings conducted:

1. Ordinary maltreatment, Case No. 41/Crm.S/2011/TDB.

On 10 April 2012 the Baucau District Court conducted a hearing to attempt to reach an amicable settlement in a case of ordinary maltreatment which was registered as Case No. 41/Crm.S/2011/TDB. This crime was allegedly committed by the defendant Petrolina

Hornay against the victim Ana Teresa da Rosa. This case allegedly occurred on 19 December 2010, di Samagata Sub-Village, Sagadate Village, Laga Sub-District, Baucau District.

The trial to negotiate an amicable agreement was led by single judge José Gonçalves and the Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

During the mediation session the victim and the defendant reached an amicable agreement and agreed to accept the outcome because previously a traditional settlement had been reached. This process was finalized with the court issuing a written document validating the settlement.

2. Domestic Violence, Case No. 155/Crm.S/2011/TDB.

On the same day (10 April 2012) the Baucau District Court conducted a hearing in a case of maltreatment characterized as domestic violence. The defendant RF in this case was accused of assaulting his spouse AF on 21 October 2010, in Osogigi Sub-Village, Uma Analu Village, Venilale Sub-District, Baucau District.

The hearing was led by single judge Afonso Carmona, the Public Prosecution Service was represented by Benvinda da Costa do Rosário, and the defendant was represented by public defender Gregório de Lima.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that on 21 October 2010, at approximately 6am, the defendant verbally abused the victim, and hit the victim with a piece of wood three times on the head and twice on the left arm. The aforementioned actions caused the victim to suffer injuries to her head and a very serious injury to her left arm.

The indictment also states that this case allegedly occurred because the victim ordered the defendant to register his name at the Sub-Village to attend schooling for the illiterate.

In relation to this incident the public prosecutor charged the defendant with Article 145 of the Penal Code in conjunction with Article 2.2 of the Law Against Domestic Violence.

In his testimony the defendant told the court that all the evidence against him was accurate and that he regretted his actions, and that he would not repeat his actions in the future.

In addition, the victim told the court that the defendant had committed the acts mentioned in the indictment of the public prosecutor. .

After hearing testimony from the parties, the court then continued the trial with the reading out of the final recommendations. In her final recommendations, the public prosecutor requested for the court to apply a suspended sentence against the defendant because the

defendant accepted the evidence against him and the parties had reconciled, and also the defendant was very old and blind.

The public defender also requested for the court to hand down a fair punishment because his client regretted his actions, was blind and was very old.

The court adjourned the trial until 25 April 2012 to read out its decision.

3. Domestic Violence, Case No. 147/Crm.S/2011/TDB.

On the same day (10 April 2012) the Baucau District Court conducted a hearing in a case of ordinary maltreatment characterized as domestic violence. This case was registered as Case No. 147/Crm.S/2011/TDB. The defendant in this case IA allegedly committed the crime against his wife AR. This case allegedly occurred on 1 September 2010, di Dasiwati Sub-Village, Afaloicai Village, Uatulari Sub-District, Viqueque District.

The hearing was led by single judge Afonso Carmona, the Public Prosecution Service was represented by Pascasio de Rosa Alves, and the defendant was represented by public defender Gregório de Lima.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that on 1 September 2010 the defendant verbally abused the victim and hit her once above her right eye and struck her on the back, kicked her once on the hip and dragged the victim on to the main road.

The incident occurred because the defendant asked the victim for food when the defendant returned from Dili, however the victim told the defendant to get the food himself so the defendant committed the aforementioned acts against the victim.

In the aforementioned hearing both the defendant and the victim used their right to remain silent. Therefore, the court decided to continue the trial on 7 August 2012 to hear testimony from witnesses.

4. Ordinary Maltreatment, Case No. 123/Crm.S/2010/TDB.

On 11 April 2012 the Baucau District Court conducted a hearing to attempt to reach an amicable settlement in a case of ordinary maltreatment which was registered as Case No. 123/Crm.S/2010/TDB. This case involved the defendant Francisco Filipe Barbosa and the victim Jacinto Ximenes da Silva. This case allegedly occurred on 6 February 2008, di Bairro Antigo Vila Baucau.

The hearing to mediate the amicable settlement was led by single judge José Gonçalves and the Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

Before the evidence was heard in this case, pursuant to Article 262 of the Criminal Procedure Code, the court tried to reach conciliation between the defendant and the victim. During the conciliation process the victim and the defendant both agreed to settle this matter in accordance with traditional custom.

Based on the request from the two parties the court fully acquitted the defendant from all criminal charges.

5. Minor property damage, Case No. 99/Crm.S/2010/TDB.

On the same day 11 April 2012 the Baucau District Court conducted a hearing to read out its decision in a case involving the crime of minor damage which was registered as Case No. 99/Crm.S/2010/TDB. This case involved three defendants, namely Januari da Costa a.k.a Melok, Januari da Costa and Domingos da Costa who allegedly committed the crime against the victim Norberta da Costa. This case allegedly occurred on 24 April 2008 di Haurobu Sub-Village, Caibada Uaimua Village, Baucau Sub-District, Baucau District.

Based on the facts presented during the trial the court was convinced that the defendants were guilty of committing the property damage as set out in Article 258 of the Penal Code that carries a prison sentence of 3 years or a fine.

Nevertheless, after evaluating the entire process the court deliberated and decided that a fine would be the most appropriate punishment for the defendants. Therefore, the court fined each defendant US\$ 75.00, which amounted to US\$ 225.00 in total. The fines must be paid within 150 days. The fines are to be paid at a rate of 50 cents per day and the defendants were ordered to pay court costs of US\$ 10.00.

The court also emphasized that if the defendants do not comply with the sentence, they will be sentenced to 100 days in prison.

6. Domestic Violence, Case No. 28/Crm.S/2012/TDB

On 12 April 2012 the Baucau District Court conducted a hearing in a case of ordinary maltreatment characterized as domestic violence. This case was registered as Case No. 28/Crm.S/2012/TDB and involved the defendant Roberto Soares who allegedly committed the crime against his wife Isabel da Costa. This case allegedly occurred on 8 September 2011 di Mamura Sub-Village, Caraubalu Village, Viqueque Sub-District, Viqueque District.

The hearing was led by single judge Antonio Fonseca Monteiro, the Public Prosecution Service was represented by Pascasio de Rosa Alves, and the defendant was represented by public defender Gregório de Lima.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that on 8 September 2011, the defendant hit the victim twice on the head

and choked the victim and threw her on the ground. These acts caused the victim to suffer swelling to her head and pain all over her body.

The incident occurred because the victim requested US\$10 from the defendant to grind some rice, however the defendant did give the money so the victim became angry and threw the rice on the ground and told the defendant that even though they had been living together for years the defendant had never given a single cent to the victim when she asked for money. When he heard this statement the defendant became angry and committed the aforementioned acts against the victim.

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

In the aforementioned trial the defendant used his right to remain silent as set out in Article 60.c of the Criminal Procedure Code and did not provide testimony.

The witness MdC was summoned by the court and testified that they often argued before the incident occurred between them, and the defendant choked the victim and struck her on the head.

The victim corroborated the testimony of the witness and stated that the defendant had committed the acts described in the indictment.

After hearing testimony from the parties, the court then continued the trial with the reading out of the final recommendations. In his final recommendations the public prosecutor requested for the court to order the defendant to pay a fine. In his final recommendation the public defender requested for the court to apply a fair sentence because his client was a first time offender this incident occurred because of provocation from the victim.

After hearing the final recommendations the court then read out its final decision at 2pm. Based on the facts deduced by the court, the court was convinced that the defendant was guilty of committing the crime of ordinary maltreatment in accordance with Article 145 of the Penal Code as well as Article 2.2 of the Law Against Domestic Violence.

In the end the court handed down a sentence 6 months imprisonment, however it was suspended for one year.

7. Aggravated property damage, Case No. 156/Crm.C/ 2011/TDB.

On 12 April 2012 the Baucau District Court conducted a hearing to read out its decision in a case involving the crime of aggravated property damage which was registered as Case No. 156/Crm.C/2011/TDB. This case involved the defendant Tomas da Costa who allegedly committed the crime against the victim Justino Ximenes. This case allegedly occurred on 31

October 2010, di Kuluhun Sub-Village, Fuiloro Village, Lospalos Sub-District, Lautem District.

The hearing to read out the decision was led by a panel of judges comprising José Gonçalves, Ângela Faria Belo and Edite Palmira Dos Reis. The Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

In the hearing to read out the decision the court stated that it was convinced that on 31 October 2010 the defendant slashed the petrol tank of a motorcycle with a machete causing it to leak and burn the motorcycle. The motorcycle was identified as B. 2639 (property of the Lore Village Chief). The public prosecutor charged the defendant for the aforementioned actions under Article 259 of the Penal Code. The reason for the incident was that the motorcycle was being ridden by his brother Acação Oliveira and collided with the defendant's child.

Based on the facts presented during the trial, the court handed down a sentence of 2 years 6 months imprisonment that was suspended for two years. The court did not order the defendant to pay compensation because there were no documents showing that the victim was the owner of the motorcycle.

8. Aggravated murder, Case No. 29/Crm.C/2012/TDB

On 18 April 2012 the Baucau District Court was unable to conduct a hearing in a case of aggravated murder which was registered as Case No. 29/Crm.C/2012/TDB. There were seven defendants in this case, namely TL, OL, AL, ATL, OLL, FS and VS who allegedly committed the crime against the two victims David Armando Ramos and Alarico Soares. This case allegedly occurred on 20 August 2011 di Hailarino Sub-Village, Luro Village, Luro Sub-District, Lautem District.

The trial was led by a panel of judges comprising judge António Fonseca Monteiro, José Gonçalves and Ângela Faria Belo. The Public Prosecution Service was represented by prosecutor Adérito Tilman and the defendants were represented by public defender Gregório de Lima and private lawyer Ângelo Neves.

Nevertheless, the hearing in this case could not take place because the court did not have an interpreter for the sae'ene language. For these reasons the court decided to adjourn the trial until 25 April 2012.

The court decided to send an official letter to the Lautem District Administrator to appoint a person who has a good command of Sae'ene and Tetum to provide interpretation in the hearing on 25 April 2012.

9. Domestic Violence, Case No. 132/Crm.S/2012/TDB.

In accordance with the court schedule, on the same day (18 March 2012) the Baucau District Court conducted a hearing in a case of domestic violence which was registered as Case No. 132/Crm.S/2012/TDB. 132/Crm.S/2012/TDB. This case involved the defendant JX who allegedly committed the crime against his spouse MS on 20 April 2010 in Caiobilale Sub-Village, Caibada Village, Baucau Sub-District, Baucau District.

This hearing could not take place because the defendant did not respond to the summons. In accordance with information that JSMP obtained from a court clerk, the reason for suspending the hearing was unclear because the case has not been given over to the court clerk (the case is still in the hands of the judge).

10. Domestic Violence, Case No. 20/Crm.S/2012/TDB.

On 19 April 2012 the Baucau District Court conducted a hearing in a case of domestic violence which was registered as Case No. 20/2012/TDB. This case involved the defendant TFA who allegedly committed the crime against his spouse CMF on 24 August 2010 in Lutu-Mutu Sub-Village, Trilolo Village, Baucau Sub-District, Baucau District.

The hearing was led by single judge Antonio Fonseca Monteiro, the Public Prosecution Service was represented by Benvinda da Costa do Rosário, and the defendant was represented by public defender Gregório de Lima.

The trial continued with the examination of witness testimony. The witness DF testified that he did not see the incident but he knew that the case had been resolved at the village level. After hearing witness testimony the court then heard final recommendations.

In her final recommendations the public prosecutor requested for the court to order the defendant to pay a fine. The public defender requested for the court to fully acquit his client because the case had been resolved at the village level. Finally the court decided to adjourn the trial to announce its final decision which will take place on 19 April 2012 at 10:00.

11. Attempted rape, Case No. 04/Crm.C/2012/TDB.

On the same day (19 April 2012) the Baucau District Court conducted a hearing in a case of attempted rape which was registered as Case No. 04/Crm.C/2012/TDB. This case involved the defendant HF who allegedly committed the crime against the victim ARM on 17 August 2011 in Bugate Sub-Village, Trilolo Village, Baucau Sub-District, Baucau District.

The trial was led by a panel of judges comprising José Gonçalves, Afonso Carmona and Antonio Fonseca Monteiro. The Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

The trial of this case was closed to the public, however based on information JSMP obtained from a trusted source in the court, the public prosecutor charged the defendant in accordance with: Articles 23,172 and 173 (d) of the Penal Code.

The reading out of the decision in this case will take place on 3 May 2012.

12. Domestic Violence, Case No. 20/Crm.S/2011/TDB.

On 20 April 2012 the Baucau District Court conducted a hearing to read out its decision in a case of domestic violence which was registered as Case No. 20/Crm.S/2011/TDB. This case involved the defendant Teofilo Freitas Amaral who allegedly committed the crime against his wife Celestina Martins Freitas. This case allegedly occurred on 24 August 2010 in Lutu-Mutu Sub-Village, Trilolo Village, Baucau Sub-District, Baucau District.

The hearing was led by single judge Antonio Fonseca Monteiro, the Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

At the completion of the trial the court was convinced that the defendant was guilty of committing the crime of ordinary maltreatment in accordance with 145 of the Penal Code and Article 2.2 of the Law Against Domestic Violence that carries a prison sentence of 3 months to 3 years.

Based on the facts deduced during the trial, the court handed down a sentence of 7 months that was suspended for 1 year.

13. Crime of sexual abuse of a minor, Case No. 96/Crm.C/2011/TDB.

On 20 April 2012 the Baucau District Court conducted a hearing in a case involving the crime of sexual abuse of a minor which was registered as Case No. 96/Crm.C.2011/TDB. This case involved the defendant CCB who allegedly committed the crime against the victim ASCF on 5 April 2011 in Anavaro Sub-Village, Caibada/Uaimua Village, Baucau Sub-District, Baucau District.

The hearing was presided over by a panel of judges comprising Ângela Fária Belo, Afonso Carmona and José Gonçalves. The Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

The trial was closed to the public, however based on information obtained by JSMP, after hearing from the parties the court adjourned the trial to read out its decision on 4 May 2012.

14. Maltreatment against a spouse, Case No. 26/Crm.C/2012/TDB.

On 20 April 2012 the Baucau District Court conducted a hearing in a case of maltreatment against a spouse which was registered as Case No. 26/Crm.C/2012/TDB. This case involved the defendant AC who allegedly committed the crime against his spouse MX on 3 August 2011 in Cauto Sub-Village, Fuiloro Village, Lospalos Sub-District, Lautem District.

The trial was presided over by a panel of judges comprising Ângela Fária Belo, Afonso Carmona and José Gonçalves. The Public Prosecution Service was represented by Adérito Tilman, and the defendant was represented by public defender Gregório de Lima.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that on 3 August 2011 the defendant had an argument with the victim and the defendant took a branch from a coconut tree and hit the victim in the head, above the eye and on the arm.

The actions of the defendant caused the victim to suffer injuries .

In addition, the indictment also explained that the defendant hit the victim at least 20 times.

The incident occurred because the victim borrowed US\$ 60 from another person without the knowledge of the defendant.

In his testimony the defendant stated that the charges of the prosecutor were true. The defendant also stated that he often hit the victim because the victim aborted their unborn child. In the aforementioned trial, the defendant regretted his actions and promised that he would not repeat such acts.

In her testimony the victim said that the defendant often committed such acts but the victim did not complain to the police because the victim did not want her husband (the defendant) to go to jail.

After hearing from the parties, the court moved on to the final recommendations. In his final recommendations, the public prosecutor requested for the court to impose a proportional punishment against the defendant. The public defender requested for the court to consider that the defendant had admitted his actions, regretted his actions and was responsible for seven children.

The court adjourned the trial until 4 May 2012 to read out its decision.

15. Crime of sexual abuse of a minor, Case No. 117/Crm.C/2011/TDB.

In accordance with the trial schedule, on 23 April 2012 the Baucau District Court conducted a hearing in a case involving the crime of sexual abuse of a minor which was registered as Case No. 117/Crm.C./2011/TDB. This case involved the defendant JM. However the hearing could not take place because the judge was unable to attend court.

Based on information that JSMP obtained from the court, the hearing could not take place because the judges were attending a meeting with the Superior Council of Judicial Magistrates in Dili.

The trial was adjourned until 18 June 2012.

16. Domestic Violence, Case No. 02/Crm.S/2012/TDB.

On 24 April 2012 the Baucau District Court conducted a hearing in a case of domestic violence which was registered as Case No. 02/Crm.S/2012/TDB. This case involved the defendant JdS who allegedly committed the crime against his spouse NAS. This case allegedly occurred on 28 June 2011 at the RSS Vila Nova Baucau.

The hearing was led by single judge Afonso Carmona, the Public Prosecution Service was represented by Benvinda da Costa do Rosário, and the defendant was represented by public defender Gregório de Lima.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that that on 28 June 2011 the defendant choked the victim and threw her to the ground then he kneeled on the victim until she became unconscious. As a consequence of the aforementioned actions, the victim suffered pain to her entire body and underwent treatment at the hospital.

The indictment also explained that the incident occurred because the younger sibling of the defendant rang the victim, however the victim responded angrily.

In the aforementioned trial the parties used their right to remain silent. The defendant used his right in accordance with Article 60 (c) of the Criminal Procedure Code and the victim used her right to remain silent in accordance with 125.1 (b) of the Criminal Procedure Code

In relation to the application of Article 125 of the Criminal Procedure Code by the court, the public prosecutor will lodge an appeal to the Court of Appeal, although previously the Court of Appeal already issued a decision in relation to opposition against the interpretation of the aforementioned article. In his final recommendations the public prosecutor requested for the court to apply a suspended sentence against the defendant. In addition, the public defender requested for the court to apply a fair punishment against his client.

The court then adjourned the trial until 9 May 2012 to read out its decision.

17. Ordinary Maltreatment, Case No. 123/Crm.S/2011/TDB.

On 24 April 2012 the Baucau District Court conducted a hearing to attempt to reach an amicable settlement in a case of ordinary maltreatment. The case involved three defendants, namely Ilidio Araújo da Cruz, Felismino Rosario and Eugebio Augusto Belo who allegedly

committed the crime against the victims Francisco da Silva and Pascoela Pinto. This case allegedly occurred on 13 August 2011 in Lutu-Mutu Sub-Village, Trilolo Village, Baucau Sub-District, Baucau District.

The hearing was led by single judge José Gonçalves, the Public Prosecution Service was represented by Benvinda da Costa do Rosário, and the defendant was represented by public defender Gregório de Lima.

In the aforementioned trial the two victims wished to withdraw their case against the three defendants.

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