

### JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU



Case Summary | GENDER BASED VIOLENCE

October 2013

In October 2013 the Women's Justice Unit continued its observation of cases involving gender based violence at the Dili District and Baucau District Courts.

This edition will summarize the trials of 11 cases, 7 of which were heard at the Dili District Court and the other 4 which were heard at the Baucau District Court.

From these 11 cases, 7 cases involved simple offences against physical integrity characterized as domestic violence, 2 cases of sexual abuse of a minor, 1 case of serious aggravated assault against a minor, and 1 case of infanticide.

From these cases, 1 case was settled with a fine, 5 cases resulted in suspended prison sentences, 2 cases resulted in imprisonment, and in 3 cases the public prosecutor and public defender have given their final recommendations and a final decision is pending.

The following information summarizes the trial of each of these cases:

## 1. Crime of simple offences against physical integrity, characterized as Domestic Violence, Case No. 78/CRM.S/2013/TDB.

Judge : Jose Gonçalves

Public Prosecutor : Pascasio de Rosa Alves

Public Defender : Rui Manuel Guterres (public defender)

Conclusion : Sentenced to 3 months imprisonment, suspended for 1 year.

On 2 October 2013 the Baucau District Court conducted a hearing and imposed a suspended sentence against the defendant MP for committing the crime against his wife, in Viqueque District.

The public prosecutor alleged that on 7 June 2012 at 10.00am the defendant hit the victim with a piece of wood on her left thigh, back, waist and arm which resulted in the victim suffering pain and swelling. The incident occurred because the victim did not listen to the defendant's instructions when he prohibited the defendant from going to another location/village.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts set out in the indictment of the public prosecutor, the defendant regretted his actions, has reconciled with the victim and promised not to reoffend in the future. Therefore, the Public Prosecutor decided that it wasn't necessary to hear testimony from the victim.

In his indictment the public prosecutor requested for the court to suspend the prison sentence from 6 months to 1 year. The public defender asked the court to hand down a fair punishment against the defendant.

The court adjourned the trial to examine if all of the facts have been proven. Then the court handed down a prison sentence of 3 months imprisonment, suspended for 1 year.

## 2. Crime of simple offences against physical integrity, characterized as Domestic Violence, Case No. 10/CRM.S/2013/TDB.

Judge : Jose Gonçalves

Public Prosecutor : Pascasio de Rosa Alves

Public Defender : Rui Manuel Guterres (public defender)

Conclusion : Ongoing

On 2 October 2013 the Baucau District Court heard a case of domestic violence involving the defendant GRGA who allegedly committed the offence against his wife, in Viqueque District.

The public prosecutor alleged that on 12 September 2012 the defendant slapped the victim in the mouth, punched her in the cheek and threatened her with a piece of wood.

On 13 September 2012 the defendant threw the victim's clothes out of the house and verbally abused the victim. The incident occurred because the victim's telephone was left at home because she forgot, and the victim called from the office but the defendant did not accept the call and ended it. Therefore, when the victim came home to provide clarification the defendant became angry and punched the victim.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts alleged against him. The court then sought confirmation with the victim, and the victim stated that the defendant did not hit her, however he slapped her twice and caught the edge of her cheek. However the victim added that they have reconciled and are living together as husband and wife.

In his indictment, the public prosecutor requested for the court to apply a fair punishment in accordance with the minimum and maximum penalties available. The public defender requested for the court to impose a suspended sentence.

The final decision will be announced on 16 October 2003, at 10am.

- 3. Crime of simple offences against physical integrity, characterized as Domestic Violence
  - Case No. 105/CRM.S/2013/TDB

Judge : Afonso Carmona
Public Prosecutor : Pascasio de Rosa Alves

Public Defender : Rui Manuel Guterres (public defender)

Conclusion : Sentenced to 6 months imprisonment, suspended for 1 year.

On 2 October 2013 the Baucau District Court heard a case of domestic violence involving the defendant GdS who allegedly committed the offence against his wife, in Viqueque District.

The public prosecutor alleged that on 4 December 20112, the defendant punched the victim in the right eye, slapped her across the nose, mouth and tied the legs and arms of the victim to one of the house pillars. As a result of the assault the victim suffered a black eye and suffered a lot of bleeding from the nose. The incident occurred because the defendant told the victim to dry some rice grains but the victim refused.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial the defendant admitted all of the facts set out in the indictment and told the court that he punched the victim because the victim did not comply with his request and the victim complained a lot against the defendant and the defendant wanted to go and look after the buffalo so the defendant became angry and punched the victim.

During the trial the defendant stated that they have reconciled and are living together as husband and wife, he regretted his actions and promised not to reoffend in the future. Because the defendant has admitted his actions the public prosecutor told the court that it is not necessary to hear witness testimony.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 3 year's imprisonment, to be suspended for 1 year, and to request the defendant not to reoffend.

The public defender requested for the court to apply a lenient sentence because the defendant admitted his actions, expressed regret and has reconciled in accordance with local custom, and is the sole breadwinner for the family.

The court considered all of the facts and the mitigating circumstances such as the defendant's regret and confession. Based on the evidence presented on 10 October 2013 the court decided the matter and sentenced the defendant to 6 months imprisonment, suspended for 1 year.

## 4. Crime of simple offences against physical integrity, characterized as Domestic Violence. Case No. 0217/2012/TDD

Judge : Jose Maria Araujo Public Prosecutor : Reinato Bere Nahak

Public Defender : Sebastião Amado de Almeida (public defender)

**Conclusion** : Ongoing

On 22 October 2013 the Dili District Court conducted a hearing against the defendant ACF who allegedly committed the crime of assault against his wife in Dili District.

The public prosecutor alleged that on 18 December 2012, the defendant punched her in the right ear and kicked her twice on her side. As a result of the violence the victim's right ear was swollen. The incident occurred because the victim accused the defendant of stealing something from the house of the defendant's sister (witness JF).

The public prosecutor charged the defendant for violating Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial, the defendant admitted all of the facts set out in the indictment and the court sought confirmation with the victim. The victim stated that the defendant hit her once on the ear and kicked her on the hip and now they are living together again and have reconciled in accordance with local custom.

After hearing the testimony of the defendant and the victim, the court decided not to hear witness testimony and continued to hear the recommendations of the Public Prosecutor and Public Defender. The court sought confirmation with the defendant that he was a driver, and that now he is a taxi driver.

In his recommendations the public prosecutor requested for the court to hand down a fair punishment against the defendant to act as a deterrent. The public defender also requested for the court to impose a fine because the defendant regretted his actions.

The final decision will be announced on 6 November 2013, at 11am.

5. Crime of simple offences against physical integrity, characterized as Domestic Violence – Case No. 297/2013/TDD.

Judge : Francisca Martins
Public Prosecutor : Angelinha Saldanha

Public Defender : Manuel Exposto (public defender)

Conclusion : Ongoing

On 22 October 2013 the Dili District Court conducted a hearing against the defendant LCO who allegedly committed the crime of assault against his wife in Bairope, Dili District.

The public prosecutor alleged that on 1 April 2012, the defendant punched the victim in the forehead and head, choked her and kicked her on the side of her body. This case allegedly occurred because there was a misunderstanding between the victim and the defendant about money for their household needs.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

During the trial, the defendant denied several of the facts set out in the indictment. Therefore, the court checked with the victim about the facts set out in the indictment. In his testimony the victim stated that all of the facts set out in the indictment were true.

After hearing the testimony of the victim, the court proceeded to hear the final recommendations because there were no other witnesses in this case.

In his final recommendations the public prosecutor stated that the defendant denied the facts, but the victim corroborated the charges. 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.

The public defender requested for the court to issue an admonishment because the defendant is a first time offender, has reconciled with the victim, however the prosecutor entrusted the matter for the court to decide.

The hearing to announce the final decision will take place on 20 November 2013 at 4pm.

# 6. Crime of simple offences against physical integrity, characterized as Domestic Violence – Case No. 190/Crm.S/2013/TDB

Judge : Hugo da Cruz Pui (trainee judge)

Public Prosecutor : Aderito Tilman

Public Defender : Grigorio de Lima (Public Defender)

Conclusion : Ordered to pay a fine

On 7 October 2013 the Baucau District Court conducted a hearing in a case involving simple offences against physical integrity characterized as domestic violence. This case involved the defendant FF who allegedly committed the offence against his wife, in Baucau District.

The public prosecutor alleged that on 2 January 2013 the defendant struck the victim in the head with a plastic bag and also struck the right arm of the victim. This attack caused the victim to suffer an injury to her head, bleeding and swelling to her fingers. This incident allegedly occurred because the victim accused the defendant of just walking back and forth and not looking after their child who was sick.

The public prosecutor charged the defendant for violating 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 that all of the facts alleged by the public prosecutor were true and he promised not to commit these acts against his wife or against anyone else in the future.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 5 month's jail, to be suspended for 1 year because the defendant admitted all of the facts, regretted his actions and has reconciled with the victim.

In his final recommendations the public defender requested for the court to acquit the defendant because the defendant had cooperated with the court to find the truth, was a first time offender, regretted his actions and has reconciled with the victim.

Based on the facts presented during the trial, the court decided this matter on 16 October 2013, by imposing a fine of \$45 against the defendant as well as the threat of an alternative punishment of 60 days prison if the defendant does not pay the fine imposed on him.

#### 7. Crime of sexual abuse of a minor, Case No. 138/2013/TDD

Judge : Antonino Gonçalves (representing a panel of judges)

Public Prosecutor : Jacinto Babo Soares

Public Defender : Sergio Quintas (public defender)

Conclusion : Sentenced to 3 months imprisonment, suspended for 5 years.

On 28 October 2013 the Dili District Court read out its final decision in a case involving the sexual abuse of a minor, allegedly committed by the defendant F in Ermera District

The public prosecutor alleged that on 26 October 2012, at approximately 07.30pm the defendant saw the victim returning from the kiosk when the defendant was returning from night shift. Then started to head home together and when they arrived at an empty house the defendant started grabbing at the front of the victim's pants and the defendant squeezed the victim's breasts. In addition, the defendant tried to rape the victim, however he was unable to because the victim got away from the defendant.

The public prosecutor charged the defendant with violating Article 177 of the Penal Code on the sexual abuse of a minor, as well as Article 23 of the Penal Code on attempt to commit a crime.

During the trial, the defendant admitted all of the facts alleged by the public prosecutor; however the defendant also expressed regret and promised not to reoffend in the future.

After examining all of these facts the court decided to not hear testimony from the victim because the defendant had confessed.

After examining and considering the facts revealed during the trial the court decided the matter and sentenced the defendant to 3 years imprisonment, suspended for 5 years.

# 8. Crime of simple offences against physical integrity, characterized as Domestic Violence – Case No. 245/2013/TDD

Judge : Antoninho Helder Public Prosecutor : Jose Landim

Public Defender : Jonas da Costa Henrique (trainee public defender) Conclusion: : Prison sentence imposed, but execution suspended

On 16 October 2013 the Dili District Court read out its final decision in a case involving domestic violence, allegedly committed by the defendant JP against his wife in Dili District.

The public prosecutor alleged that on16 October 2012 the defendant used a motorcycle to crash into the victim and her child who fell to the ground. The defendant also punched the victim many times which caused the victim to suffer swelling and bruising. The incident occurred because the victim did not want to be taken on the motorcycle by the defendant.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Articles 2, 3 and 35 of the Law Against Domestic Violence.

In court the defendant admitted all of the facts described in the indictment of the public prosecutor. In addition, the victim also testified that all of the facts were true.

Based on the facts that were proven, the court decided the matter and sentenced the defendant to 6 months imprisonment, suspended for 1 year.

### 9. Crime of sexual abuse of a minor, Case No. 135/2013/TDD

Judge : Antonino Gonçalves (representing a panel of judges)

Public Prosecutor : Jacinto Babo Soares

Public Defender : Manuel Amaral (trainee public defender)
Conclusion : Sentenced to 20 years imprisonment

On 8 October 2013 the Dili District Court conducted a hearing to announce its final decision in a case of sexual violence categorized as incest.

The public prosecutor alleged that the defendant committed the crime of sexual violence against a minor more than sixteen times between September and December 2012. Each month, the defendant had sexual intercourse with the victim four times. The defendant always had sexual intercourse on Fridays when the defendant came home from his work place.

The actions of the defendant caused the victim to become pregnant and she gave birth to a baby boy. This crime is characterized as domestic violence and incest because the defendant was the step father of the victim.

In relation to these acts the public prosecutor charged the defendant with violating Article 177 of the Penal Code on sexual abuse of a minor and Article 182 (d) on aggravation and Article 35 of the Law Against Domestic Violence.

The court sentenced the defendant to 20 years imprisonment for committing the crime of sexual abuse against a minor who was his child. This sentence relates to the accumulation of 16 criminal offences that were committed in succession by the defendant against the victim.

The court found the defendant guilty based on the facts presented during the trial as well as the confession of the defendant, testimony from the victim and the medical report.

#### 10. Crime of sexual abuse of a minor, Case No. 233/2013/TDD

Judge : Jacinta Correia da Costa (representing a panel of judges)

Public Prosecutor : Gloria da Silva (international prosecutor)

Public Defender : Câncio Xavier

Conclusion : Sentenced to 10 years imprisonment

On 21 October 2013 the Dili District Court conducted a hearing to announce its decision in a case of sexual abuse of a minor and sentenced the defendant to 10 years imprisonment. This case involved the defendant Rds who allegedly committed the offence against the victim aged 6 years of age, in Dili District.

The public prosecutor alleged that on 19 May 2013, the defendant asked the grandfather of the victim to go and watch television at his house and at that time the victim went together with her grandfather.

Because it was late at night, the victim was sleepy and fell asleep, the defendant carried the victim and lay her down in the bedroom, then the defendant started to undress the victim and grope the body and genitals of the victim, suddenly the victim awoke in shock and ran to her grandfather who was outside.

However, the defendant also followed the victim and asked her grandfather to go back to sleep and they went to sleep together and the victim was sleeping in between them.

The defendant testified that when they went to sleep, the defendant's hand touched an electrical cord and then the electricity went out, and the defendant continued to harass the victim. The defendant squeezed the victim's thighs and groped her body and genitals and the victim woke up and shouted and then her grandfather woke up and pulled the victim out from the defendant's thighs.

In this case, the public prosecutor charged the defendant with violating Article 177 (1) of the Penal Code on sexual abuse of a minor as well as Article 182.1 (a) of the Penal Code on aggravation.

During the trial, the court considered the facts that were presented during the trial and the court was convinced that the defendant was truly guilty of committing the crime of which he was charged. Therefore, the court decided the matter and sentenced the defendant to 10 years imprisonment.

#### 11. Crime of infanticide, Case No. 230/2013/TDD

Judge : Jacinta Correia (representing the panel of judges)

Public Prosecutor : Oscar Tavares (international prosecutor)

Public Defender : Paulino Alves and Jose Alves (private lawyers)

Conclusion : Sentenced to 3 years imprisonment, suspended for 5 years.

On 14 October 2013 the Dili District Court conducted a hearing to announce its final decision in a case involving the crime of infanticide. This crime was allegedly committed by PdA against her own child in Aileu District.

The public prosecutor alleged that on the evening of 1 May 2013, the defendant felt a pain in her waist and went into the bathroom and then gave birth to a baby girl. The defendant cut the umbilical cord with her fingernails and choked the baby to death. The defendant then placed the baby in a black plastic bag and in the morning the defendant took the body to her house but suddenly her friend examined the plastic bag and found that it did not contain dirty clothes, but there was a dead baby inside.

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.

During the trial, the defendant told the court that some of the facts alleged by the public prosecutor were true; however the defendant denied choking the victim.

The defendant's boyfriend gave testimony and stated that he did not know when the defendant committed the act because they were not living together. However the witness admitted that they had previously had sexual intercourse.

Based on all of the facts presented during the trial, the court concluded the matter and sentenced the defendant to 3 years imprisonment, suspended for 5 years.

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