

**Case Summary****Suai District Court***March 2017*

Statement: The following case summaries set out the facts and the proceedings of cases before the court based on JSMP's independent monitoring, and the testimony given by the parties before the court. This information does not reflect the opinions of JSMP as an institution.

JSMP strongly condemns all forms of violence, especially against women and vulnerable persons. JSMP maintains that there is no justification for violence against women.

A. Summary of the trial process at the Suai District Court**1. Total case monitored by JSMP : 18**

Article	Type of case	Number of cases
Article 145 of the Penal Code (PC) as well as Articles 2,3 & 35 of the Law Against Domestic Violence (LADV)	Simple offences against physical integrity characterized as domestic violence (Article 2 on the concept of domestic violence, Article 3 on family relationships, Article 35 on different types of domestic violence and Article 36 on domestic violence as a public crime)	4
Article 177 (2) of the PC & 182.1 (a) of the PC	Aggravated sexual abuse of a minor	1
Article 177 of the PC	Sexual abuse of a minor	2
Article 177 of the PC and Article 23 & 24 of the PC	Attempted sexual abuse of a minor	1
Article 154 of the PC as well as articles 2, 3, 35 and 36 of the Law Against Domestic Violence	Mistreatment of a spouse	1

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Article 225 of the PC	Failure to fulfill an obligation to provide food assistance	2
Articles 295 & 303 of the PC	Embezzlement and Forgery of documents or technical report	1
Article 267 of the PC	Aggravated fraud	1
Article 252 of the PC	Aggravated larceny	1
Article 146 of the PC	Serious offences against physical integrity	1
Article 145 of the PC	Simple offences against physical integrity	1
Article 316 of the PC	Smuggling	1
Article 157 of the PC	Threats	1
Total		18

1. Total number of decisions monitored by JSMP: 10

Type of Penalty	Number of cases
Prison	3
Suspension of execution of a prison sentence (Article 68 of the PC)	4
Withdrawal of complaint	2
Acquitted	1
Total	10

2. Total cases adjourned based on JSMP monitoring: 6

Reason for adjournment	Number of cases
Defendant not present	2
Defendant and victim not present	1
Defendant, victim and witness not present	1
Defendant and witness not present	1

Judge not present	1
Total	6

4. Total ongoing cases based on JSMP monitoring: 2

B. Short descriptions of these cases

1. Crime of simple offences against physical integrity characterized as domestic violence

Case No. : 212/PEN/16/TDS
Composition of the court : Single Judge
Judge : Nasson Sarmiento
Prosecutor : Matias Soares
Defence : Jose do Rego (private lawyer)
Type of Penalty : 3 months imprisonment, suspended for 1 year

On 2 March 2017 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant LdC who allegedly committed the offence against his wife in Covalima District.

Charges of the Prosecutor

The public prosecutor alleged that on 10 April 2016 the defendant punched the victim once on her left shoulder, kicked her twice on her side and knocked the victim to the ground when he saw the victim strike their child with a piece of rattan because the child wanted to go with the victim to a ceremony, and as a consequence of these actions the victim suffered pain to her shoulder, side and back.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3, 35 (b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant completely confessed to the facts set out in the indictment of the public prosecutor and stated that he committed this crime against the victim. In addition, the victim maintained the charges of the prosecutor.

Final recommendations

The public prosecutor requested for the court to sentence the defendant to 1 year in prison suspended for 1 year to prevent the defendant from repeating his actions in the future.

The defence requested for the court to impose a fair penalty on the defendant because the defendant and victim had reconciled and have had no further problems.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment of the public prosecutor. For this reason the court concluded the matter and sentenced the defendant to 3 months in prison, suspended for 1 year.

2. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 119/PEN/16/TDS
Composition of the court	: Single Judge
Judge	: Nasson Sarmiento
Prosecutor	: Matias Soares
Defence	: Jose do Rego (private lawyer)
Type of Penalty	: 3 months imprisonment, suspended for 1 year

On 2 March 2017 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant AC who allegedly committed the offence against her husband in Covalima District.

Charges of the Prosecutor

The prosecutor stated that on 25 December 2014 the victim did not want to transport the defendant to mass and when the defendant got back from mass they had an argument. At that moment the defendant was cutting up vegetables and the victim approached her, and the defendant took the knife she was using to cut up the vegetables and slashed the victim once on the fingers of his right hand which resulted in an injury and bleeding.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3, 35 (b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant stated that she had no intention of slashing the victim but the victim tried to grab the knife from her hand and she cut the victim. The victim maintained the facts set out in the indictment.

Final recommendations

The public prosecutor said that the defendant was guilty of committing the crime against the victim and requested for the court to sentence the defendant to 6 months in prison suspended for 1 year to prevent the defendant from repeating her actions in the future.

The defence argued that the defendant committed this crime because the victim tried to grab the knife from her, and they have since reconciled and had no further problems. Based on these mitigating circumstances he requested for the court to impose a fair penalty on the defendant.

Decision

After evaluating all of the facts the court found that the defendant intended to injure the victim. Based on the evidence and the aforementioned considerations, the court sentenced the defendant to 3 months in prison, suspended for 1 year.

3. Crime of simple offences against physical integrity characterized as domestic violence

Case No.	: 286/PEN/16/TDS
Composition of the court	: Single Judge
Judge	: Nasson Sarmento
Prosecutor	: Napoleão Soares da Silva
Public Defender	: Albino de Jesus Pereira
Type of Penalty	: 3 months imprisonment, suspended for 1 year

On 2 March 2017 the Suai District Court announced its decision in a case of simple offences against physical integrity characterised as domestic violence involving the defendant FdC who allegedly committed the offence against his wife in Covalima District.

Charges of the Prosecutor

The public prosecutor alleged that on 4 October 2017 the defendant insulted and swore at the victim because the victim was searching for their rooster that was lost and they couldn't find it. The defendant also grabbed the victim's hair causing the victim to fall to the ground and stood on the victim's back. These acts caused the victim to suffer pain and swelling to her left breast.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3, 35 (b) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant denied all of the facts and stated that he did not verbally abuse and insult the victim with swear words, the defendant also did not grab the victim's hair and did not stamp on the victim's back. The victim maintained and reiterated the facts set out in the indictment of the public prosecutor.

Final recommendations

The public prosecutor believed that the defendant was guilty of committing the crime against the victim and requested for the court to sentence the defendant to 6 months in prison suspended for 1 year. The public prosecutor stated that this penalty would deter the defendant from repeating such actions in the future.

The defence requested for the court to impose a prison sentence of 3 months, suspended for 3 months, considering the age of the defendant who is quite elderly.

Decision

After evaluating the facts presented during trial, the court found that the defendant did indeed grab the victim's hair, insulted and swore at the victim and stomped on the victim's back which caused her to suffer pain and swelling to her breast. For this reason the court concluded the matter and sentenced the defendant to 3 months in prison, suspended for 1 year.

4. Crime of sexual abuse of a juvenile*

Case No.	: 421/PEN/16/TDS
Composition of the Court	: Panel
Judges	: Constancio Barros Basmery, Benjamin Barros and Nasson Sarmiento
Prosecutor	: Matias Soares
Public Defender	: Albino de Jesus Pereira
Type of Penalty	: 7 years in prison

On 8 March 2017 the Suai District Court announced its decision in a case of sexual abuse of a minor involving the defendant AST who allegedly committed the offence against his neighbour who was aged just 11 in Manufahi.

Charges of the Prosecutor

The public prosecutor alleged that on 24 June 2016 the victim was fast asleep in her room, and the defendant entered the victim's room and lay down next to the victim. The defendant removed the victim's clothes, grabbed her breasts and sucked at her breasts. Suddenly the victim's younger sister came into the room to go to sleep and saw the defendant committing the act. The victim's younger sibling yelled out and threatened to tell their parents.

The prosecutor accused the defendant of violating Article 177 (2) on committing a sexual act against a child under the age of 14 which carries a prison sentence of 5 – 15 years; aggravated pursuant to Article 182.1 (a) of the Penal Code regarding the age of the victim who was under 12 years of age at the time of the incident.

* Please refer to JSMP Press Release available at: http://jsmp.tl/wp-content/uploads/2017/01/final-PR-pena-prizaun-tinan-7-ba-abuzu-seksuAI-_TDS.pdf

Presentation of evidence

During the trial the defendant totally confessed all of the facts set out in the indictment. The victim maintained the charges of the prosecutor.

The witness MCX who was the victim's younger sister also reiterated the testimony of the defendant and victim and said that she saw the defendant carrying out the sexual act against the victim. The witness added that at that time she called out to the defendant and threatened to tell her parents about the defendant's actions.

Final recommendations

In his final recommendations the prosecutor maintained the charges and requested for the court to sentence the defendant pursuant to Article 177 (2) of the Penal Code and Article 182.1 (a) of the Penal Code on aggravation. On the other hand, the public defender requested for the court to impose a fair penalty against the defendant who is a student.

Decision

After evaluating the facts during the trial, the court found the defendant guilty of committing the crime as set out in the indictment of the public prosecutor and sentenced the defendant to 7 years in prison.

5. Crime of Embezzlement and forgery of documents or technical reports

Case No.	: 126/PEN/15/TDS
Composition of the court	: Panel
Judges	: Argentino Luisa Nunes, Samuel da Costa Pacheco and Nasson Sarmiento
Prosecutor	: Matias Soares
Public Defender	: Manuel Amaral
Type of Penalty	: Acquitted

On 8 March 2017 the Suai District Court announced its decision in a case of embezzlement and forgery of documents or technical reports involving the defendant DdA who allegedly committed the offence against the State, in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 8 October 2014 the defendant who was the Director at the 5th September Primary School in Cassa, was given instructions by the Ministry of Education National office to hold a contest at the primary level. The budget allocated for this contest came from the Ministry of Education totalling US\$1,000 which was transferred via BNCTL. Because the contest was held at other schools and was a long distance away, the defendant gave US\$

15.00 each to three teachers and 3 students to attend the contest. This money did not follow the Ministry of Education guidelines which stated that each person should be given US\$35.00.

The teachers who received the money were unhappy and lodged a complaint against the defendant. In addition, the teachers also suspected the defendant of manipulating the remaining money amounting to US\$392.00 when he drafted and submitted a report to the Ministry of Education.

The prosecutor accused the defendant of violating Article 295 of the PC on embezzlement that carries a penalty of 3 years to 10 years prison and for violating Article 303 of the PC on the forgery of documents or technical reports that carries a sentence of 3 years or a fine.

Presentation of evidence

During the trial the defendant confessed his actions and said he gave US\$ 15.00 to the teachers and students. In relation to the remaining money, the defendant stated that he used this money to build a school room, fix a window that was broken and purchase school necessities.

The witnesses LM and CdJ who held the contest testified that they each received US\$15.00 from the defendant. The witnesses also testified that they didn't know about the report that the defendant submitted to the Ministry of Education.

Final recommendations

The public prosecutor requested for the court to sentence the defendant to 5 months in prison, because the public prosecutor considered that the defendant had been found guilty of committing the crime based on the facts set out in the indictment.

The defence believed that the defendant's actions did not fulfil the elements of the crime of embezzlement and forgery of documents or technical reports because until now there has been no claim or objection to the activity report submitted by the defendant to the Ministry of Education. This means that the report is valid and legitimate. For this reason he requested for the court to acquit the defendant from these charges.

Decision

After evaluating all of the facts, the Court acquitted the defendant from the charges of the public prosecutor because the court did not find the defendant guilty of committing the crime of embezzlement and forgery of documents or technical reports and accepted the argument that there was no claim from the Ministry of Education.

6. Crime of sexual abuse against a minor

Case No. : 357/PEN/16/TDS
Composition of the court : Panel
Judges : Argentino Luisa Nunes, Nasson Sarmiento and

Samuel da Costa Pacheco
Prosecutor : Matias Soares
Public Defender : Albino de Jesus Pereira
Type of Penalty : 4 years in prison

On 16 March 2017 the Suai District Court announced its decision in a case of rape involving the defendant QdS who allegedly committed the offence against the victim DdR who was aged 13, in Ainaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 4 June 2016 the defendant saw the victim grab some dirty clothes and wash them in the river near a coffee plantation and the defendant went and hid to wait for the victim. When the victim reached the river and grabbed the dirty clothes to start washing them the defendant suddenly grabbed the victim from behind and put the victim over his shoulder and ran into the coffee plantation. The victim yelled out and wanted to know who had grabbed her but the defendant carried her away. When he got into the coffee plantation the defendant forced the victim to undress and he forced the victim to have sexual intercourse but he did not succeed because the victim's older brother arrived at the scene.

The prosecutor accused the defendant of violating Article 171 of the PC on sexual coercion which carries a penalty of 2 to 8 years in prison and for violating Article 173 (1d) of the PC on aggravation because the victim was under 17 years of age.

Presentation of evidence

During the trial the defendant denied all of the facts alleged against him and stated that at that time when the defendant passed the victim's house the victim called out to the defendant but the defendant just kept on walking. However, the victim maintained and reiterated the facts set out in the indictment of the public prosecutor.

The witness JRM, who is the older brother of the victim, testified that he heard the victim shout out his name. Therefore he ran into the coffee plantation and when the defendant saw him (the witness) the defendant ran off and left the victim, and there was also a shirt, because the victim was holding on to it tightly.

Final recommendations

The public prosecutor maintained the charges and requested for the court to sentence the defendant to 10 years in prison. The defence requested for the court to acquit the defendant from the charges because he believed that the defendant did not commit the crime of rape against the victim.

Decision

After evaluating the facts during trial, the court amended the charge from Article 172 of the Penal Code and Article 173 (d) to Article 177 (2) as well as Article 23 and 24 of the Penal Code.

The court made these amendments because after seeking confirmation from the victim regarding her birth certificate, it was discovered that the victim was only 13 when the crime occurred. Based on these facts and the aforementioned evidence, the Court found the defendant guilty of committing the crime of sexual abuse against the victim and sentenced the defendant to an effective prison sentence of 4 years.

7. Mistreatment of a spouse

Case No. : 405/PEN/15/TDS
Composition of the court : Panel
Judges : Benjamin Barros, Samuel da Costa Pacheco and
Nasson Sarmento
Prosecutor : Matias Soares
Public Defender : Albino de Jesus Pereira
Type of Penalty : Punishment of 3 years in prison, suspended for 5 year

On 16 March 2017 the Suai District Court announced its decision in a case of mistreatment of a spouse involving the defendant AC who allegedly committed the offence against his wife in Bobonaro District.

Charges of the Prosecutor

The public prosecutor alleged that on 20 April 2016 the defendant suspected the victim of having a relationship with another man, and the defendant punched and kicked the victim many times all over her body, choked her and slammed her on the ground knocking her unconscious.

In 2013 the defendant grabbed a palm leaf stalk and struck the victim in the stomach and caused bruising and swelling to the victim's stomach. In addition, at some time in 2011, the defendant also suspected the victim and kicked and punched the victim in the face. These acts caused the victim to suffer bruising and swelling to her face.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse that carries a prison sentence of 2 years to 6 years prison as well as Articles 2, 3 and 35 (a) and 36 of the Law Against Domestic Violence.

Presentation of evidence

During the trial the defendant partially confessed to the facts that occurred in April 2016. The defendant stated that he punched the victim once, and did not kick her many times. The defendant also stated that he did not choke the victim or slam her on the ground. In relation to the facts that occurred in 2013 and 2011, the defendant stated that they were all true. However, although the defendant rejected some of the facts, the victim maintained the facts set out in the charges of the public prosecutor.

Final recommendations

After considering all of the facts and circumstances, the public prosecutor requested for the court to sentence the defendant to an effective prison sentence of 4 years and 6 months. The public prosecutor emphasized that he was requesting an effective prison sentence because the defendant had mistreated the victim and to prevent the defendant from repeating his actions in the future.

The defence requested for the court to apply a suspended prison sentence against the defendant because the defendant confessed, even though it was a partial confession, and he regretted his behaviour and was a first time offender.

Decision

The court found the defendant guilty of committing the crime against the victim based on the facts set out in the indictment of the public prosecutor. Based on the aforementioned evidence, the court concluded the matter and sentenced the defendant to 3 years in prison, suspended for 5 years.

8. Crime of simple offences against physical integrity

Case No.	: 32/PEN/17/TDS
Composition of the court	: Single Judge
Judge	: Samuel da Costa Pacheco
Prosecutor	: Napoleão Soares da Silva
Public Defender	: Albino de Jesus Pereira
Type of Penalty	: Withdrawal of complaint

On 23 March 2017 the Suai District Court attempted conciliation in a case of simple offences against physical integrity involving the defendants JB, JRM and RA who allegedly committed the crime against the victim LM in Covalima District.

Charges of the Prosecutor

The public prosecutor alleged that on 18 August 2016 the victim and defendant were attending a wake and returned at 2:00 am. On the way the three defendants stopped the victim and asked him "are you the one who challenged our younger brother?" The victim told the defendants that he did not challenge the younger brother of the defendants because he had just come from Lospalos.

But after hearing the victim's response, the defendant JB punched the victim twice on the shoulder, and the defendant JRM used his right hand to slap the victim once on the cheek, punched the victim once in the mouth, and the other defendant (RA) slapped the victim on the shoulder and caused the victim to suffer pain to his cheek, shoulder and a swollen mouth.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine.

Presentation of evidence

Before progressing to the presentation of evidence, pursuant to Article 262 of the Criminal Procedure Code on attempted conciliation, the judge may seek to reach conciliation between the defendant and victim.

During the attempted conciliation the victim wanted to withdraw the complaint against the defendants but asked the defendants to pay for the injuries that he suffered to the value of US\$80.00. The defendants agree to the victim's request and were willing to pay US\$80.00 to the victim. The defendants also stated that they regretted their actions and promised not to repeat such acts in the future against the victim or anyone else.

Final recommendations

The prosecution and defence accepted the amicable agreement between the two parties and requested for the court to settle this process.

Decision

Based on the request of the victim to withdraw the case and the amicable agreement between the parties, the Court decided to validate the settlement.

9. Crime of aggravated fraud

Case No.	: 44/PEN/16/TDS
Composition of the court	: Panel
Judges	: Constáncio Barros Basmery, Nasson Sarmiento and Samuel Pacheco
Prosecutor	: Matias Soares
Public Defender	: Manuel Amaral
Type of Penalty	: 7 years in prison

On 27 March 2017 the Suai District Court announced its decision in a case of aggravated fraud involving the defendant XdS who allegedly committed the offence against the victim AF, in Covalima District.

Charges of the Prosecutor

The public prosecutor alleged that on 17 September 2013 the defendant went to the victim's kiosk to speak with the victim and lied to the victim that he was the manager of a project in the Suai area. The defendant also promised that he would marry the victim. For this reason the

victim gave items from the kiosk to the defendant on credit. She gave the defendant money, cigarettes, beer, rice and oil. The approximate cost of these goods was US\$5,500 and the defendant promised to the victim that he would repay the debts at a rate of 20% interest, but in the end the defendant did not keep his promise and went and hid from the victim.

The public prosecutor alleged that the defendant violated Article 267 of the Penal Code on aggravated fraud that carries a maximum penalty of three years to ten years in prison.

Presentation of evidence

During the trial the defendant totally denied the facts set out in the indictment of the public prosecutor and stated that he did not know the victim. The victim maintained and reiterated the facts set out in the indictment of the public prosecutor.

The witnesses AG and DS, who were members of the victim's family, testified that they knew about and saw the defendant take items from the victim's kiosk on credit because the defendant promised to marry the victim. Also, these two witnesses said that sometimes the defendant would take items from the kiosk when the victim wasn't there.

Final recommendations

The public prosecutor believed that the actions of the defendant fulfilled the elements of the crime of aggravated fraud had disadvantaged the victim. Therefore he requested for the court to consider the testimony of the victim and witnesses and sentence the defendant to 6 years in prison, and order the defendant to pay back the money owed to the victim.

The defence requested for the court to acquit the defendant because the victim had just accused the defendant of borrowing her money. The defence believed that the items that the victim gave to the defendant were things that spouses give to each other.

Decision

After evaluating the facts produced during the trial, the court found the defendant guilty of committing the crime based on the facts set out in the indictment of the public prosecutor. Based on this evidence the court sentenced the defendant to 7 years in prison and ordered him to pay compensation of US\$1,000 to the victim. The court also ordered the defendant to pay court costs of US\$ 50.

10. Crime of failure to fulfil an obligation to provide food assistance

Case No.	: 95/PEN/16/TDS
Composition of the court	: Single Judge
Judge	: Alvaro Maria Freitas
Prosecutor	: Napoleão Soares da Silva
Defence	: Jose do Rego (private lawyer)

Type of Penalty : Settlement validated

On 28 March 2017 the Suai District Court announced its ruling in a case of failure to fulfil an obligation to provide food assistance involving the defendant GdA who allegedly committed the offence against the victim FB and his underage child in Covalima District.

Charges of the Prosecutor

The prosecutor stated that in 2015 the defendant left his house after he had an argument with his wife. After leaving the house, the defendant never provided any alimony to his child.

The public prosecutor alleged that the defendant violated Article 225 of the Penal Code on failure to provide food assistance that carries a maximum penalty of 3 years in prison or a fine.

Presentation of evidence

During the trial the defendant confessed the facts in the indictment. The defendant stated that he regretted his actions and promised to give US\$25.00 every month. The victim agreed to this amount and forgave the defendant.

Final recommendations

In their closing statements the prosecution and defence agreed with the settlement between the two parties and requested for the court to validate this settlement.

Decision

Based on the agreement made by the parties and the victim's request to withdraw the complaint the court validated the settlement on the condition that the defendant must keep his promise to pay US\$25.00 every month for his child.

For more information, please contact:

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