



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press release
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**JSMP MONITORING OF HEARINGS AT THE OECUSSE DISTRICT COURT:
APRIL 2008**

Between 22 and 24 April 2008 the Oecusse District Court conducted hearings and issued decisions in several cases, most relating to incidents that occurred prior to 2008. These were presided over by a single judge. The majority of cases involved maltreatment and the court was able to issue a number of decisions. Additionally, one case was decided involving defamation and another case relating to a traffic accident was adjourned, as witnesses did not attend the hearing.

All of these cases were handled by national court actors, namely judge Helder Antonio do Carmo, public prosecutors Domingos Barreto and Carolino da Costa and public defender Sergio Hornai. Private lawyers from *Fundasaun Fatu Sinai Oecusse* (FFSO), namely Mateus Nesi and Calisto Tout, also represented some defendants.

Case of Maltreatment, No. 16/PCO/2008 – hearing conducted 22 April 2008

The public prosecutor charged the defendant under Article 351.1 of the Indonesian Penal Code and stated that on 30 April 2003 the defendant had intentionally injured the victim by slashing him twice with a machete on the back and the left hand. The defendant was alleged to have committed these acts because prior the victim had, while drunk, damaged kitchen equipment belonging to the defendant.

Significant problems with gathering evidence were encountered by the court. Both the defendant and the victim were unwilling to give testimony, as was the victim's sister, who had reportedly witnessed the attack. A further witness claimed that, despite his testimony, he had in fact been some distance from the scene of the crime during its commission.

Given limited insight into the event, the presiding judge decided to acquit the defendant due to a lack of evidence.

**Case of 'Light' Maltreatment, No. 07/PCO/2008 – hearing conducted 22 April 2008,
decision announced 23 April 2008.**

According to indictment, on the 4 June 2002 the defendant was intoxicated and insulted the victim before striking her on the back with a piece of wood, injuring her and causing her to fall to the ground. These actions were prosecuted under Article 351.1 of the Indonesian Penal Code. The defendant attended the hearing but refused to give testimony.

The victim testified that the defendant had indeed injured her, and that he had been drunk at the time. Whilst had to have her injuries treated at the hospital, she had still been able to conduct her normal activities. She testified that she did not harbour continuing resentment against the defendant because he was her husband. The prosecutor did not submit any witnesses in this case to support his charges.

After hearing the testimony of the victim, the prosecutor requested that an amendment be made to the indictment, namely to replace the charge of maltreatment under Article 351 with one of 'light' maltreatment under Article 352, as the victim had suffered only minor injuries that had not interfered with her work.

JSMP observed that the defendant did not speak during the hearing. Nevertheless, the judge assented to the prosecutor's recommendations, issuing a guilty verdict and sentencing the defendant to one month's imprisonment, to be suspended for six months.

Case of Defamation, No. 21/pco/2008/TDO – hearing conducted 22 April 2008, decision announced 23 April 2008.

Under Articles 310 and 316 of the Indonesian Penal Code, the prosecutor laid charges for defamation of character. The defendant testified that on 29 November 2003 he had returned from Passabe, where he had bought some drums of oil. When he arrived in Tono, the victim, a PNTL officer, stopped the defendant's vehicle and reportedly spoke to him in an aggressive manner. The defendant responded with "abusive" language.

The victim testified that at that time he was carrying out his duties at the Tono police station and had received information from the Passabe police station that the defendant was driving a vehicle carrying oil that was the product of an illegal transaction. The victim claims he politely stopped the defendant but the defendant hurled responded with abuse. Three witnesses came forward and testified that they saw and heard the defendant abuse the victim.

In his recommendation of sentence, the prosecutor requested that the court convict the defendant given the weight of supporting testimony. Private lawyer Mateus Nesi, representing the defendant, claimed accounts of the confrontation varied.

The presiding judge returned a guilty verdict and sentenced the defendant to two months imprisonment, to be suspended for eight months, and ordered the defendant to pay court costs totaling US\$30.

Case of Maltreatment, No. 01/pco/2008/TDO – hearing conducted 22 April 2008, decided 23 April 2008.

The prosecutor charged the defendant under Article 351 of the Indonesian Penal Code with maltreatment relating to an incident in Oetulu on 13 May 2006.

In his testimony, the defendant admitted that he committed assaulted the victim in response to verbal abuse, a claim the victim refuted in court.

The victim testified that the defendant had attacked him for no apparent reason, kicking him twice in the thigh, striking him on the forehead and squeezing his neck in a strangling motion. A witness summoned to the hearing failed to attend the court for an undisclosed reason.

Defence lawyer Calisto Tout stated his client had made an honest account to the court and appealed for this to be considered in sentencing. The judge, finding the defendant guilty, handed down a sentence of eight months imprisonment, to be suspended for two years.

Case of 'Light' Maltreatment, No. 18/pco/2008 – hearing conducted 23 April 2008, decision issued 24 April 2008.

The prosecutor charged the defendant with 'light' (minor) maltreatment, under Article 352 of the Indonesian Penal Code, for an assault against the victim on 1 June 2004. The defendant admitted punching the victim once on the cheek because the victim had tried to handcuff him during a confrontation at a wedding. The victim, a PNTL officer, testified that had been attacked at a wedding reception by a group of people, including the defendant.

The prosecutor evaluated the maltreatment committed by the defendant as light maltreatment, and accordingly requested the court to apply the appropriate article governing this degree of assault. The defendant was represented by lawyer Mateus Nesi, who requested the court to acquit the defendant on all charges.

The judge, however, found the defendant guilty and sentenced him to three months imprisonment, to be suspended for one year.

Case of 'Light' Maltreatment, No. 03/PCO/2008 – hearing conducted and decision announced 23 April 2008.

The prosecutor prosecuted the defendant for an attack against his wife that occurred on 26 May 2006. It was alleged that this attack had been precipitated by suspicion of adultery. Both the defendant and victim appeared before the court but exercised their right to remain silent. One witness testified that he had seen a photo of the victim with a swollen and battered face, taken shortly after the incident.

The presiding judge decided to acquit the defendant due to insufficient evidence. The defendant was represented during the hearing by public defender Sergio Hornai.

Traffic Accident Case, No. 17/pco/2008 – hearing conducted 24 April 2008.

The indictment stated that the defendant had been intoxicated while driving a truck belonging to Caritas Australia, which was carrying five passengers. The defendant was driving the truck at high speed and the truck flipped over. The five passengers, and the defendant, suffered serious injuries and had to receive intensive treatment in hospital for several months.

The actions of the defendant were alleged to have caused bodily harm by negligence, and so violated Article 360.2 of the Indonesian Penal Code. In his testimony the defendant testified that although he had been intoxicated, he was traveling at only 40-45 km/hour.

The prosecutor requested an adjournment until 12 May 2008, to hear testimony from witnesses summoned by both the prosecution and the defence.

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