



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release

29 February 2008

Legal proceedings in Oecusse – February 2008

Despite its relative isolation, the Oecusse District Court is well organised and in good repair. A two-storey building close to the local police station, the district offices and the local UNMIT outpost, it contains separate office facilities for judges, prosecutors and defenders, and is fully equipped for court administration. A generator on site ensures constant power, and air conditioning renders the building perfectly habitable.

This venue, however ready for service, is presently only scheduling cases for, at most, four days each month. In accordance with Directive 06/2007 on judicial personnel, a judge – Helder Antonio do Carmo – has been permanently appointed to Oecusse, as with each jurisdiction. A house has been built to accommodate Dr Carmo. Due to delays in furnishing the property, though, the judge is yet to take up residence here. JSMP has also learned that other properties acquired for the use of the prosecutor and public defender are, similarly, not yet ready for habitation due to ongoing renovations.

Instead, Oecusse's dedicated judicial member travels to hear cases once a month, on this occasion accompanied by two other judges as required to hear cases as a panel. Where charges against a defendant may incur a sentence upward of five years' in jail, the criminal procedure code stipulates the matter be heard by three judges together. Attending in February were judges Vitor Hugo Pardal and Constancio Basmery.

The court clerk, Vasco Kehi (assisted for the few days of this month's sitting by an international counterpart), had scheduled four cases over as many days. Regrettably, only one matter was heard. One matter, due for a hearing on 28 February, did not proceed as police had not been able to locate the defendant to deliver a letter of notification. Parties in two other cases were not able to reach court as seasonal flooding had isolated their communities, and these cases were postponed to April.

Pedro Andrade, a public defender who has often argued cases in Oecusse, told JSMP that judges had, over preceding years, been strong advocates for the renovation of this court site, apparently despite some resistance from central administration. Dr Andrade also noted that recent graduates of legal

training have increased the ranks of Timor's public defenders to 16, with another four soon to complete their studies. It is hoped that this will ensure greater availability of defence lawyers at district locations.

Unfortunately, the cases for which Dr Andrade had travelled from Dili were not held. Police were sent, as waters subsided, to fetch the parties if possible, but in the mean time, the court continued through its docket. The first listed case, officially registered as 32/crms/2007/TDO, was a criminal matter, in which two defendants had been charged with stealing the victim's roof, supposedly to satisfy a one-buffalo debt.

Testimony in this matter was heard on 25 February, and a witness interviewed. The Dili-based prosecutor, Domingos Barreto, presented indictments under section 406(1) of the Indonesian Penal Code, relating to destruction of property. Judge Carmo, handing down judgement two days later, found insufficient evidence in support of this case, and the defendants were acquitted without any financial liability to the court.

Dr Barreto laudably took time to explain the judgement to parties and warn against reprisals. Throughout the trial, care had been taken to translate proceedings into Baiqueno, the language of Oecusse. This entailed translation by judicial personnel between Portuguese and Tetum, and further translation to and from Baiqueno.

JSMP understands that Tetum is increasingly used in court at Oecusse, and that this is largely accepted by judges and lawyers. As no direct Baiqueno-Portuguese translator has yet been located and employed, the process of referring courtroom proceedings through Tetum is time-consuming and risks miscommunication to and between parties. JSMP staff have reported similar problems with translation into the local Macassae language at the Baucau court, and into Bunaq in the Suai jurisdiction.

The accused were ably represented by Mateus Nesi, a private lawyer with the local NGO Fundação Fatu Sinai Oecusse (FFSO). While in Oecusse, JSMP researchers met with representatives of FFSSO and observed that formal mediation processes facilitated by the organization, often using legally trained 'lian nain', or local ritual leaders, were taking place with a frequency that far exceeded the current workload of the court.

JSMP also interviewed local community leaders who expressed concerns over the cost and time involved in taking matters to court. Travelling distance was also stated to be an issue – a problem now partially addressed in Suai by limited circuit hearings, whereby judges have, in some instances, travelled to remote locations to hear cases. Many saw dispute resolution in the community as preferable for practical, rather than explicitly cultural, reasons, even in respect of some serious criminal matters.

An unfortunate conclusion to proceedings at Oecusse district court last month saw parties from the delayed cases arrive with police escort only an hour after judicial personnel had departed overland for Dili immediately following the sole judgement. JSMP considers that this court is under-utilised at present, and calls for practical steps to be taken in order that more regular hearings take place. Delays as are now common in this jurisdiction undermine confidence in the formal system and, unsurprisingly, bolster support for alternative measures that may not be appropriate in all cases.

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