



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Case Summary

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Summary of trials conducted by the Oecusse District Court in May 2011

Between 24-26 May 2011 JSMP conducted court monitoring at the Oecusse District Court. This case summary describes the activities that took place in the aforementioned jurisdiction during a three day period, and does not cover all of the trials that were conducted during the entire month of May, because JSMP has limited resources.

Based on court monitoring conducted at the Oecusse District Court, JSMP noted that hearings were slightly delayed or were not in accordance with the court schedule; however all of the cases scheduled for trial were heard by the court.

JSMP noted that in just three days the Oecusse District Court was able to use the available time to hear 12 cases, which means that four cases were heard each day. JSMP praises the district court for demonstrating its productivity to ensure that court administration is functioning effectively and therefore responding to public expectations on justice.

However, JSMP also noted that on Friday the court did not hold any hearings because several court actors who reside in Dili had to return to Dili.

The trial of the aforementioned cases were presided over by single judge Alvaro Freitas, SH, the prosecution was represented in turn by Jacinto Babo, SH and Afonso Lopes SH, and the Public Defender's Unit was represented by Calisto Tout, SH and in one case legal representation was provided by a lawyer from F-FSO.

Based on court monitoring, JSMP noticed that not all of the parties attended the court in accordance with the schedule, as some defendants, victims and witness did not appear. Therefore, the court had to adjourn the trials of several cases. In addition, JSMP also noted that in nearly all of the cases of domestic violence that were observed by JSMP over the three day period, the majority of defendants, victims and also witnesses exercised their right to remain silent during the trial, pursuant to Article 125 of the Criminal Procedure Code.

JSMP observed that the judge fulfilled his obligation to mention the provisions of Article 125 of the Criminal Procedure Code before starting each trial to allow the parties to exercise choice, however the judge or court did not provide a detailed explanation on the implications and effects of these provisions when the parties decided to exercise their right to remain silent. JSMP fully

understands that the Criminal Procedure Code does not oblige the honorable judge to do so, however in reality JSMP believes that there is a need for the court to explain the implications of Article 125 of Criminal Procedure Code to victims and witnesses who are summoned by the court, especially victims in cases categorized as gender based violence.

During the three days of observation the Oecusse District Court conducted hearings in 12 cases of maltreatment. 9 of these cases related to domestic violence, and interestingly enough, 4 of these were cases involving women as the perpetrators of domestic violence. This shows the public that it is not always men who commit domestic violence, but women also have the capacity to do so. This also means that Law No. 7/2010 Against Domestic Violence which came into force in July 2010 is not only intended to punish men, but this law will also be applied against any person who commits domestic violence against a member of their family, including female perpetrators.

Just like the case summaries that have been provided for other courts, this summary is intended to disseminate up-to-date information to the public about trials and developments in cases that are being heard by the Oecusse District Court.

The following information provides detailed summaries about the hearings that took place during three days of JSMP monitoring at the Oecusse District Court:

1. Crime of Domestic Violence, Case No. 22/PCO/2011/TDO

The hearing was conducted on 24 May 2011, and presided over by single judge Alvaro M. Freitas, SH, the Prosecution Service was represented by Jacinto Babo Soares, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

The defendant MFK was charged with committing a crime against the victim BSS, her husband. The incident allegedly occurred on 14 December 2010 at Sanane Village, Pante Makassar Sub-District, Oecusse District.

At that time the defendant returned home carrying US\$ 5,000. This money belonged to the F-EEO NGO where the defendant worked. When he saw the large amount of money the victim was suspicious that the defendant was having an illegitimate relationship (affair) with her boss because every day she would ride pillion on his motorbike. For this reason the defendant and victim had an argument and the victim started to abuse the defendant with words that were offensive to her dignity. The defendant felt embarrassed and took a piece of wood and struck the victim on his right hand and took a rock and then threw it at the victim's head. The victim suffered swelling to his hand and bleeding from his head.

The public prosecutor charged the defendant in this case with Articles 2, 35 and 36 of the Law Against Domestic Violence as well as Article 145 of the Penal Code relating to ordinary maltreatment. The judge will issue a decision after considering the evidence of this case.

2. Crime of Domestic Violence, Case No. 05/PCO/2011/TDO

The hearing was conducted on 24 May 2011, and presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Jacinto Babo Soares, SH and the defendant was represented by Calisto Tout, SH.

The defendant PS was charged with committing domestic violence against the victim EP, his wife. The alleged incident occurred on 12 November 2010 in village Wastako Sub-Village, Oebobo Village, Sub-District Taeboko, Oecusse District.

At that time the victim was working in her plantation when the defendant asked her for USD 0.50 (fifty cents) to pay for having his legs massaged. The victim said that she didn't have any money so the defendant pulled the victim's hair and threw her to the ground and she landed on some rocks. The defendant also scratched the victim's face. The victim suffered injuries to her head and cheek.

For one week the victim stayed at her parent's house then the defendant brought USD 50.00 so he could meet with the victim. The money was handed over to the victim's family to rehabilitate the good name of the victim's family.

During the hearing the victim and defendant used their right to not give testimony in accordance with Article 125 of the Criminal Procedure Code. The public prosecutor charged the defendant pursuant to Articles 2, 35 no 36 of the Law Against Domestic Violence as well as Article 145 of the Penal Code. Although the defendant and victim exercised their right to remain silent the public prosecutor maintained the charges pursuant to Article 266 (2b) of the Criminal Procedure Code relating to the enquiry records to the extent that they contain testimony provided by the defendant, victim and witness before judicial authorities. Therefore the public prosecutor requested for the court to punish the defendant with a sentence proportionate to his actions.

The decision will be read out on 7 July 2011 at 2pm.

3. Crime of Domestic Violence, Case No. 04/PCO/2011/TDO

The hearing was conducted on 24 May 2011 and was presided over by single judge Alvaro M. Freitas SH, the prosecution service was represented by Jacinto Babo Soares, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

The defendant MS was accused of committing domestic violence against the victim AK, her husband. The alleged incident occurred on 20 August 2010 in Sanane Oetulu Sub-Village, Costa Village, Pante Makassar Sub-District, Oecusse District.

The victim testified that he and his children went to the plantation, and when they saw that their cassava had been taken by an unknown person, the victim accused the defendant and her children of being responsible. In spite of the accusation, the defendant and her children maintained that they did not do it. However, the victim continued to accuse the defendant, so the defendant felt pressured and unhappy with the accusation, and then the defendant took a rock and threw it at the victim, and as a result the victim suffered swelling to his hand. After the incident the defendant

left her home and stayed with her parents for one night. One day later the defendant returned carrying a traditional cloth (*tais*) to give to her husband and a pig to be slaughtered and eaten together as an expression of remorse and a symbol of peace.

During the hearing the defendant used his right to remain silent and no witnesses were present so the trial was adjourned until 26 May 2011 at 9am to hear witness testimony in accordance with Article 261 (1) of the Criminal Procedure Code.

4. Crime of Domestic Violence, Case No. 01/Acara Cepat/PCO/2011/TDO

The hearing was conducted on 25 May 2011 and presided over by judge Alvaro M. Freitas SH, the prosecution service was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH.

The defendant FM stated that the victim has passed away. The hearing could not take place and the trial was adjourned until 21 June 2011 at 9am because the court needs to obtain clear testimony from the defendant.

5. Crime of Domestic Violence, Case No. 25/PCO/2011/TDO

The trial was conducted on 25 May 2011 and presided over by single judge Alvaro M. Freitas, SH, the public prosecution was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH.

The defendant AL was charged with committing domestic violence against the victim MT, his wife. The alleged incident occurred on 15 September 2010 in Oetulu sub-village, Costa Village, Oecusse District. At that time the victim asked one of his children FL who had wet hands to move the electrical cable, but FL ignored his command/request. Then the defendant heard about it and got angry with the victim and pushed her causing her to fall over and injure herself. After the victim fell down the defendant stomped on her chest.

During the hearing the defendant, victim and witness DS, who is the nephew of the defendant, chose to exercise their right to remain silent. However, the public prosecutor, pursuant to Article 261 of the Criminal Procedure Code, asked the court to summon two other witnesses to reveal the facts behind the crime, because the defendant, victim and witness who were present had chosen not to provide testimony during the hearing.

The trial was adjourned until 15 June 2011 at 9pm to hear witness testimony.

6. Crime of Ordinary Maltreatment, Case No. 12/PCO/2011/TDO

The trial was conducted on 25 May 2011, and presided over by single judge Alvaro M. Freitas, SH the prosecution service was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

There were two defendants in this case, namely SS and DL. The defendant SS received the summons from the court but did not respond and no clear reason was provided. The defendant DL did not receive the summons because he resides in Dili. Pursuant to Article 256 of the Criminal Procedure Code, the defendant SS who was summoned properly by the court should have provided a reason to the court for not responding to the summons.

The court was unable to conduct the hearing in this case and adjourned the trial until 21 June 2011 at 2pm.

7. Crime of Domestic Violence, Case No. 11/PCO/2011/TDO

The hearing was conducted on 25 May 2011, and presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

The defendant FB was charged with committing domestic violence against the victim FA, his wife. The alleged incident occurred on 7 October 2010 in Noenine sub-village, Cunha Village, Pante Makassar Sub-District, Oecusse District.

On the aforementioned date at approximately 11pm the defendant struck the victim on her back because he suspected the victim of having a relationship with another man. The witnesses FST and FMT were summoned and testified that they found out about the incident one week later from another person. During the hearing the defendant and the victim exercised their right to remain silent in accordance with Article 125 of the Criminal Procedure Code.

However, the public prosecutor maintained the charges in accordance with Article 145 of the Penal Code as well as Articles 2, 35 and 36 of the Law Against Domestic Violence.

The decision will be read out on 7 July 2011 at 9am.

8. Crime of Falsification of Documents and Misuse of Authority, Case No. 31/PCO/2010/TDO

The hearing was conducted on 26 May 2011 to hear the indictment. The hearing was presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the defendants were represented by Calisto Tout, SH from the Public Defender's Office and Raimondo Efi from the Legal Aid Institute F-FSO.

This case involves four defendants, namely AE (Youth Leader), MP (MSS Official), HC (also a civil servant) and BT (Village Chief), who were accused of falsifying birth certificates and trying to falsify voter cards. The alleged incident occurred in 2006. The defendants have been sacked by the government from their positions as civil servants.

For their involvement in the aforementioned crimes the public prosecutor charged the four defendants with Article 263 of the Indonesian Penal Code on the falsification of documents, which carries a sentence of 6 years imprisonment, and Article 303 of the Timor-Leste Penal

Code on the falsification of documents, which carries a sentence of 3 years imprisonment or a fine.

Pursuant to the aforementioned articles, the court found the defendants guilty for committing the crimes as charged. The defendant AE was sentenced to 2 years imprisonment, which was suspended for 3 years, the defendants MP and HC were each sentenced to 3 years imprisonment suspended for five years, and the court did not find enough evidence to convict the defendant BT who was acquitted from all charges.

9. Crime of Domestic Violence, Case No. 04/PCO/2011/TDO

The hearing was conducted on 26 May to hear testimony from witnesses. The hearing was presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the defendants were represented by Calisto Tout, SH from the Public Defender's Office.

The defendant MS, was charged with committing Domestic Violence against the victim AK, her husband. The alleged incident occurred on 20 August 2010 in Sanane Oetulu Sub-Village, Costa Village, Pante Makassar Sub-District, Oecusse District.

The witness BO who is the child of the defendant was summoned together with the victim, but he exercised his right to remain silent. The victim also chose not to give testimony during the hearing. However, in his final recommendation of sentence the public prosecutor maintained the charges in accordance with Article 145 of the Penal Code as well as Articles 2, 35 and 36 of the Law Against Domestic Violence.

The decision will be announced on 7 June 2011 at 2.30pm.

10. Crime of Domestic Violence, Case No. 20/PCO/2011/TDO

The hearing was conducted on 26 May 2011 and was presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

The defendant VAB (security guard) was accused of committing domestic violence against his wife PK. The alleged incident occurred on 6 September 2010 di Masin Sub-Village, Costa Village, Pante Makassar Sub-District, Oecusse District.

It is alleged that the incident occurred at 10am when the defendant returned from work. The victim was preparing breakfast but the defendant did not have anything to eat and went to sleep immediately. Several hours later the defendant woke up and asked the victim why she didn't wake him up to deal with the problem in the rice field (buffalo had entered the rice field). The defendant became angry and took some rice in a pot and tipped it over the victim and struck the victim in her forehead.

During the hearing the defendant and victim use their right to remain silent. The public prosecutor charged the defendant with Article 145 of the Penal Code as well as Articles 2, 35, 36 of the Law Against Domestic Violence.

The decision will be announced on 9 June 2011 at 9am.

11. Crime of Making Threats, Case No. 17/PCO/2011/TDO

The hearing was conducted on 26 May 2011 and was presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the defendant was represented by Calisto Tout, SH from the Public Defender's Office.

The defendant MP was accused of committing a crime against the victim FT. The alleged incident occurred on 3 October 2010.

The incident occurred because previously the defendant had borrowed a *Mega pro* Motorcycle and crashed it. At that time the defendant was heavily intoxicated. The victim sought clarification about the issue from the defendant but the defendant did not admit liability, and actually threatened the victim and refused to take responsibility or give compensation.

The defendant did not attend the hearing even though he had been summoned by the court. Based on available information, the defendant is currently in Dili. Therefore the trial was adjourned until 27 June 2011 at 2pm.

12. Crime of Domestic Violence, Case No. 02/PCO/2011/TDO

The hearing was conducted on 26 May 2011 and was presided over by single judge Alvaro M. Freitas, SH, the prosecution service was represented by Afonso Lopes, SH and the two defendants were represented by Calisto Tout, SH from the Public Defender's Office.

In this case the public prosecutor charged the defendants MM (female) and CM (male) for committing domestic violence against the victim BL who is their parent. The alleged incident occurred on 18 October 2010 in Oefoko Sub-Village, Bobokase Village, Pante Makassar Sub-District, Oecusse District.

At that time the victim was heavily intoxicated and asked for money and yanked MM by the arm. At that time the defendant was holding her baby and the defendant let go of the victim's hand and the victim who was heavily intoxicated fell to the ground, then the defendant CM came over to the victim to try and help the victim stand up, but the victim fell to the ground again.

The court scheduled the hearing to hear testimony from the two defendants pursuant to Article 269 (1) of the Criminal Procedure Code.

The two defendants, the victim and the witness KM, who was the sibling of the two defendants and had been summoned by the court, decided not to give testimony before the court or in other words to remain silent during the trial. The public prosecutor believes that the parties have not

cooperated with the legal process because they have exercised their right to remain silent. For this reason the court found it difficult to obtain sufficient evidence. However, the public prosecutor maintained his charges pursuant to Article 145 of the Penal Code as well as Articles 2, 35 and 36 of the Law Against Domestic Violence.

The decision will be announced on 21 June 2011 at 2pm.

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