



JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Summary

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FINAL RECOMMENDATIONS OF SENTENCE MADE IN CASE OF SEXUAL ASSAULT AND CASE OF THEFT

This summary outlines criminal cases tried by the Oecusse District Court in February, after all cases scheduled for trial in January were adjourned.

These cases included a case of sexual assault tried before a panel of judges. This case was tried by a panel of three judges comprising Antonio Helder V., Constanço Basmary and Antoninio Gonçalves.

In Case No. 25/CPO.C/2008/TDO, which was tried before a panel of judges, the public prosecutor made his final recommendation of sentence and maintained the original charge pursuant to Article 285 of the Indonesian Penal Code. The decision in this case will be read out on 5/3/2009.

In Case No. 50/Cpo.C/2008/TDO the public prosecutor also made his final recommendation of sentence. In his oral statement the prosecutor explained that it had been established that the defendants had violated the law, and the specific articles with which they had been charged. However, the prosecutor also took into consideration the positive initiative taken by the defendants to reach an amicable settlement and pay a fine which was of a considerable amount. Therefore the prosecutor asked the panel of judges to consider this factor and acquit the defendants. The public defender agreed with the prosecutor's recommendation, however he first asked for the charge to be modified from Article 363 to Article 364 of the Indonesian Penal Code which relates to the theft committed by his clients of an object that was less than \$ 25 in value.

In addition to the two aforementioned hearings another case involving sexual assault was scheduled to another date because the defendants, victim and

witness did not appear before the court after being notified of the hearing. They did not attend due to heavy rains that had caused flooding and restricted transport to their area. JSMP observed that conditions such as this continue to pose obstacles to the smooth functioning of the Oecusse District Court.

The chronology of events and other relevant information in relation to the aforementioned cases are described in detail below.

Oecusse, 18/02/09

NP: 25/CPO.C/2008/TDO

According to the prosecutor's indictment this case of sexual assault occurred on 14/10/2007 in Bobometo, Oesilo, Oecusse. The incident took place at a spring when the victim was planning to collect water at 2pm in the afternoon. Suddenly the defendant grabbed the victim's arms from behind and carried her to a place located some distance from the spring, approximately 1km away. The defendant then had sexual intercourse with the victim in that location.

After hearing the charges the defendant rejected the contents of the indictment. The defendant said that the charges were not true, especially in relation to the time of the incident.

The defendant claimed that at the time mentioned in the indictment (2pm) he and his wife were at home repairing their generator and suddenly the older brother of the victim Maukelu arrived at their home and yelled "what did you do to the victim T at the spring?". In response to the yelling the defendant and his wife immediately went to the home of Maukelu to see the victim who was still at the spring. But they did not manage to meet the victim because of an argument with Maukelu in his house.

The victim testified that the defendant did in fact sexually assault her as explained in the indictment. The victim said that at the time of the incident the defendant was holding her arms and she screamed and tried to free herself but was unable to because he was much stronger than her. Then the defendant took her to a specific location.

The witness J said that he went to the scene of the crime because he heard the victim screaming "M has got me". When he arrived at the scene he saw that the defendant was naked and he deliberately threw a stone towards the bush with the aim of scaring the defendant so he would let go of the victim. Due to the arrival of the witness the defendant was startled and he ran away and left the victim at the scene.

In his final recommendation of sentence the prosecutor maintained the charge under Article 285 of the Indonesian Penal Code which carries a maximum sentence of 12 years imprisonment. The prosecutor applied this article based on the testimony of the victim and in consideration of the fact that she was aged 16 at the time of the incident. The prosecutor also took into consideration the testimony of the victim because he was still young (11) and he truthfully told the court what had happened based on what he saw and experienced at that time.

In his final plea the public defender requested for the court to fully acquit his client and to carefully consider any other evidence that had been established to issue a fair and just decision. The public defender believed that there were many contradictions between the testimonies of the witness and the victim in relation to the contents of the indictment.

JSMP observed that during the trial no material evidence was presented by the prosecutor to strengthen the case.

Oecusse, 19/2/09
NP. 50/Cpo.C/2008/TDO

According to the prosecutor's indictment the criminal act of theft occurred on 29/3/03. On this date the two defendants (EB and BO) were intoxicated. In their drunken state they convinced one another to steal a goat belonging to someone else that was roaming around a long distance from its owner's house. They captured the goat with the intention of selling it to get some money. However they did not manage to achieve their objective, because not long after they tied up the goat at a person's house the owner came along and saw them. Therefore they did not manage to sell the goat and did not get any money from their efforts.

The two defendants in this case admitted their wrongdoing and said that they did capture the goat with the aim of selling it to get money. The defendants also told the court that they had reached an amicable settlement with the owner of the goat before the traditional elders and village chief. As a result of the amicable settlement the two defendants were ordered to pay a fine to the owner of the goat consisting of 6 goats, one large pig, 5 piglets, one piece of decorative cloth (*tais*), 2 traditional ornaments (*belak*) and \$2.

The two defendants told the court that they regretted their actions and swore not to reoffend. They also acknowledged that their actions were criminal and they were ashamed.

In his final recommendation of sentence the public prosecutor said that the actions of the defendants had been established in accordance with the contents of the indictment and based on the testimony of the defendants who had honestly admitted their wrongdoing before the court. Therefore the prosecutor concluded that their actions violated article 363 of the Indonesian Penal Code on theft. However the prosecutor presented a number of mitigating factors such as the positive initiative between the defendants and the victim as outlined in the document presented by the two defendants to the court during the trial. Therefore the prosecutor requested for the court to acquit the defendants from all charges.

The public defender also acknowledged all of the facts presented by the parties before the court, however he requested for the charge to be changed from Article 363 to Article 364 of the Indonesian Penal Code. The reason for this modification is because the loss experienced by the victim did not exceed \$25. The public defender also requested the judge to decide the case as fairly as possible.

Oecusse, 17/2/09

Case No. **22/Cpo.C/2008/TDO**

Case No. 22/Cpo.C/2008/TDO involving sexual assault was rescheduled until 5 May 2009. The trial of this case could not take place because heavy rains had caused flooding and damaged the main road which restricted transport to the area where the parties reside. Therefore they could not attend the scheduled hearing.

The court decided to continue this case in May 2009 to hear witness testimony. Based on monitoring conducted by JSMP at the Oecusse District Court, the parties (defendant, victim and witness) arrived at court one day after the court decided to reschedule their case. Therefore court officials told the parties why their case had been rescheduled and reminded them to appear in court on the prescribed date.

For more information please contact:

Luis de Oliveira Sampaio

Executive Director of JSMP

E-mail: luis@jsmp.minihub.org

Telephone: 3323883