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Oecusse District Court Encourages Victims of Domestic Violence to Provide Testimony in Court

On 5 October 2011 the Oecusse District Court conducted a hearing in Case No. 25/Proc/TDO/2011 involving domestic violence (against a spouse).

The trial of this matter was presided over by single judge António Helder Do Carmo. The Public Prosecution Service was represented by Jacinto Babo and the Public Defender's Office was represented by Calisto Tout and Sebastião Amadu Almeida.

What was interesting in this case was the fact that the Oecusse District Court asked the victim of domestic violence to provide testimony against her spouse, who was the one who had perpetrated the domestic violence against the victim.

The Executive Director of JSMP, Luis de Oliveira Sampaio, stated that: *“the Oecusse District Court has marked a new practice in the justice sector by trying to interpret the rules of the Criminal Procedure Code in an extremely neutral and progressive manner. This is a new phase in the history of the Timor-Leste justice sector, and we should all feel proud and congratulate the judge who has tried to interpret the provisions of the law in a comprehensive fashion, after years of confusion relating to the application of Article 125 of the Criminal Procedure Code”*.

Based on JSMP's observations, until now the practice of all courts has been to introduce and apply Article 125 of the Criminal Procedure Code for victims of domestic violence in a way that provides the victim with a difficult choice between: trying to find the truth and obtain justice, or choosing to remain silent which results in the partner being acquitted from the charges.

However, this case was quite different, because the court obliged and encouraged the victim to provide testimony regarding the case which the victim reported to the Public Prosecutor.

Prior to this event, on 4 October 2011 the court conducted a hearing in a case of domestic violence, however in this case the victim chose to remain silent and did not provide testimony against her partner.

JSMP believes that in relation to this situation, on 5 October 2011 the court conducted a hearing in a different case of domestic violence registered as Case No.25/Proc/TDO/2011. In the latter case when the Public Prosecutor delivered his final recommendation of sentence he conveyed his concern regarding the application of Article 125 of the Criminal Procedure Code, because the case involved the crime of domestic violence. Therefore the Public Prosecutor requested for the court to try and find a solution in order to establish the truth, and more importantly stated that the court is obliged to freely assess the facts outlined in the charges.

After the hearing finished the Oecusse District Court organized a consultation to request the Court of Appeal to interpret Article 125 of the Criminal Procedure Code. The Court of Appeal provided oral confirmation about the application of the provisions set out in Article 125 of the Criminal Procedure Code, because the Public Prosecution Service has frequently lodged appeals to the Court of Appeal regarding the interpretation of the aforementioned article. Therefore the Court of Appeal allowed the court to refrain from applying, or in other words to disregard, Article 125 of the Criminal Procedure Code in cases involving domestic violence and to encourage victims to provide testimony.

Although the Court of Appeal did not issue a written circular about this matter, JSMP hopes that the guidance provided by the Court of Appeal to the judicial authorities can bring about a significant change in the application of justice in Timor-Leste, because JSMP has expressed its concerns on a frequent basis about the application of Article 125 of the Criminal Procedure Code in cases of domestic violence.

Once again, JSMP has examined and welcomed all of the efforts of the judicial authorities who have had the motivation and commitment to reduce and eradicate violence against women, and JSMP hopes that this practice will also be adopted in other district courts.

For more information, please contact:
Luis de Oliveira Sampaio
Executive Director of JSMP
Email: luis@jsmp.minihub.org