



**JUDICIAL SYSTEM MONITORING PROGRAMME**  
**PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

**Press Release**

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**A VICTIM'S FAILURE TO GIVE TESTIMONY IN COURT RESULTS IN HIM  
BEING CHARGED AS A DEFENDANT**

On 22 May 2007 the Oecusse District Court conducted a hearing into a case of attempted murder that took place in 2004. This hearing was presided over by a Panel of Judges consisting of Victor P. (International Judge), Constancio Basmerly and Antonio Helder do Carmo (National Judges). The convicted person was represented by Joao Ndun from the Legal Aid Organisation *Fatu Sinai*. The prosecution was represented by Domingos Barreto.

A Panel of Judges from the Oecusse District Court convened the hearing to examine testimony from defendants and witnesses. According to the indictment submitted by the Public Prosecutor, two defendants and two victims should have appeared before the court. However, one defendant and one victim failed to appear even though they had been formally summoned by the court. The Panel decided to issue a warrant of arrest against the defendant for his failure to appear, in the interests of facilitating the trial of this matter. Article 90 (4) of the Criminal Procedure Code states that "*the judge may order the arrest of the absentee for the duration strictly necessary to ensure the presence of the person concerned in the procedural act from which he or she has been unjustifiably absent*".

It was alleged that on 5 October 2004, in Passabe, Oecusse the defendant came to the victim's house to beat him and slashed the victim's throat causing serious injury. This incident was triggered by an inter-family dispute. Both the defendant and victim proposed for the court to abandon the trial on the grounds that the defendant and his family had reached an amicable and customary settlement with the victim and his family. However the Panel rejected this proposal and continued the hearing of the matter in accordance with the applicable law of East Timor whilst still respecting and considering the amicable settlement reached between the two parties.

During the examination phase the victim did not give honest testimony and refused to provide a statement to the court, even though he had previously taken an oath to inform the court of what he knew. The victim held steadfastly to the amicable settlement which had already been reached, so the court ordered the Public Prosecutor to process and charge the victim as a suspect in accordance with Article 61 (a) of the Criminal Procedure Code that states "*to provide the particulars required, when questioned, and, outside the trial, inform about his or her criminal background in a full and truthful manner,*" and Article 118 (1) of the Criminal Procedure Code that states "*The aggrieved*

*person takes an oath and he or she is subject to the duty to truth and the ensuing criminal liability for the breach thereof,” as well as Article 242 of the Indonesian Penal Code.*

In this case, the defendant was charged by the Public Prosecutor with Article 338 and Article 53 of the Indonesian Penal Code.

Article 338 of the Indonesian Penal Code states that *“any person who deliberately takes the life of another, shall be punished for the crime of manslaughter which carries a maximum sentence of 15 years imprisonment”*. Article 53 of the Indonesian Penal Code states that *“an attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will”*.

JSMP believes that pursuant to the legal facts and the circumstances of the aforementioned case, the Public Prosecutor should not have charged the defendant with Article 338 of the Indonesian Penal Code, as it is inappropriate. JSMP believes that this article can only be charged when the act causes the victim’s death, however in this case it is clear that the victim only suffered neck wounds. Article 338 of the Indonesian Penal Code explicitly states “deliberately takes the life of another”.

In the aforementioned case, JSMP recommends that the court actors should have limited themselves to charging the defendant with the articles that adequately reflect the criminal act committed by the defendant and the consequences suffered by the victim, with due reference to the legal facts and the law that prescribes criminal acts for which an individual can be held accountable, as well as appealing to those members of the public seeking justice to value the procedural steps in the legal process that are necessary in all cases.

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