



**JSMP Press Release**  
**19 May 2005**

### **Judge Applies Customary Law in a Criminal Case**

On 6 May 2005 JSMP monitored two cases being heard before the Oecussi District Court on criminal charges of minor maltreatment. One of these cases (# 15/PDO/2004) was of particular interest to JSMP monitors as it involved maltreatment perpetrated by a juvenile against a woman. According to the international judge who was presiding, this case did not need to be tried under applicable formal laws because all parties had resolved their problems in accordance with traditional laws and customs. For example, the offender had already given several cows to the victim.

The judge's decision was based on the withdrawal of the case by the victim and a joint statement outlining the peaceful settlement between the victim and suspect. JSMP observed that the judge did not refer to Indonesian Penal Code, as an applicable formal law, but instead referred to and adopted traditional law as the basis for his decision not to proceed with the hearing of the charges.

The legal system in Timor Leste is one which is based on formal, codified laws, such as those enacted by Parliament and the Government, those previously enacted by UNTAET and those Indonesian laws which are still deemed to be applicable. The primacy of formal criminal laws is entrenched by Art. 31 of the Constitution. The current applicable criminal laws of Timor Leste are contained in the Indonesian Penal Code, which will apply until repealed by the Draft Penal Code that is currently being considered by Parliament.

On the other hand, the standing of traditional law in Timor Leste is also recognised by the Constitution, Art. 2.4 of which requires the State to "recognise and value the norms and customs of East Timor...and...any legislation dealing specifically with customary law". Customary laws therefore occupy an important position in Timor Leste and they can be applied by judges. The application of these laws is, however, problematic and would appear to be general and broad without having any clear limitation or being confined to specific categories of legal cases.

Given the competing sources of law discussed above, JSMP concludes that application of traditional law in criminal cases of minor maltreatment raises a number of important issues.

Although recognized as a legitimate source of law in Timor Leste the application of traditional laws and their relationship with formal laws, such as the Indonesian Penal Code, is not clearly defined. In practice, the judge will apply traditional law if it satisfies and gives to the respective parties a sense of justice and is not contrary to applicable formal laws or the appropriate development of the legal system. The formal use and recognition of customary laws in the courts is an important development in the evolution of Timor Leste's legal system. Its role in that system is something which JSMP hopes will continue to be clarified with time.