



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

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TIMOR'S COURTS SILENCE WOMEN VICTIMS

A flawed interpretation of the Criminal Procedure Code is seeing some perpetrators of sexual violence and domestic violence walk free.

In a country where over half of the adult female population is estimated to have suffered partner violence over the last twelve months, this is an unacceptable indignity.

Article 125 of the Timorese Criminal Procedure Code enshrines a form of what is commonly referred to as the right to silence.

Under this article, witnesses to a crime who are related to, married or have been married to or are living with the defendant can legally refuse to testify.

In such cases, the court must in fact advise the witness that they do not have to provide a statement to the court if they do not want to.

Article 125 applies to witnesses only. This is clarified in Article 124 which specifically states that victims are not considered to be witnesses.

JSMP has learned, however, that some judges and prosecutors are applying Article 125 to victims, advising such individuals that they too have the same right to silence.

Confusion about what can and should be said in a courtroom setting is adding to the understandable reluctance many victims feel in describing their assaults.

While there is no doubt safety is a concern for many, without the victim's statement, the case typically cannot proceed and the defendant is released without a conviction.

JSMP maintains that judges and prosecutors who are applying Article 125 in relation to victims are misinterpreting the Article and doing the victims themselves a disservice.

JSMP considers the misinterpretation of Article 125 in gender based violence cases to be significant as many women already consider that the formal justice system cannot assist them.

Despite the social and procedural obstacles, more Timorese women are seeking justice, with gender-based violence matters accounting for more than half of court workload in some districts.

When judges and prosecutors do not apply the law exactly, the resulting confusion risks shattering the fragile trust victims have in the courts.

If the endemic problem of domestic assault and sexual violence is to be combated effectively, formal prosecution must be seen to be open to women's experiences.

Women must be encouraged to speak up against domestic and sexual violence. JSMP therefore urges Timor's judicial actors to consider more carefully their approach to victims.

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