



**PRESS RELEASE**

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## **Out of Court Agreement Taken into Account in Criminal Case**

On 22 November 2005 the Oecusse District Court handed down a decision which provides an example of a new development in the district courts, namely the consideration of out-of-court agreements between parties in criminal proceedings. In the decision, made in the case of Z who was charged with committing sexual assault against a minor, the Court sentenced the perpetrator to three years and six months imprisonment but also required that he pay three cows to the victim's family in accordance with a traditional law agreement between the families.

In her decision, the Judge stated that the perpetrator was guilty of sexually assaulting his 12-year old niece under section 287(1) and (2) of the Indonesian Criminal Code, which relate to rape of a minor. The Court found that the crime occurred when the victim's parents were out of the house at around 10.30 at night. The victim tried to scream but the suspect forcefully held the hands of the victim and she, a small child, was unable to stop the attack.

The suspect confessed to the crime in the trial and on that basis the Judge stated that no further evidence, either from the victim or another witness, was necessary to convict the accused.

In his submissions on sentencing, the lawyer for the accused informed the Court that the accused and the victim had already undergone a traditional justice process in relation to the crime and that the suspect should be released. However, the Court held that a number of aggravating factors including the fact that the victim was a child and still attending school, and that she was the suspect's niece, meant that a prison sentence was required.

However, as well as the prison sentence, the Court also recognized the traditional law of Timor-Leste and requested that the perpetrator pay three buffalo, the remaining debt owed by the family of the suspect under the out-of-court agreement between the two parties. In the trial, the lawyer for the accused informed the Court that the accused's family had already paid items such as buffalo, pigs and other traditional items to the victim's family.

A court monitor from the Women's Justice Unit (WJU) of the Judicial System Monitoring Programme stated that "This decision shows us that formal law and traditional law can complement each other and that perhaps this will create a more effective system of justice, particularly in sentencing. People will feel justice has been done if they can relate to the sanctions. We hope it will help people to take cases of sexual violence more seriously and cannot be resolved by informal justice alone."

The WJU monitor also stated that one of the many obstacles for women taking their cases to Court was community attitudes which tend to blame the victim, not the accused, for the crime. Because of this, most victims choose to deal with assaults within the family or through traditional law. It's hoped that the formal justice system, through the process of trial and evidence, can help to change such community attitudes.