



Press Release
Dili District Court
19 October 2015

Due to insufficient evidence, the Dili District Court acquits defendant in case of sexual abuse of a minor

On 13 October 2015 the Dili District Court acquitted the defendant JJS from the charge of committing sexual abuse against a minor (under 14) under Article 177 (1) of the Penal Code, as charged by the public prosecutor. The Court found that the elements of this crime were not fulfilled because when the crime occurred the victim was 14 and had a consensual sexual relationship with the defendant.

The Court also found that the actions of the defendant did not satisfy the elements of the crime of rape as set out in Article 172 of the Penal Code because there were no threats, force or violence used against the victim.

“This decision sends an improper and dangerous message to the community and will encourage other people to take advantage of shortcomings in the Penal Code and continue to commit crimes against adolescent girls in the future. JSMP is troubled by this decision because the Court has failed to protect girls like the victim, who do not have sufficient knowledge about sexual relations,” said Luis de Oliveira Sampaio, Executive Director of JSMP.

JSMP is concerned with the Court’s lack of sensitivity when considering and assessing the capacity of teenage girls to engage in consensual sexual relations, especially when they are in vulnerable situations. In this case, the Court proved that the defendant threatened the victim, saying he would approach victim and yell at her in front of her family if she did not meet him. JSMP believes that in situations like this, such acts place a lot of pressure on the victim, and the victim is not emotionally mature enough to accept or deal with the pressure exerted by the defendant. The Court also failed to consider the status of the defendant as a family man, who could easily take advantage of a young victim inexperienced in sexual relations.

Even though the Court considered that the victim had the capacity to say no to the defendant’s advances, JSMP believes that the victim did not have a good and sufficient understanding about the impact of sexual relations like this.

In addition, when the Court found that the victim was 14 years old, the Court should have amended the indictment and instead charged the defendant under Article 178 of the Penal Code for committing sexual acts with an adolescent aged 14 to 16. The

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maximum sentence for this crime is 5 years in prison. JSMP believes that if the Court applied this article, the defendant would have received a more appropriate penalty.

Article 178 of the Penal Code specifies that any person who, being an adult and apart from situations provided in this section, practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.

JSMP believes that situations like this should be used as reference point by the National Parliament to give careful consideration to the proposal from JSMP and ALFeLa about amending the Penal Code, which was submitted in early 2015. In this proposal JSMP and ALFeLa recommended that the National Parliament amend the Penal Code to include a specific article for cases of incest and to harmonize the age of a minor for the purpose of sexual offences with several other related legal provisions.

Currently, several provisions in the Timor-Leste Penal Code inconsistently set out definitions on the age of minors in Timor-Leste. JSMP and ALFeLa feel it is important to ensure consistency with Article 1 of the Convention on the Rights of the Child, which defines minors as those under 18, and Article 118 and 126 of the Civil Code, which states that a minor in Timor-Leste is a person under 17.

The public prosecutor alleged that on 8 August 2014 the defendant sent a message via facebook to meet with the victim, but she refused. On 09 August 2014 the defendant sent another message threatening that he would yell at the victim at her house if she refused to meet him. The victim therefore went out to meet the defendant. He then took the victim on his motorcycle to his friend's house and had sexual intercourse with the victim. After that, the defendant and the victim continued to have sexual intercourse 10 times at his friend's house on different occasions.

This hearing was presided over by a panel of judges comprising Jumiati Soares Freitas, Antonio do Carmo and Maria Solana. The Public Prosecution Service was represented by Reinato Bere Nahak and the defendant was represented by Abilio Tavares from the Office of the Public Defender.

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