



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

**Press Release**  
**Dili District Court**  
**22 November 2016**

**Court sentences defendant to 12 years in prison in case of aggravated sexual abuse against a minor**

**JSMP: this penalty does not reflect the loss suffered by the victim**

The Dili District Court sentenced a defendant to 12 years in prison in a case of aggravated sexual abuse against a minor that occurred in Dili. The court found the defendant guilty of committing sexual abuse against the victim who was aged 11. This decision was read out on 9 November 2016.

The Public Prosecutor charged the defendant for violating Article 177(1) of the Penal Code on the sexual abuse of a minor as well as Article 182(1)(a) of the Penal Code on aggravation.

“This penalty does not reflect the loss suffered by the victim because the court did not comprehensively consider the circumstances that could aggravate the penalty against the defendant” said Luis de Oliveira Sampaio, Executive Director of JSMP.

The maximum penalty provided for in Article 177 (1) and Article 182(1)(a) is 26 years and 8 months in prison. Therefore, this penalty does not reflect the gravity and circumstances of the act, and the Court has failed to ensure justice for the victim.

The Court proved that on 9 February 2016 the defendant grabbed the victim by the arm and dragged her into a hut (at the beach), and tied the victims hands, and laid the victim down on top of a bamboo mat, pulled the victim's clothes down with the intention of having sexual intercourse. However, the defendant did not achieve his aim because the victim kicked the defendant and knocked him down. Then the victim tried to run away, but the defendant yelled and threatened the victim not to tell anyone about the incident, or otherwise the defendant would kill the victim.

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The court also proved that the defendant and the victim were living in the same house, and the defendant committed sexual violence against the victim twice in 2015. The defendant also admitted that previously on 6 February 2016 he had sexual intercourse with the victim and the victim was only aged 11.

The Court should have amended the charge to accumulate the multiple crimes because the defendant committed sexual violence against the victim three times.

The fact that the defendant has a wife and child and regretted his actions is not relevant to the crime committed against the underage victim.

JSMP believes that this penalty is not proportional to the suffering of the victim because it failed to consider the aggravating circumstances such as the defendant misusing his authority in the family and the multiple crimes should have been accumulated. In its deliberations the Court admitted that the acts of the defendant will damage and influence the development of the victim who is still underage, however the Court failed to provide an adequate penalty and compensation for the victim.

Article 34 of the Convention on the Rights of the Child states that “State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity, (b) the exploitative use of children in prostitution or other unlawful sexual practices (c) the exploitative use of children in pornographic performances and material.”

In addition, Article 39 of the Convention on the Rights of the Child states that State Parties must take all appropriate measures to provide special help to child victims so they can physically and psychologically recover and reintegrate into society, for those victims who have been neglected, abused or exploited in any way or subjected to any other form of cruel, inhumane or degrading treatment or punishment, or armed conflict. This recovery and integration must take place in an environment that will restore the health, dignity and self-respect of the child.

JSMP is also concerned and disappointed with the penalty of 12 years in prison handed down by the Suai District Court, via the mobile court in Ainaro, in a case of sexual abuse against a minor aged 4 years. The court found the defendant guilty of committing sexual abuse against the victim on 29 March 2016 in Covalima District. This case is extremely serious because it involves a victim who is very underage. This decision was read out on 24 October 2016.

JSMP hopes that in the future the Court will be able to adequately and carefully examine the facts in each case. The Court should specifically ensure that these facts contribute to an adequate and fair penalty in accordance with the gravity of the case and the loss suffered by the victim. This is a way for the State, through relevant institutions such as the Courts, to seriously reject

and condemn all forms of crime against Children and fulfil its obligations in accordance with the international laws ratified by the State.

This case was registered as Case No. 0026/16.DBCR and the hearing was presided over by judge Albertina Neves (representing a panel of judges). The Public Prosecution Service was represented by Nelson de Carvalho. The Office of the Public Defender was represented by João Henrique de Carvalho.

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