



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

Baucau District Court

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The courts need to select the appropriate provisions of the law and charge the crime of marital rape

JSMP requests for the Public Prosecution Service and the Courts to select the appropriate provisions of the law in cases of marital rape and charge this crime in accordance with the juridical framework of Timor-Leste and Timor-Leste's obligations in accordance with international law ratified by the State.

JSMP believes that sexual intercourse accompanied by threats and violence is crime within the juridical framework of Timor-Leste, in particular Article 2.2 (b) of the Law Against Domestic Violence (LADV).

Article 2 of the Law Against Domestic Violence (LADV), on definition of domestic violence, states that domestic violence includes physical violence, *sexual violence*, psychological violence and economic violence.

Article 2.2 (b) of the Law Against Domestic Violence states that: Sexual violence is understood as any conduct that induces the person to witness, to maintain or participate in unwanted sexual relations, even within a marriage, *through intimidation, threats, coercion or use of force*, or which limits or nullifies the exercise of sexual and reproductive rights.

JSMP is concerned and disappointed with the decision of the Baucau District Court to order the defendant EM, who committed the crime of simple offences against the physical integrity of his wife and used force and violence to force his wife to have sexual intercourse, to pay a fine of just US\$7.50.

"This decision is disappointing and a long way from providing fair justice, because the judicial actors failed to identify and properly uphold the provisions of the law in this case to guarantee justice for the victim in this case", said Luis de Oliveira Sampaio, Executive Director of JSMP.

The public prosecutor alleged that on 12 October 2017, at 11pm, the defendant asked the victim if he could have a mistress, but the victim said nothing, so the defendant used force to remove the victim's clothing and had sexual intercourse with the victim. After the defendant had sexual intercourse with the victim, she did not accept this behaviour and cried. The defendant told the victim to be quiet, but the victim would not be quiet, so the defendant choked her with great force and pulled her hair. These acts caused the victim to suffer pain to her neck and she had trouble breathing.

During the trial the defendant admitted all of the facts alleged by the Prosecutor. In addition the victim also maintained the facts set out in the indictment, but unfortunately the prosecution and the court failed to identify other articles relevant to these crimes.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity as well as Articles 2.2 (a), Article 3 (b), and Article 35 (b) of the Law Against Domestic Violence.

Actually the relevant and most appropriate articles for this crime are Article 145 of the Penal Code in conjunction with Article 2.2 (b) and Articles 3, 4, 35 and 36 of the Law Against Domestic Violence.

The prosecutor failed to identify the correct articles and relevant provisions in Article 2.2 (b) of the Law Against Domestic Violence which states that marital rape is a crime and also Article 172 of the Penal Code on rape which carries a maximum sentence of 5 - 15 years in prison.

JSMP believes that in addition to charging the crime of simple offences against physical integrity, the prosecutor should have also charged the defendant with the crime of rape pursuant to Article 172 of the Penal Code because the defendant used force and violence to force his wife to have sexual intercourse without his wife's consent. The rape actually took place because the defendant's wife refused his request to have another woman.

JSMP believes that the prosecutor and the court were aware of the evidence of rape in this case, but the prosecutor and the court intentionally ignored this evidence because they consider rape in the family sphere as a common and acceptable practice in East Timorese society. This is justified through the prosecutor's final recommendation which stated that rape is an acceptable act because the defendant and the victim were husband and wife.

In addition the judge had no reaction to the relevant facts (evidence) about the crime of rape that occurred in this case.

JSMP requests for judicial institutions to adhere to their obligations in accordance with the law to eradicate prejudice and social, cultural and traditional practices that discriminate against women.

According to Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination Against Women ratified by the State: States Parties shall take all appropriate measures:

- a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Once again JSMP is concerned and very disappointed with this institutional negligence because of a failure to observe Timor-Leste's legal obligations. The judicial institutions need to implement the law and put aside their traditional and personal feelings to convict defendants in accordance with the law.

JSMP recommends for the relevant institutions such as the Ministry of Justice to promote comprehensive training at the Legal and Judicial Training Centre that includes relevant materials on human rights and the relevant international conventions ratified by the State of Timor-Leste.

This case was registered by the court as Case No. 0049/17 LASIC. The trial was conducted on 10 April 2018 and was presided over by Jose Quintão. The prosecution was represented by Luis H. Rangel da Cruz and the defendant was represented by public defender Antonio Fernandes.

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