



Press Release

The Dili District Court

08 February 2021

Criminal proceedings in a crime of rape lapse due to the statute of limitations

On 26 January 2021 the Dili District Court held a trial and decided to terminate criminal proceedings in a case of rape involving the defendant OS who allegedly committed the crime against his stepdaughter. The court archived this case because after the examination of evidence and final recommendations the court found that this case has exceeded the statute of limitations. This case occurred in November 2001 and was registered with the Public Prosecution Service in 2010, however the prosecutor handling this case submitted the indictment to the court in 2019.

“JSMP considers this situation to be extremely serious and it has harmed the victim because the victim has lost her right to justice. When the legal system fails to uphold due diligence and provide justice for the victim, this impedes the victim’s ability to seek redress through the formal justice system,” said Ms. Ana Paula Marçal, Executive Director of JSMP.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape that carries a prison sentence of 5 to 15 years and Article 173 (a) on aggravation as well as articles 2, 3, 35 and 36 of the Law Against Domestic Violence.

After the examination of evidence and final recommendations the court decided to amend the charges from articles 172, 173 (a) of the Timor-Leste Penal Code to Article 285¹ of the Indonesian Penal Code because this case occurred in 2001 and at that time the Indonesian Penal Code was applicable.

¹Any person who by using force or threat of force forces a woman to have sexual intercourse with him out of marriage, shall, being guilty of rape, shall be punished with a maximum imprisonment of twelve years.

Article 78.3² on the Indonesian Penal Code states that that the right to prosecute shall lapse due to the statute of limitations in twelve (12) years for all crimes upon which temporary imprisonment for more than three years is imposed.

In relation to the amended charges, JSMP observed that the victim registered this case with the Public Prosecution Service in 2010 as Case No. 2588/10.PDDIL and the indictment in this case was received by the Dili District Court in 2019, meaning that this case was delayed at the Public Prosecution Service for nine (9) years. The court held its first hearing in this case on 11 January 2021 and concluded the trial on 26 January 2021. JSMP believes that although the prosecutor may have encountered some difficulties, however if the Public Prosecution Service quickly submitted an indictment when the case was received in 2010 then the statute of limitations would not apply, because it would have been just nine (9) years, and less than 12 years, and there also would have been time for the court to conclude his case before it lapsed in 2013.

Regarding the time lapse between when the incident occurred and when a complaint was submitted to the Public Prosecution Service, JSMP believes that this occurred because the victim may have faced the same circumstances as other victims, namely she could have been pressured by the family to resolve this matter through the informal justice system, and she could have been concerned about stigma or she could have lacked knowledge about the formal justice system and believed that violence occurring in the home needs to be kept secret, which prevents women, girls and others who have been victimised from making a complaint or report in cases of sexual violence.

In this case the defendant confessed that he raped the victim who is his stepdaughter and she later gave birth, although the baby only lived for one year. Therefore, JSMP is very concerned and urges the public prosecution service, as the body responsible for penal actions, with the competence to prepare and uphold indictments during trials, to act swiftly when a complaint or report is received to prepare an indictment so that the statute of limitations does not expire, especially in cases involving sexual violence because victims may be living in danger but they have summoned up the courage to have their cases prosecuted. They place their trust in the formal justice system, therefore the formal justice system is obliged to uphold the rights of victims to access justice.

For more information, please contact:

² (1) The right to prosecute shall lapse by lapse of time: 3. in twelve years for all crimes upon which temporary imprisonment for more than three years is imposed;

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