



**Press Release**  
**Suai District Court**  
**9 July 2019**

**In cases involving the crime of rape, JSMP demands for public prosecutors to include civil compensation in their final recommendations and for the courts to include civil compensation in their final decisions**

JSMP continues to demand for public prosecutors and the courts to include civil compensation in their final recommendations and decisions in cases involving the crime of rape.

On 29 June 2019 JSMP observed that the Suai District Court convicted the defendant GdA for committing the crime of sexual abuse against the victim RdJ aged 13, and did not order the defendant to pay civil compensation.

"An order for the defendant to pay civil compensation is a way of compelling the defendant to redress the psychological suffering of the victim who has been affected by the actions of the defendant. This provides justice to victims who have suffered psychological pressure, especially in cases of a sexual nature involving minors," said Casimiro dos Santos, Acting Director of JSMP.

Article 72 (2&3) of the Criminal Procedure Code on procedural positions includes civil compensation for victims. Meanwhile, Article 281.3 (b) of the Criminal Procedure Code on elements required for a sentence refers to the convicting or acquitting decision, including the one on civil compensation. Artigu 430 (1) of the Civil Code on personal injury states that compensation must be given to victims to cover financial costs relating to the violence.

These articles clearly provide for the right of a victim to obtain civil compensation from a defendant. Article 430 of the Civil Code states that when a victim's suffering relates to violence, civil compensation must be provided. Therefore, for certain crimes, especially those characterized as rape, defendants must be ordered to pay civil compensation to victims. This article does not provide an option to consider the inclusion of civil compensation, but states that civil compensation must be included.

Based on these relevant provisions, JSMP urges and demands for prosecutors and judges dealing with such cases to include civil compensation in their respective final recommendations and sentences, because the law provides for defendants to compensate the harm or suffering of the victim. JSMP believes that the prosecutors and the courts have failed in this regard, because they have not been sensitive and have not thoroughly explored the relevant provisions that guarantee

the rights of the victim. JSMP has always believed that the approaches used in such cases and the methods of resolution, as well as the sentences applied by the courts in each case, should contribute to deterring other cases from occurring in the future.

The public prosecutor alleged that on 2 July 2017 the victim returned from a plantation and was carrying some vegetables. The defendant was standing under a tree and showed US\$5.00 to the victim and told her "*here is the money, let's do it*". After making this statement the defendant took the victim into some grass and removed her clothing and had sexual intercourse with the victim. After the sexual intercourse, the defendant gave US\$5.00 to the victim. As a consequence of the defendant's actions the victim suffered an injury and bleeding to her genitals.

Then, on an unspecified day in July 2017, when the victim was fetching water, the defendant walked behind the victim and dragged the victim into the forest. Then the defendant removed the victim's clothes and had sexual intercourse with the victim. After having sexual intercourse the defendant gave US\$0.50 to the victim but the victim did not want to accept this money.

On 22 September 2017 when the victim was watching some people play roulette, the defendant approached the victim and asked the victim to have sexual intercourse, and then the defendant and the victim had sexual intercourse. As the result of the defendant's actions the victim became pregnant and gave birth to a baby boy.

The public prosecutor accused the defendant of violating Article 177.1 of the Penal Code on the sexual abuse of a minor and Article 35 of the Penal Code on joinder of crimes.

During the examination of evidence the defendant totally confessed to all of the facts in the indictment and stated that the sexual intercourse was based on the victim's consent. In addition, the defendant also stated that he did not know that the victim was a minor because she had the same physical appearance as an adult. The defendant also stated that the defendant's family and the victim's family met to resolve this case and at that time the defendant was willing to cover up the victim's embarrassment by paying US\$4,000 on the condition that the victim would not take the matter to court. However, because the victim took the matter to court, the defendant did not hand over this money. On the other hand, the victim confirmed all of the facts set out in the indictment.

In the final recommendations the public prosecutor stated that the defendant had been proven guilty of committing the crime against the victim based the confession of the defendant and the confirmation provided by the victim. Therefore, the public prosecutor requested for the court to impose a prison sentence of 10 years for each crime, as a single sentence of 18 years in prison. The public defender requested for the court to acquit the defendant from this crime because the sexual intercourse was based on the consent of the defendant and the victim.

After evaluating all of the facts, the court found that the defendant was guilty of committing the crime of sexual abuse of a minor based on the facts set out in the indictment even though the defendant stated that the sexual intercourse was based on the consent of the victim. The court also found that as a consequence of the sexual intercourse the victim gave birth to a baby boy.

Based on this evidence the court concluded the matter and convicted the defendant for committing the crime of sexual abuse on three occasions, and imposed a prison sentence of 8 years for each crime. For committing these three crimes, the court imposed a single sentence of 12 years in prison.

JSMP observed that in nearly all decisions the courts have not imposed civil compensation in cases involving rape. In its annual report in 2018 JSMP reported that during 2018 there were 25 rape cases where defendants received a prison sentence. From these 25 cases, only in 2 cases the court asked the defendant to pay civil compensation to the victim.

JSMP is convinced that the application of civil compensation against a defendant not only serves as a means to redress the suffering and moral harm suffered by the victim, but this also serves to educate the defendant and society to avoid committing such crimes in the future.

JSMP continues to recommend for the courts and the Public Prosecution Service to establish guidelines for prosecutors on charging cases characterized as rape including demanding for the courts to consider civil compensation in their decisions.

This case was registered by the court as Case Number 0003/18.BBBV. A panel of judges heard this matter, led by Judge Florencia Freitas. The public prosecution service was represented by Ricardo Godinho and the defendant was represented by private lawyer Fernando da Costa.

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