



X v. Timor-Leste

Communication NO. 88/2015

Country:

Region:

Year: 2018

Court: Committee on the Elimination of Discrimination against Women

Health Topics: Health care and health services, Prisons, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to family life, Right to life, Right to social security

Facts

The plaintiff Ms. X was a Timorese national. She was convicted for the crime of aggravated homicide for fatally stabbing her partner, D.S. with whom she had a child. D.S., who was a member of the Timor-Leste Defense Force was contended to have had physically abused the Plaintiff for years and she alleged self-defense after years of domestic abuse. Societal pressure and the different cycles of abuse prevented her from approaching the authorities and when she did approach them, she was not taken seriously.

On the day of the killing, D.S. became violent again and beat X severely. She fatally stabbed him in the chest in self-defense and immediately contacted the police to report the incident. She was taken into custody and detained at the police station. While at the police station, she requested the services of a doctor for her injuries and wanted to preserve medical evidence of them. The police refused to provide her with medical treatment and instead took pictures of the injuries late at night using a camera with poor quality.

She was found guilty on November 2012 of the aggravated homicide of her partner and sentenced to 15 years in jail. The Dili District Court found that she had intended to kill her partner and that there were no prior problems between the two, notwithstanding the evidence by X and D.S.'s sister to the contrary, and X's account of grabbing the knife to stab her partner only after he had beaten her severely.

She appealed the decision of the lower court to the Court of Appeal on grounds of errors in the evaluation of the case and inadequate evidence to reach the decision. The Court of Appeal in February 2013 ordered a new trial and rendered the decision of the lower court void, declaring that the lower court did not address the issue of self-defense and that the evidence to support the decision was not sufficient. The Dili District Court retried the case on May 2013 and found that D.S. had been physically abusive towards X before she grabbed the knife to stab him but nonetheless the Court did not believe that she acted in self-defense.

Ms. X submitted this complaint to the committee on the Elimination of Discrimination against Women. She alleged that Timor-Leste violated her rights under articles 2 (c) and (d) of the Convention on the Elimination of all Forms of Discrimination Against Women (hereinafter "the Convention") by failing to adequately protect her from domestic violence and arrange appropriate remedies, and her right to a fair trial under article 14 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant") as she was not provided proper legal representation. She also asserted that Timor-Leste violated her rights under article 2 (f) and 15 of the Convention by failing to ensure the impartiality and fairness of legal procedures and court proceedings and ensure that they were not affected by prejudices and gender bias. Ms. X was convicted of the murder of her partner in 2012 and was sentenced to 15 years in prison. She was released from prison on parole in 2015 after been partially pardoned by the President of Timor-Leste the same year.

Decision and Reasoning

The issues before the Committee consisted of (1) whether the State failed in its duty to protect X from domestic violence before the incident on November 25 and, (2) whether the State's judiciary failed to ensure that X had a fair trial without any gender bias and stereotyping. With regard to the first issue, the Committee held that by not referring X's claims of domestic violence to the appropriate authorities, the Defense Force, a State agent, failed in its due diligence responsibilities to ensure the protection of X despite taking a written statement alleging domestic violence and photographs of her injuries. With regard to the second issue, the Committee held that the State parties violated X's right to fair trial, including, but not limited to, not providing her with medical treatment and psychological support after she was arrested, not promptly providing her with a counsel at her first interview or one that would gather evidence to be used in her defense. The Court also held that her rights were violated by keeping her in detention for many days in violation of the law notwithstanding the fact that she was still breastfeeding her child at that time and allowing gender bias to

influence the weighing of the evidence in the second trial giving more credence to the nephew's testimony. The Committee held that State parties under their due diligence responsibilities must take actions to tackle any form of gender-based violence against women and failure to do so constitutes human rights violations. Similarly, under articles 2(f) and 5(a) of the Convention, State parties must take appropriate steps to revise or abolish laws, regulations, customs and practices that constitute discrimination against women and under article 16(1) they ought to adopt adequate measures to eliminate discrimination against women in marriage and family relationship. The Committee emphasized the importance of stereotypes in influencing women's rights to fair and unbiased judicial processes and the judiciary's duty not to give way to preconceived ideas about what constitutes domestic violence.

Accordingly, the Committee concluded that Timor-Leste violated articles 2(c), (d), and (f) and 15 of the Convention by failing in its obligation to address the issue of continuing domestic violence against X, the issue of collection of the evidence and the issue of the treatment of her testimony and sentencing decision, and its obligations to provide her with medical treatment, support and counseling. The Committee then concluded the opinion by making several recommendations to the State party such as granting X a full pardon and adequate remedies and requested the state to submit a written response within six months.

Decision Excerpts

“The Committee further notes that the State party's law enforcement authorities failed to provide the author with medical care after her arrest, inform her of her rights, provide counsel at her first interview or collect evidence that would have aided her defense; kept the author in detention for a great deal longer than is provided for by the law, despite her being a breastfeeding mother; failed to provide the author with psychosocial support after her arrest appropriate to a person claiming to have been attacked and to have killed in self-defence; failed to ensure, when it appointed counsel, that the assistance provided was effective (including the failure to advance arguments to prevent the pretrial detention of a breastfeeding mother, advise her on her defense or consult her in order to provide her with the opportunity to mount her own defense); and finally that judges, despite a retrial being granted on the basis that self-defense had not been duly considered in the first trial, allowed gender stereotypes and bias to affect the weighing of evidence in the second trial, in particular by lending the author's voice less credence than that of her nephew, who had not been present at all relevant times.” (para 6.5)

“Prosecutors, law enforcement officials, and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim ... Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgment. (Para 6.6)

“The Committee recalls its general recommendations No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, according to which gender-based violence that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.” (para 6.7)

“In the present case, the Committee considers that the authorities of the State party, by their failure to address the issue of ongoing domestic violence, in the collection of evidence, the treatment of the author, the support and counsel that she received, the treatment of her testimony and the sentencing decision relating to a vulnerable breastfeeding mother, failed to discharge their obligations under articles 2 (c), (d) and (f) and 15 of the Convention.” (para 6.9)