



**JUDICIAL SYSTEM MONITORING PROGRAMME**  
**PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

**JUSTICE UPDATE**

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**Trials of Serious Criminal Cases at the Suai District Court**

During the third week of March 2008, the Suai District Court conducted trials relating to 4 serious criminal cases comprising 2 cases of murder and 2 cases of obscene acts committed against a minor. JSMP was not able to monitor one of the latter cases because the trial was closed to the public pursuant to Article 76 of the Criminal Procedure Code.

JSMP was only able to monitor three of the four cases scheduled for trial. Based on its monitoring, JSMP ascertained that three of the aforementioned cases will be decided on 30 March and the remaining case has been adjourned until June 2009.

The cases monitored by JSMP during the aforementioned period are described in detail below.

**Case of obscene acts committed against a minor**

In this case the defendant committed obscene acts against two minors on two separate occasions. In accordance with the prosecutor's indictment, the defendant who was aged 56 in 2002 committed obscene acts against a 3 year old child. The indictment was filed with the Suai District Court and registered as Case No. 32/PEN/2005/TDS. Then in 2008, the defendant committed the same obscene acts against an 8 year old child. The second case was scheduled for trial on 16 March 2009 and was registered as Case No. 123/PEN/2008/TDS.

For the aforementioned acts the defendant was charged with Article 290 (3e) of the Indonesian Penal Code relating to committing obscene acts against a minor under the age of 15. Both the prosecution and defence requested for the trial to be adjourned on the grounds that the court should settle the first case before proceeding with the second case. The judge advised that the first case had not been settled due to an administrative problem, namely the case was initially dealt with by an international judge and when that judge's contract expired no clear report was provided on the status of the first case.

In light of the aforementioned circumstances the prosecution and defence requested for the two cases to be combined in one indictment to speed up the trial process because the defendant had committed the same crime on separate occasions. The defendant was detained in October last year in relation to the second case and on 16 March 2009 was granted conditional release pending a final decision.

The trial will continue on 9 June 2009 with the reading out of the indictment and examination of witnesses.

### **Case of murder**

On 7 November 2008 in Maubisse the victim grabbed the defendant around the neck and threw the defendant to the ground. After the defendant fell to the ground the victim grabbed a rock with the aim of striking the victim or stoning him, and as a reflex action the defendant took a knife from his pocket and stabbed the victim in the stomach all the way through to the other side. On the following day the victim died at a local hospital. The prosecution charged the defendant under Article 338 of the Indonesian Penal Code relating to murder.

In his testimony the defendant stated that initially he did not plan to kill the victim, however the victim grabbed the defendant around the neck and threw him to the ground and was going to stone him, therefore the defendant took a knife from his pocket and stabbed the victim. The witnesses presented said that the defendant did in fact stab the victim during the incident.

Pursuant to the aforementioned facts the prosecutor maintained the charge under Article 338 of the Indonesian Penal Code and recommended for the court to sentence the defendant to 6 years imprisonment.

The defence objected to the application of Article 338 of the Indonesian Penal Code in this case. The defence argued that given the circumstances of the case the defendant's actions should be categorized as self-defence, therefore the appropriate article for deciding this case is Article 49 of the Indonesian Penal Code relating to self-defence, because the defendant had no intention at all of killing the victim, rather he was acting in self-defence because the victim initiated the incident.

The decision in this case will be announced on 30 March 2009.

### **Case of murder**

On 21 September 2008, two defendants (AS & VS) committed a crime that resulted in the death of the victim. The defendant AS kicked the victim once in the stomach then left the scene of the crime. When the defendant AS left the scene the defendant VS, who was approximately five meters away, grabbed a rock and threw it at the victim's head causing the victim to fall to the ground. The victim died soon after as a result of being struck on the head by the rock.

In his final recommendation of sentence the prosecutor charged the two defendants with Article 338 of the Indonesian Penal Code on murder and Article 55 on participation in a criminal act. The prosecutor recommended for the court to sentence the defendant VS to five years imprisonment and to sentence the defendant AS to 2 years imprisonment.

The defence argued that the actions of the defendant AS, who only kicked the victim once in the stomach, did not fulfill the elements listed in the charge of murder, therefore the defendant AS should be acquitted from the charge of murder as his actions only fulfill the elements of the charge for light maltreatment. In relation to the defendant VS, the defence argued that he did not intend to kill the victim. Therefore the appropriate charge for his actions is Article 351.3 of the Indonesian Penal Code on maltreatment resulting in death.

The decision in this case will be announced on 30 March 2009.

### **Case of rape committed against a minor**

JSMP was only permitted to attend the reading out of the indictment because the examination of witnesses was closed to the public. The indictment read out by the presiding judge stated that in May 2008 the defendant tried to rape the victim who was aged 11 but did not manage to complete the act. At that time the defendant embraced the victim and placed his hand inside the victim's underpants until he ejaculated. The defendant threatened to kill the victim if she screamed. The prosecutor charged the defendant with Articles 285 and 74 of the Indonesian Penal Code.

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