



Press Release

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Obstacles encountered by the Suai District Court in the Processing of Criminal Cases

Between 15-18 July 2008 the Suai District Court conducted trials in 8 criminal cases relating to maltreatment and destruction of property. JSMP observed that the majority of the eight cases examined were recent cases (2008) and only two cases had occurred in 2005.

The legal basis for the charges presented by the prosecution in these 8 minor criminal cases were Articles 351, 352 and 406 of the Indonesian Penal Code which carry a penalty less than five years imprisonment. The most common crimes related to assaults between individuals, rival groups and assault of individuals by a group.

Several days before the trials of the eight cases were scheduled to be conducted the administration section of the court notified the public defenders unit who were supposed to provide legal services to the defendants, however they were unable to attend due to problems with transport and the price of fuel. This fact was announced by the President of the Suai District Court in the aforementioned hearings. Due to the non-attendance of any public defenders the presiding judge appointed several private lawyers from the Covalima Legal Aid Service to assist the defendants. This matter is set out in Article 260 (2) and Article 66 of the Criminal Procedure Code.

The President of the Court then stated that the processing of these cases had not only been affected by transport problems but also because of problems with electricity supply, a generator and accommodation for court actors who are responsible for the jurisdiction of Suai. He also said that during 2008 hearings were not only held in Suai, but often in Maliana and Same, due to these aforementioned factors.

In addition to problems with facilities, these trials were further obstructed by the non-attendance of witnesses, victims, and defendants even though they had been notified by the court. This can be attributed to the fact that they live some distance from the court.

For example, in one case of domestic violence, the prosecutor charged the defendant with Article 352 (1) and Article 406 (1) of the Indonesian Penal Code on maltreatment and destruction of property. During the trial the court only examined the defendant and victim because no other victims were presented to the court to help establish the facts.

As there were no other witnesses the court provided an opportunity to the prosecutor to make his final recommendation of sentence and for the legal representative of the defendant to make his final plea. The prosecutor decided to withdraw Article 406 (1) on destruction of property because he felt that it was not relevant because the actions of the defendant did not fulfill the elements of this article. The prosecutor believed that due to the fact that the defendant and victim were husband and wife, then the clothing that was burned by the defendant was joint property according to civil law. Article 406 (1) of the Indonesian Penal Code refers to property that belongs wholly or partially to another.

For more information please contact:

Roberto da Costa Pacheco, Legal Research Unit Coordinator, JSMP

Email: bebeto@jsmp.minihub.org

Telephone: 3323883