



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAM PEMANTAUAN SISTEM YUDISIAL

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Press Release

More Support and Consideration Required for Continuation of Serious Crimes Trials

On 6 September 2005 police arrested 3 persons who were believed to be members of the HMP (Hametin Merah Putih) militia in the village of Haekase Mota Nunura, near Maliana. All of the suspects were brought to the Dili District Court on Friday, 9 September 2005 for the 72-hour detention review hearing, as required by law. At that hearing the judge ordered the detention of all suspects for 30 days. According to the prosecution the suspects allegedly committed arson, assault and murder near Maliana in September 1999, following the Popular Consultation.

In JSMP's opinion the Dili District Court is competent to hear serious crimes cases if presided over by two international judges and one national judge who are qualified and appointed to do so according to law (see JSMP Justice Update # 16/2005). Nevertheless, JSMP also believes that serious crimes cases can only be tried by court actors – that is, judges, prosecutors and defenders – who have adequate experience in the fields of criminal law and international law. Further, the investigation of serious crimes requires a specialist investigation team which is supported by adequate financial and human resources.

Before their suspension in May 2005, the international community was the primary provider of court actors, investigators and expertise to the Special Panels for Serious Crimes. JSMP is aware that this case is being tried by a prosecutor who previously worked with the Serious Crimes Unit and that his experience within the Unit at that time was limited – indictments were usually prepared and tried in court by international prosecutors. In addition, the defence lawyer for the suspects is a private lawyer who only completed his legal education in Indonesia one year ago and has not yet had any experience handling serious crimes cases.

Further, according to the prosecutor, the charges are based solely on the suspects' involvement in militia groups, as members of HMP in Maliana in 1999. In JSMP's view that allegation does not provide a strong enough basis to arrest and detain the suspects. In 1999 there were many persons who were involved with militia groups but not all of them committed crimes. The laws of Timor Leste require that there be some evidence of the commission of a crime to justify arresting and detaining a person suspected of involvement in the serious crimes perpetrated in 1999.

In JSMP's opinion the serious crimes trial process which was previously funded and supported by the UN until May 2005 involved a number of complex legal and practical issues. The serious crimes trial process is also very important for relations between Timor Leste and Indonesia. For example, what are the implications of the mandate and role of the Truth & Friendship Commission for the continued trial of serious crimes suspects? It is therefore extremely important for Timor Leste to genuinely address the question of how to try serious crimes cases in the Dili District Court. In JSMP's opinion continued serious crimes trials require real support from the international community and a specialised investigative unit which is capable of properly collecting the evidence and preparing the indictment. Most important of all is to ensure that the suspects' rights are respected, including the presumption of innocence.