



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAM PEMANTAUAN SISTEM YUDISIAL

Dili, 8 August 2005
Press Release

War Crimes Suspect Returns to Timor Leste

A former member of the Mahidi militia who had been indicted by the Special Panels for Serious Crimes (“SPSC”) recently returned to Timor Leste from West Timor. The recent closure of the SPSC has raised a number of complex issues, including how to deal with the return of indicted persons.

On or about 1 August 2005 Manuel Maia crossed the border at Tunubibi near Maliana and was detained by members of the community who had recognised him and then handed over to the Police. Maia was indicted in July 2003 for his alleged involvement in crimes against humanity, including murder and torture, which were committed in Bobonara District in March and April of 1999. He was indicted with at least 30 others in what came to be known as the Cailaco case, however, it did not proceed before the SPSC as all indictees remained in West Timor.

The SPSC was established in 2001 as a domestic tribunal in Dili with exclusive jurisdiction to try persons accused of crimes against humanity committed prior to and during 1999. The SPSC held its final hearing on May 2005 and left open the question of what to do if one of the many indictees who had not been tried returned to Timor Leste. Prior to the closure of the SPSC many leading persons involved with the process, including SPSC judges, had cited this as one of the biggest problems to be addressed and a major reason justifying their continuation. Although the SPSC indicted 440 persons in total, 339 of these have, until now, remained beyond the jurisdiction of the courts in Timor Leste.

The Chief of Police in Timor Leste, Paulo Martins, has reportedly indicated that Maia would be investigated and brought to court in accordance with the existing laws of Timor Leste. Nevertheless, the question of how and where to try SPSC suspects involves a number of potentially complex legal issues:

- It is generally accepted that current laws only authorise trial of an indictee by a ‘special panel’ comprising two international judges and one national judge.
- At present there are three international judges working at the Dili District Court but they are only involved with ordinary crimes cases and it is not clear whether they must be specially constituted as judges of the SPSC to be able to hear serious crimes cases.

- Even though several national judges have been appointed to hear cases it remains questionable whether they are qualified to do so given that all national judges failed their qualifying exams.
- Assuming even that there were judges to hear Maia's case it is doubtful whether there would be adequate numbers of qualified lawyers to ensure proper prosecution and a fair defence in accordance with standards of international law.

In any event, future prosecution of SPSC indictees faces a number of basic but fundamental, practical obstacles. All evidence, archives and case files on SPSC indictees have been stored away under the authority of the Prosecutor General of Timor Leste. Their status and the manner in which they have been stored is unclear, however, as a prosecutor indicated recently to JSMP, it would in practice be difficult to locate and access the case files on serious crimes suspects. He also pointed out that although Manuel Maia might be tried in the District Court for possible violations of immigration laws, there was confusion as to the process and forum in which he could be tried for allegedly committing crimes against humanity.

In short, the return of Maia from West Timor has exposed the folly of closing the SPSC prematurely without creating a complementary institution, or even a clear policy, to deal with untried SPSC indictees. The possibility of suspects returning from West Timor is very real and this is an eventuality which the United Nations should have planned for when preparing for the closure of its mission in Timor Leste. Their failure to do so is unacceptable. The implications for Timor Leste, indeed the region, are potentially enormous and should not be underestimated. On the one hand, if suspects are not tried vigorously or at all it will send the wrong signal to suspects on the other side of the border. They may then be encouraged to return to the fragile peace of villages in Timor Leste which are only just beginning to recover from the traumas of 1999. On the other hand, the social and political stability derived from bringing suspects to justice should not be secured at the expense of their rights in show trials before an improperly constituted tribunal.

The need for continued prosecution of serious crimes is a clear outcome of the recently-released report of the UN-appointed Commission of Experts. The Commission was tasked with evaluating the extent to which tribunals in Indonesia and in Timor Leste had succeeded in genuinely prosecuting perpetrators of human rights abuses in 1999. Its recommendations were for the continuation of investigations and prosecutions in Timor Leste with international assistance and for suspects in Indonesia to be re-tried in accordance with international prosecutorial standards. If these options are not pursued the Commission recommends the creation of an international tribunal to bring suspects to trial and ensure justice for Timor Leste. When considering the Commission's recommendations the Security Council must acknowledge and take seriously the implications of failing to implement a specific mechanism to deal with returning perpetrators of crimes against humanity. At the very least it must support the Government of East Timor to create a special panel of judges in a manner consistent with national laws in order to try the cases of returned indictees as soon as possible.