



**JUDICIAL SYSTEM MONITORING PROGRAMME**  
**PROGRAM PEMANTAUAN SISTEM YUDISIAL**

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### JSMP STAFF 2001:

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#### **Christian Ranheim**

Cand. Jur (cum laude) from the University of Oslo and the Institute of Human Rights, Oslo, Norway. He has previously worked as a project manager at the Asia desk of the human rights NGO Worldview Rights and as a coordinator of UNHCR's Legal Aid Centres in Bosnia and Herzegovina. He was in East Timor as a long term election observer in 1999.



#### **Caitlin Reiger**

LLB (Hons)/ BA (Hons) from University of Melbourne, Australia. Barrister and Solicitor of the Supreme Court of Victoria, Federal Court of Australia and High Court of Australia. Caitlin previously worked as a litigation lawyer as well as a judge's associate in the Federal Court of Australia. She has worked as a volunteer with human rights NGOs for a number of years.



#### **Nelson Belo**

Political science student. Nelson has a long history working for the resistance in East Timor, including with the East Timor Student Solidarity Council (ETSSC). He completed Human Rights training at the John Abbot College, Montreal, Canada and Diplomatic Training at the University of Oslo, Norway and Northern Territory University, Darwin Australia.

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*The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see [www.jsmp.minihub.org](http://www.jsmp.minihub.org)*

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*Judicial System Monitoring Programme  
1/1a Rua do Mozambique, Farol, Dili  
Postal address: PO Box 275, Dili, East Timor VIA Darwin, Australia  
Tel/Fax: (670) 390 323 883  
Mobile: (61) 419 804 600  
Email: info@jsmp.minihub.org*

## **1. INTRODUCTION**

The last two years have been rich in events and developments for the East Timorese people. Eagerly awaiting independence, they have made great efforts to rebuild their country after the rampage led by the Indonesian military in September 1999. A key factor both for ensuring state security and for the process of national healing has been the construction of a formal justice system in which to prosecute those accused of committing serious crimes during the Indonesian occupation. When the multinational force, INTERFET, arrived in 1999 it encountered an entirely destroyed infrastructure and a legal vacuum, with most legal professionals having fled the territory. A crucial part of the mandate given to the United Nations Transitional Administration (UNTAET) by the Security Council was the administration of justice. Since then, some of the few East Timorese lawyers have been appointed as judges, prosecutors and public defenders and a transitional legal system has been established. Even though there have certainly been major achievements, the justice system is still in a nascent state and will need continued support in the future.

It was in this context that the concept of the Judicial System Monitoring Programme (JSMP) emerged in early 2001. After consultation with local non-governmental organisations and early observations of the very first Serious Crimes trials, it was clear that the justice system was experiencing significant problems and that an independent body was needed that could provide:

- a) a physical presence by legal observers at the trials;
- b) analysis of the progress of the new legal and judicial system; and
- c) public information.

After being entirely dependent upon volunteer contributions for several months, JSMP was established and fully funded by August 2001. The organization has since then contributed to the development of the fledgling judicial system by identifying areas of concern and by making recommendation for reform. In addition, the JSMP's public information initiatives – particularly in relation to the serious crimes trials - are now widely recognized as the sole source of information for those outside of East Timor, as well as providing a valuable and independent contribution to the ongoing public debate inside East Timor.

## **2. SECTOR PLANS AND ACHIEVEMENTS 2001**

### ***2.1. PROJECT ADMINISTRATION AND STAFFING***

Although JSMP first started monitoring Serious Crimes trials in January 2001, the first few months of operation were made possible by significant contributions of time, expertise and equipment by volunteer project staff. Valuable advice and support, including office space, was provided by the two East Timorese organisations *La'õ Hamutuk* and the *East Timor Jurists' Association* within their premises in Farol, Dili.

Funding for the most urgent office costs was granted by the Australian Section of the International Commission of Jurists in mid-2001, which enabled the two international lawyers to continue working until other funding was obtained. These lawyers bring to JSMP an important combination of a thorough understanding of human rights mechanisms and international law, together with project management and legal practice expertise from both common and civil law jurisdictions. Another international lawyer also volunteered for five weeks, assisting with trial observation and undertaking research for the first major report. The project finally received funding in August 2001, provided by USAID/OTI in Dili, and the

first East Timorese staff member was employed in October 2001. This staff member has brought to JSMP first hand knowledge of the importance of an effective and fair justice system for East Timor's future, together with experience in human rights analysis. The amount of work has continued to grow, and further volunteer assistance has continued to be gratefully received by JSMP in both substantive project work as well as administrative support. In 2002 JSMP plans to move into its own offices and expand its staffing levels.

## 2.2. TRIAL OBSERVATION

Trial observation has enabled JSMP to gain an invaluable first hand impression of developments taking place within the judicial system in East Timor and long term data gathering comprises the main source of information JSMP uses for comparative analysis. Since the programme was established in April 2001, JSMP legal observers have been present at more than 100 preliminary hearing and trial sessions.

Detailed notes are taken by the legal observers and are later entered into the JSMP case database which contains information about all Serious Crimes trials.

Although JSMP has observed virtually all Serious Crimes proceedings, the focus has been on the largest case so far, the *Los Palos case*. Involving 10 accused and the first crimes against humanity charges, the trial lasted from 9 July to mid-December 2001. JSMP is in the process of issuing a report detailing the findings made by our observers during the trial.

## 2.3. ANALYTICAL REPORTS

JSMP's first major analytical report *Justice in Practice: Human Rights in Court Administration* was published in mid-December 2001, only days after the judgment was announced in the first crimes against humanity trial. Although JSMP had hoped to produce more reports through the course of 2001, this was ultimately more difficult than anticipated given the demands of setting up a new organization and beginning the ground work of observing trials and developing relationships with judicial staff, all of which form the basis of JSMP's credible research.



JSMP briefing the U.N. Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy on the content of the report *Justice in Practice – Human Rights in Court Administration* during his visit to Dili in November 2001.

Nevertheless, JSMP's main objective for 2001 was to provide high quality reports and analysis of the developments within the judicial sector of East Timor. The first major report is a testament to that policy; it has not only been widely cited and circulated within East Timor and abroad, but is now being used as an important source for policy development within the final months of the Transitional Administration.

In his recent statement to the UN Security Council Sergio Vieira de Mello drew heavily on JSMP's recommendations in relation to strategies for remedying problems within the court administration. JSMP's second major report is

currently being finalized and is an assessment of the *Los Palos case*. A general review report of the justice system, that examines the progress of each of the District Courts, is currently being drafted.

#### 2.4. PUBLIC INFORMATION AND COOPERATION WITH OTHER NGOS

In 2001 JSMP has provided extensive information regarding the judicial system in East Timor to individuals, organizations, media and many others. The main component of public information activities has been the JSMP website, which features news, trial schedules, reports, resource material, judgments and indictments. The website, which is updated daily from our Dili office, receives approximately 1000 visits per month. JSMP also administers an e-mail list; over 170 subscribers to this list receive daily news and updates on developments. Among the subscribers are diplomatic missions to East Timor, researchers, donor organizations, some of the world's leading human rights NGOs, UNTAET management staff and other individuals from around the world.

In terms of outreach and information dissemination through media agencies, JSMP regularly briefs journalists on the developments within the Serious Crimes trials and is often contacted for interviews. International media briefed by JSMP have included Agence France Press, *Time* magazine, the *Boston Globe*, ABC Radio (Australia), Associated Press, Lusa, Asia Press International, the *Asahi Shimbun* and the *Atlanta Constitution*. As for domestic media, JSMP press releases with information from all cases we monitor are issued in both English and Bahasa Indonesia. They have been quoted in all major news papers and radio stations of East Timor, including *Suara Timor Lorosae* and *Timor Post*. JSMP staff regularly give feature interviews to Radio UNTAET, as well as to Radio Timor Kmanek and Radio FALINTIL. A sample of JSMP press coverage is attached to this report.



JSMP speaking at a human rights training organized by the UNTAET Human Rights Unit for all East Timorese Judges, prosecutors and defenders.

JSMP has been cooperating closely with other civil society groups in East Timor, both regarding comments on draft legislation and the Constitution, drafting briefing papers for donor's conferences and through presenting information regarding the justice system at a number of seminars and meetings. JSMP gave presentations and assisted in training on human rights issues to the East Timorese judges and prosecutors at the Hong Kong Bar Association Fair Trial Seminar and workshops organised by the UNTAET Human Rights Unit. In May 2001 JSMP provided court reporting and legal media training to East Timorese journalists in conjunction with INTERNEWS. In October 2001 JSMP

contributed articles to the *Lao Hamutuk Bulletin* on justice and gave a presentation at the seminar on justice and accountability in East Timor that was organised by a coalition of NGOs including Yayasan HAK and NGO Forum. Furthermore, NGO Forum has formally registered JSMP as a local NGO.

JSMP is frequently called upon to provide independent briefings on the progress of the justice system, particularly to visitors to East Timor. Those briefed during 2001 include: representatives of diplomatic missions, the UN Special Rapporteur on Independence of Judges and Lawyers, United Nations Development Program, International Committee of the

Red Cross, the Coalition for International Justice, Amnesty International, Berkeley War Crimes Study Center, Harvard Global Peace Project, Australian Legal Resources International, Asian Human Rights Commission, Australian Council for Overseas Aid, and Asia Foundation.

JSMP gave a presentation at a NGO seminar in Oslo, Norway during the East Timor Donor's Conference in December 2001, at an International Commission of Jurists conference in Melbourne, Australia, and have been invited to speak at the forthcoming seminar "*Justice in the Balance – Military Commissions and International Tribunals in a Violent Age*" at the University of California, Berkeley in March 2002.

### **3. EVALUATION OF THE PROGRAMME 2001**

Both before and since JSMP was established, no other organisation or programme existed to ensure independent and consistent monitoring of the judicial system in East Timor. Even though organisations such as Amnesty International on several occasions had pointed out the importance of providing a permanent presence at the Serious Crimes trials, JSMP often found that its observers were the only ones present in court during the proceedings.

In other post-conflict areas, such as in Bosnia and Herzegovina and in Kosovo, the UN and OSCE have realised the importance of setting up their own monitoring programs (Legal System Monitoring Program in Kosovo and the earlier Judicial System Assessment Program in Bosnia). As the UN was the authority responsible for the establishment of the courts in East Timor, a monitoring programme therefore had to be independent of the Transitional Administrator. Setting up JSMP as a non-governmental organisation ensured the required independence and also created a basis for civil society participation in the judicial processes.

Another pre-requisite for the successful implementation of the activities was the building of trust and confidence among the court actors. Ever since the commencement of the project judicial staff have afforded JSMP full co-operation in its monitoring work, a fact attributable in part to JSMP's high quality reporting and regular consultation and discussions with judicial staff about their experiences. Most of the court actors who are the subject of JSMP monitoring have welcomed the opportunity to provide input, which helps ensure the relevance and accuracy of JSMP recommendations and news releases.

Even though JSMP is now successfully established as a local NGO and enjoys the confidence of the court actors, the direct impact of the activities nevertheless remains somewhat hard to measure. In order to examine in more detail JSMP's achievements, it is useful to divide the results into three main areas: judicial accountability, structural reform and public knowledge of the Serious Crimes proceedings.

#### **3.1. JUDICIAL ACCOUNTABILITY**

According to the World Bank development report 2002, one of the key elements in judicial reform is to increase judicial accountability. This will in turn increase the efficiency of the judicial system and promote judges who provide faster and fairer solutions in their cases. The same report highlights the effect that media and civil society monitoring have on changing a judge's behaviour.

The situation in East Timor is no different in this respect. As one of the East Timorese judges noted during a recent meeting with the UNTAET Human Rights Unit and JSMP "*every time I*

*see a JSMP observer in my court room, I try to concentrate even harder and make sure I do not make any mistakes”.*

Although the effect of judicial monitoring on judicial decisions will always be hard to measure, statements as the one above illustrate the subtle impact of trial observation. JSMP observers frequently report glances in their direction from judges who are obviously aware of the observers’ presence and role in the court room. Some judgments even contain references to issues the judges have urged the observers to cover in their reports, such as problems with interpretation and the lack of court transcripts.

Some of the ordinary crimes judges in East Timor have even requested that JSMP observers be present in their court rooms. In acknowledging their limited legal experience, they have encouraged critical review of their own performances with the objective of highlighting areas which warrant reform and improvement. Unfortunately, JSMP does not yet have the resources to conduct as thorough reviews as the judges themselves are requesting.

### **3.2. STRUCTURAL REFORM**

In response to recurring concerns expressed by both internal and independent sources, the latter half of 2001 has seen UNTAET increase its level of attention to the progress of the justice system in order to identify weak areas and initiate structural reform prior to the declaration of East Timorese independence. The work of JSMP has, directly and indirectly, contributed to this process and the JSMP report *Justice in Practice – Human Rights in Court Administration* is frequently cited in relation to judicial reform activities in East Timor.

As briefly mentioned above, the Special Representative of the Secretary General of the United Nations, Sergio Vieira de Mello drew heavily on JSMP’s recommendations in his speech to the Security Council on 30 January 2002. He referred to problems identified in the court administration and his planned strategy for improvement corresponded directly with JSMP’s recommendations from the thematic report.

Similarly, several donors to the justice sector have informed JSMP that they are evaluating whether to channel funding into priority areas identified in JSMP reports.

Even though JSMP has seen improvements since we started our monitoring, the problems facing the justice sector remain daunting. The real challenge will be in the realisation and implementation of the proposed structural changes. Furthermore, the justice system is about to undergo significant transformation post-independence and it is hoped that the Ministry of Justice will take note of the lessons learned to date while making the important decisions about the future of justice in East Timor.

### **3.3. PUBLIC INFORMATION**

Between 1 August 2001 and 15 February 2002 JSMP issued 13 press releases in English and Bahasa Indonesia. The majority of these were published directly or used in reporting by domestic media agencies. JSMP staff also gave 18 radio interviews in the same period; Radio UNTAET 10 times, Radio Timor Kmanek 5 times, Radio Rakambia once and Radio Hironelle twice. The launch of the JSMP thematic report was also covered by TVTL and the UN Public Information Office.

In general, information regarding Serious Crimes in East Timor has been scarce, and reporting has mainly been done by Dili-based newspapers or through the official UN news wire. JSMP has established itself as the main source of reliable and independent information about the court proceedings.

JSMP is also the primary provider of justice-related news and legal developments in East Timor at an international level. In addition to the interviews and briefings given directly to international media as mentioned above, JSMP's website includes detailed and up-to-date legal material and receives approximately 1000 visits per month. In addition, the e-mail list server has been an important means by which people can receive updates on recent developments.

JSMP's participation in public meetings within East Timor, such as the NGO seminar on Justice and Accountability in October 2001, enabled other local organisations to familiarise themselves with the problems facing the justice sector.

### **3.4. CONCLUSION**

The activities of JSMP can certainly be considered a great success. From its early days on borrowed desks in a corridor with a cardboard box for a filing cabinet, JSMP has become a small but important contributor to strategic policy formulation regarding judicial reform in East Timor. Furthermore, JSMP has combined this with a commitment to the dissemination of valuable information to both the East Timorese and international communities. In the first year of operation, JSMP has laid the ground work for future achievements, and established a valuable confidence among court actors. It remains the only organisation developed and based in East Timor that is exclusively dedicated to monitoring the justice system and publicising its findings.

Nevertheless, the shortage of staff and resources has limited JSMP's ability to conduct the level of monitoring and reporting required in East Timor. The combination of high workloads and limited resources has unfortunately led to the publication of fewer reports than originally planned and restricted the cases monitored to those relating to Serious Crimes. JSMP hopes that additional resources for 2002 will enable the production of more reports and a greater number of more diverse public information activities being conducted - especially in the districts outside of Dili. In addition, JSMP hopes to broaden its monitoring activities to include both ordinary crimes cases and the work of the Reception, Truth and Reconciliation Commission.

## **4. FINANCIAL STATEMENT**

In 2001 JSMP received income from two sources: grants from USAID/OTI and the International Commission of Jurists (ICJ), Australian Section.

While the grant from ICJ was to ease the urgent office requirements until more substantial funding was procured, the USAID grant was in-kind and had strict restrictions on use. All objects or costs which were not recurring were purchased directly by the USAID logistician and delivered to the JSMP office. Although this sometimes led to substantial delays in procurement of important items and incompatibility of certain equipment, ultimately the office became operational. Other expenses such as phone bills, petrol and salaries were first covered by JSMP and then reimbursed by USAID. The grant from ICJ therefore had two

functions- either for purchasing objects not included in the USAID funding agreement and secondly as an important petty cash buffer for costs to be reimbursed by USAID.

The original grant period with USAID was from 1 August 2001 to 31 December 2001, and covered a budget of 40 837 USD. The period was later extended until 15 February 2002, while the budget limit remained the same.

The following table gives a short overview of JSMP funds up until 15 February 2002.

<b>JSMP Financial overview (in US\$)</b>	
Contributions 2001	
<i>International Commission of Jurists</i>	2 066.00
<i>USAID/OTI</i>	37 963.00
Expenditure 2001	
<i>International Commission of Jurists</i>	125.00
<i>USAID/OTI</i>	37 963.00
<b>Balance</b>	<b>1941.00</b>