



**Office of the  
Deputy General Prosecutor  
for Serious Crimes  
Timor Leste**

**SERIOUS CRIMES UNIT UPDATE X/03**

22 December 2003

**SCU: INVESTIGATION AND PROSECUTION**

**The Serious Crimes Unit (SCU) was established by the United Nations Transitional Authority in East Timor (UNTAET) following UN Security Council Resolution 1272 (1999). As mandated by the United Nations Security Council, the Serious Crimes Unit is responsible for conducting investigations and preparing indictments to assist in bringing to justice those responsible for Crimes against Humanity and other serious crimes committed in East Timor in 1999.**

Since the independence of Timor Leste on 20 May 2002, the SCU has worked under the legal authority of the Prosecutor-General of the Democratic Republic of East Timor (RDTL). Dr. Longuinhos Monteiro is currently the Prosecutor-General. The Office of the Prosecutor-General is divided into two sections: Ordinary Crimes and the Serious Crimes Unit.

The Serious Crimes Unit is headed by the Deputy General Prosecutor for Serious Crimes who reports functionally to the Prosecutor-General and is responsible for managing the investigations and prosecutions of the SCU. The Deputy General Prosecutor for Serious Crimes is Mr. Nicholas Koumjian who began working at SCU on 20 October 2003.

The SCU currently has **111** staff members including 38 UN International staff including prosecutors, case managers, investigators, forensic specialists and translators as well as 10 UN Police investigators and 35 UN national staff including translators and mortuary staff. In addition, 10 East Timorese trainee prosecutors, case managers, ITU and data coding staff work in teams with International UN staff at SCU as well as a total of 18 East Timorese Police (PNTL) trainee investigators with 12 new trainee PNTL investigators having joined the investigation training programme at SCU in August 2003.

The SCU is divided into 4 Prosecution teams consisting of International prosecutors, case managers and investigators as well as forensic, evidence management and witness management teams. The Prosecution/investigation teams cover all 13 districts of East Timor with District investigation offices currently operating in Dili and Covalima with the SCU Office in Oecussi having been recently closed due to downsizing of UN Police investigators.

SCU is currently investigating and prosecuting cases of Crimes against Humanity, as well as individual offences of murder, rape, torture and other serious crimes committed in East Timor between 1 January and 25 October 1999.

**SCU INDICTMENT INFORMATION**

**Since the work of SCU began, 81 indictments have been filed with the Special Panel for Serious Crimes at Dili District Court. In the indictments, there are charges filed against 369 accused persons.**

The accused in the 81 indictments include 37 Indonesian TNI Military Commanders and Officers, 4 Indonesian Chiefs of Police, 65 East Timorese TNI Officers and soldiers, the former Governor of

East Timor and 5 former District Administrators. At present, 281 of those 369 indicted persons indicted by SCU remain at large in the Republic of Indonesia

### **10 Priority Cases and Additional Cases of Crimes against Humanity**

The 10 Priority case indictments include the Liquica church attack, the Suai Church massacre, the September attack on the compound of Bishop Belo, the Maliana Police station attack, and the TNI Battallion 745 killings. A total of 183 accused persons are charged with Crimes against Humanity in the 10 Priority case indictments with 168 of those 183 accused at large in Indonesia.

The **National indictment** issued on 24 February charges the former Indonesian Minister of Defence and Commander of the Armed Forces, 6 high-ranking Indonesian Military Commanders and the former Governor of Timor Leste with Crimes against Humanity for murder, deportation and persecution during 1999.

To date, 55 of the 81 indictments issued by SCU charge for Crimes against Humanity against 339 accused persons. These indictments include Crimes against Humanity cases such as the Atabae rape cases, the Baucau indictment and the TNI rape case charging 5 East Timorese TNI soldiers with rape as a Crime against Humanity

### **Aileu TNI Soldier indictment**

On **18 November 2003**, a single indictment was filed with the Special Panels for Serious Crimes charging former East Timorese TNI soldier Adolfo Amaral from Aileu district with murder and attempted murder as Crimes against Humanity. Amaral is charged with the murder of Francisco Alexio aka Carvalho and the attempted murder of three men near Kotolau village in Aileu district on 6 September 1999. The indictment alleges that a group of uniformed TNI soldiers fired multiple shots at the group of four men with Amaral allegedly shooting at close range Francisco Alexio who died from his injuries and another victim who survived his injuries. It is believed that Amaral remains at large in the Republic of Indonesia. Arrest warrants have been requested from Dili District Court which when will be forwarded to the Attorney General of the Republic of Indonesia and the Interpol organization when received by SCU.

### **SCU PNTL TRAINING PROGRAMME**

In August 2003, 12 new trainee PNTL investigators joined the investigation training programme at SCU. The 12 PNTL Investigators at SCU recently completed an 8-week Training Course on 21 November 2003 conducted by a USAID-funded Police training consultant and an SCU UNPOL investigator. The course provided the trainee PNTL with specific training in investigations, legal procedure and specific skills related to investigating serious violations of humanitarian law. Crimes against humanity, murder and sexual offences were examined in detail during the course.

The PNTL training course covered how to plan and manage an investigation, including crime scene and evidence management. With the completion of the intensive course, the 12 PNTL are now assigned to SCU operational investigation teams undergoing practical training in the field under the supervision of UNPOL and UN International Investigators in a continuation of their training.

### **TRIALS AT THE SPECIAL PANELS FOR SERIOUS CRIMES**

In 2000, UNTAET set up Special Panels of Judges at Dili District Court to hear cases of Crimes against Humanity and serious crimes from the 1999 period. The Special Panels for Serious Crimes are comprised of two International Judges and one East Timorese Judge to hear cases of Crimes against Humanity and serious crimes from the 1999 period.

To date, there have been **46 convictions, 1 acquittal and 2 indictment dismissals** at the Special Panels for Serious Crimes since trials began (1 indictment dismissal was subsequently re-instated

by the Court of Appeal –see below). Those convicted and acquitted in trials include East Timorese TNI soldiers, East Timorese militia members and an East Timorese Falintil resistance fighter.

Since 1 July 2003, there have been a total of 14 adjudications at the Special Panels for Serious Crimes out of the total of 30 adjudications since trials began in January 2001. At present, 8 trials are currently proceeding at the Special Panels for Serious Crimes with further trials of accused persons in Timor Leste scheduled to commence in the coming months.

#### **The Conviction of Covalima Laksaur militia member Miguel Mau**

The trial of the Miguel Mau began on **13 November 2003**. During the trial, Mau pleaded guilty to three counts of Crimes against Humanity in relation to crimes committed in Tilomar subdistrict on 23 April 1999. The three counts of Crimes against Humanity included the murder of three independence supporters and the enforced disappearance of Lodificus Rabo from Nikir village in Tilomar subdistrict, and the torture of several villagers and the destruction of property in a joint TNI and Laksaur militia attack on Fatukmetan village in Tilomar subdistrict.

On **26 November 2003**, Judges at the Special Panels for Serious Crimes convicted Miguel Mau of Crimes against Humanity including murder, enforced disappearance and persecution. Taking into account the guilty plea of the former Laksaur militia member, the Special Panel of three Judges sentenced Miguel Mau to 9 years imprisonment.

#### **The Conviction of Carlos Soares (aka Carman) from Ermera district**

The trial of Carlos Soares began on **6 October 2003**. During the trial, the SCU Prosecution had argued that Soares stabbed Graciano Mau Mario in Aitura village in Ermera district on 19 September 1999 after being verbally insulted by him, while the Defense counsel claimed that Soares had acted in self-defence. On **24 November 2003**, Judges at the Special Panels for Serious Crimes found Carlos Soares (aka Carman) guilty of murder in violation of section 8 of UNTAET Regulation 2000/15 and article 338 of the Indonesian Penal Code. The Special Panel of Judges found Soares responsible for the murder of Mau Mario sentencing Soares to 4 years and 6 months imprisonment. The case of Carlos Soares is regular murder case from the 1999 period without any connection to the Crimes against Humanity cases against TNI and militia members which are the main focus of the investigations and prosecutions of the SCU.

#### **The Acquittal of TNI soldier Paulino de Jesus**

The trial of Paulino de Jesus began on **4 August 2003**. In the first acquittal at the Special Panels, on **8 December 2003** Special Panel Judges decided by a 2-1 majority to acquit Paulino de Jesus of one count of murder as a Crime against Humanity and one count of attempted murder as Crimes against Humanity. Paulino de Jesus, who was serving as an East Timorese soldier in the Indonesian military (TNI) in Bobonaro district in 1999, was accused of the direct perpetration of one murder and assisting in an attempted murder in Lourba village on 10 September 1999.

Following the acquittal, Paulino de Jesus was released from detention in Timor Leste. Acquittals at the Special Panels can be appealed. According to UNTAET Regulation 2000/30, the Office of the Deputy Prosecutor General for Serious Crimes has ten days to file a notice of appeal.

#### **The Conviction of former Maliana Dadurus militia member Salvador Soares**

The trial of **Salvador Soares** commenced on **29 September 2003**. Soares was convicted on **9 December 2003** of Crimes against Humanity for the murder of two East Timorese UNAMET employees in Maliana on 2 September 1999. Soares was found guilty of murder as a Crime against

Humanity for the stabbing of Ruben Barros and responsible for the murder of Domingos Pereira on 2 September 1999. The defendant was found not guilty of torture as a Crime against Humanity for the beating of Ruben Barros during the incident in front of the family home of Barros in Maliana town. The Special Panel of Judges sentenced the former Dadurus Merah Putih militia member from Maliana to 10 years and 6 months imprisonment.

The two UNAMET employees were specifically targeted in a joint Indonesian military (TNI)-Dadurus militia attack led by a TNI Sergeant as violence began to escalate in Maliana immediately after the popular consultation. The UNAMET killings indictment issued in June 2002 charges a total of 10 individuals including the former Bobonaro district TNI Intelligence Chief, Lieutenant Sutrisno and Bobonaro district TNI Intelligence member, Sergeant Asis Fontes with Crimes against Humanity of murder and torture. INTERPOL Arrest Warrants have been issued by INTERPOL in relation to five of the indicted persons including Lt. Sutrisno, who is believed to continue to serve in the Indonesian armed forces and Sergeant Asis Fontes who is also believed to be residing in Indonesia.

### **The Conviction of former Laksaur Platoon Commander Damiao da Costa Nunes**

The trial of **Damaio Da Costa Nunes aka Damianus** commenced on **29 October 2003** and was concluded on **10 December 2003** when Special Panel Judges convicted Damiao da Costa Nunes of two counts of murder as a Crime against Humanity and one count of persecution as a Crime against Humanity. The former Laksaur militia platoon commander from Covalima district was found guilty of one count of murder for his role in the stabbing of independence supporter Jaime Da Costa Nunes in Mota Ulun Village in Covalima District on 27 August 1999. Nunes was further found guilty of murder for the stabbing of Jose Dos Reis in the chest on 7 September 1999. Nunes was also found guilty of persecution as a Crime against Humanity for the abduction and disappearance of Albino Nahak (aka Albino De Niri) in Suai sub-district on 6 September 1999 who was later found dead. The Special Panel of Judges sentenced Nunes to 10 years and 6 months imprisonment.

### **The Conviction of former TNI Head Sergeant Marcelino Soares**

The trial of Marcelino Soares commenced on **10 September 2003** and on **10 December 2003** a three-Judge Special Panel later sentenced former TNI Head Sergeant Marcelino Soares to 11 years imprisonment for Crimes against Humanity of murder, torture and persecution by unlawful detention in the Hera area of Dili district in April 1999. Soares was found guilty of murder as a Crime against Humanity for the killing of Luis Dias Soares who was beaten to death by TNI members at the TNI post in Hera town on 20 April 1999. Soares was also found guilty of torture as a Crime against Humanity for the beating and torture of Luis Dias Soares and 2 other independence supporters at the TNI post in Hera on 20 April 1999. Soares was further found guilty of persecution for the illegal detention of the three men with one held captive for four days at the TNI post where he was severely beaten by TNI soldiers before being released on 24 April 1999. This is the first case at the Special Panels of a TNI member to be convicted of Crimes against Humanity since trials began in Timor Leste.

The crimes committed on 20 April 1999 at the Hera TNI Post are also charged in the **Hera Indictment** issued by SCU which charges 18 individuals with Crimes against Humanity including murder, torture, deportation and persecution committed in the Hera and Metinaro areas in Dili between April and September 1999. The accused persons include 2 Indonesian military (TNI) commanders in Hera and Metinaro subdistrict and 4 East Timorese TNI soldiers as well as militia commanders. All of the 18 accused in the Hera indictment are believed to be at large in the Republic of Indonesia.

## **The verdict in the trial of former Tim Alfa members from Los Palos**

The trial began on **22 September 2003** with former Tim Saka members Gilberto Fernandes, Jose da Costa and Inacio Olivera charged with Crimes against Humanity for the murder of Verissimo Dias Quintas, the Liurai (local King) of Los Palos on 27 August 1999. On **12 December 2003**, Judges of the Special Panels for Serious Crimes acquitted three former Tim Alfa militia members of the charges of Murder and Persecution as Crimes Against Humanity while convicting the three former Tim Alfa members of Violence Against Property or Persons. The Prosecution alleged that although the three defendants in this trial were not the direct perpetrators of the killing, they played a sufficient role to incur criminal responsibility for the murder. The Special Panel disagreed and acquitted on the charge in Count One of murder as a Crime against Humanity. On Count Two, Persecution as a Crime Against Humanity, the Special Panel re-qualified the crime as “Violence Against Property Or Persons Committed By A Group Of People United For A Common Purpose” pursuant to Article 170 of the Indonesian Penal Code. The evidence presented at trial showed that the accused fired multiple gunshots at the residence of Verissimo Dias Quintas. For this act, the Special Panel Judges sentenced the three men to imprisonment of 1 year and 6 months respectively.

In an indictment issued in November 2002, the Deputy Prosecutor General for Serious Crimes charged 12 persons for the 27 August 1999 attack by BRTT and Tim Alfa members on the house of Verissimo Dias Quintas, including the three who were tried in this case. With the acquittal of the three former Tim Alfa members of murder, 9 indictees remain at large in Indonesia, including Indonesian TNI Kopassus Special Forces Commanders in Lautem district, Rahman Zulkarnean and Syaful Anwar and the former District Administrator of Lautem, Edmundo da Conceicao Silva, described in the SCU indictment, as an Honorary Member of Indonesian TNI Kopassus Special Forces. INTERPOL arrest warrants have been issued for all 9 accused, including Lieutenants Zulkarnean and Anwar who are believed to continue to serve in the Indonesian armed forces.

### **THE COURT OF APPEAL**

The Court of Appeal was established under UNTAET regulation 2000/11 and began to hear appeals in 7 February 2001. The function of the Court of Appeal is to allow parties to cases to appeal decisions of any district courts in Timor Leste. This includes those parties to criminal cases before the Special Panels for Serious Crimes relating to crimes against humanity and other serious crimes committed during 1999.

The President of the Court of Appeal is Dr. Claudio de Jesus Ximenes who sits on a panel of three judges at the Court of Appeal along with one International Judge and one East Timorese Judge. In future months, a number of appeals filed by the prosecution and the defence from decisions of the Special Panel for Serious Crimes will be heard by the Court of Appeal.

### **The Appeal in the case of former Aitarak militia Domingos Amati and Francisco Matos**

On **28 February 2003**, SCU indicted Domingos Amati and Francisco Matos with the murder of Antonio Pinto Soares (aka Charles) in violation of Section 340 of the Penal Code of Indonesia. In a preliminary hearing held on **11 July 2003**, one of the Special Panels had dismissed the SCU indictment charging Domingos Amati and Francisco Matos with the murder of Antonio Pinto Soares (a.k.a. Charles) on 5 September 1999 in the Hera area of Dili. The Special Panel Judges had reasoned that the facts disclosed in the indictment did not amount to “murder” under Section 340 of the Penal Code of Indonesia, which requires premeditation. The Judges had ruled that the facts alleged in the indictment only satisfied the requirements of Article 338, which they interpreted as “manslaughter.” While “murder” committed between 1 January and 25 October 1999 falls within the jurisdiction of the Special Panels, “manslaughter” does not.

Following the dismissal of the SCU indictment, on **21 July 2003** the SCU Prosecution filed an appeal with the Court of Appeal against the decision of the Special Panel. On **9 December 2003**,

the Court of Appeal held that Article 338 of the Indonesian Penal Code qualifies as a “murder” charge and therefore the case fell within the jurisdiction of the Special Panels. The Court of Appeal ruling overturned the dismissal of the indictment by the Special Panel which had interpreted Article 338 as “manslaughter” and therefore outside the jurisdiction of the Special Panels as defined in UNTAET Regulation 2000/15.

The decision overturning the Special Panel decision means that Domingos Amati and Francisco Matos will face justice for murder in a future trial at the Special Panels for Serious Crimes under the murder charges in the original SCU indictment. The 9 December 2003 decision of the Court of Appeal is the first time that the Court of Appeal has applied Indonesian law to crimes committed in Timor Leste since its controversial July 2003 ruling in the case of The Deputy General Prosecutor vs. Armando Dos Santos holding that Portuguese law applied. (See SCU Update VII/03).

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