



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

**SERIOUS CRIMES UNIT UPDATE**

30 April 2004

**SCU: INVESTIGATION AND PROSECUTION**

**The Serious Crimes Unit was established in 2000 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 (SCU) is responsible for conducting investigations and preparing indictments to bring 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, Mr. Nicholas Koumjian, began working at SCU on 20 October 2003.

The SCU is divided into 4 Regional teams comprised of UN prosecutors, case managers, investigators and trainee staff with separate forensic investigation, evidence management and witness support teams. The Regional Investigation and Prosecution teams cover all 13 districts of East Timor with Regional investigation teams currently operating from offices in Dili, Maliana and Manufahi. The SCU Office in Oecussi was recently closed due to downsizing of UN Police investigators at the SCU.

The SCU currently has **110** staff members including 37 UN International civilian staff including prosecutors, investigators, forensic specialists and translators as well as 8 UN Police investigators and 34 UN national staff including translators and mortuary staff. In addition, 12 East Timorese trainee staff work with SCU including prosecutors, ITU and evidence management staff funded by bilateral funds from the Norwegian Government. A total of 17 East Timorese Police (PNTL) investigators are currently undergoing practical training in SCU district investigation teams with UN investigators and UN Police trainers and 2 PNTL officers working in the SCU witness management team.

At present, the Serious Crimes Unit continues to investigate and prosecute cases of Crimes against Humanity, as well as individual offences of murder and rape committed in East Timor between 1 January and 25 October 1999. Since 2001, SCU cases have been prosecuted in trials at the Special Panels for Serious Crimes (SPSC) within Dili District Court. At present, 16 trials are currently proceeding or due to commence at the SPSC.

**SCU INDICTMENT INFORMATION**

**Since the work of SCU began, 83 indictments have been filed with the Special Panel for Serious Crimes at Dili District Court indicting a total of 373 accused persons. SCU indictment charges are currently pending against a total of 313 accused persons.**

Since trials began at the SPSC, a total of 50 defendants have been convicted and 2 defendants acquitted. The SPSC has dismissed 2 SCU indictments against 3 accused with 1 of those dismissed indictments against 2 accused subsequently being re-instated in a Court of Appeal ruling in December 2003<sup>1</sup>. The SCU prosecution has withdrawn a total of 4 the above indictments against 7 accused. 34 of those 313 accused persons are currently on trial or awaiting trial in 16 cases at the SPSC.

At present, 279<sup>2</sup> of those 313 accused persons indicted by SCU remain at large in the Republic of Indonesia<sup>3</sup>. This includes 37 Indonesian TNI Military Commanders and Officers, 4 Indonesian Chiefs of Police, 60 East Timorese TNI Officers and soldiers, the former Governor of East Timor and 5 former District Administrators

## **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 202 accused persons are charged with Crimes against Humanity in the 10 Priority case indictments with 183 of those 202 accused at large in Indonesia.

The **National indictment** issued on 24 February 2003 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, 57 of the 83 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

## **The Indictment and Conditional Release of 3 former Laksaur militia members**

On **9 and 10 March 2004**, three former Laksaur militia members from Suai subdistrict in Covalima district were arrested and subsequently indicted with murder, attempted murder, forcible deportation and persecution as crimes against humanity allegedly committed in Suai subdistrict in October 1999.

On **17 March 2004**, the Special Panels for Serious Crimes denied the request of the SCU Prosecution for pre-trial detention, allowing the suspects to return to their communities where they have lived safely since 1999. The accused are released with the restrictive condition that they remain within the jurisdiction of Timor Leste and report weekly to the police station nearest their residence. The accused are also prohibited from interfering in any way with the ongoing investigation. The Special Panel has scheduled a preliminary hearing for 18 May 2004.

<sup>1</sup> One of the SCU indictments which was dismissed by the Special Penal for Serious Crimes on 11 July 2003 has since been re-stated following a decision at the Court of Appeal on 9 December 2003 which overturned the dismissal of the original indictment of Domingos Amati and Francisco Matos. For more information see Page 6, SCU Update X/03 from 22 December 2003.

<sup>2</sup> The figure for the number of accused persons outside Timor Leste given in the SCU Update X/03 has now changed from 281 to 279. One of the indictees believed to be living in Indonesian West Timor was killed in late 2003. A second indictee in relation to the Maliana indictment was recently arrested in Timor Leste. See Section Below

<sup>3</sup> 25 of those 279 accused persons believed to be outside Timor Leste appear on two separate SCU indictments with a further 2 accused appearing on three separate SCU indictments.

## **The Arrest and Detention of former Dadurus militiaman indicted for the Mulau killings**

On **21 April 2004**, Apricio Guterres (aka Mali Dao aka Mau Buti ) was arrested by PNTL Border Police Unit on suspicion of illegally crossing into Timor Leste from Indonesian West Timor. Following his arrest, Guterres was later identified as a former Dadurus Merah Putih militia member indicted for his alleged criminal acts in the joint TNI–Dadurus militia attack on an unknown number of civilians who were hiding at Mulau on 9 September 1999. On **24 April 2004**, Guterres was then arrested by the SCU. On **29 April 2004**, a judge at the Special Panels for Serious Crimes confirmed the arrest and ordered the detention of the accused in Timor Leste. The SCU Prosecution expects that Guterres will stand trial at the Special Panels in the coming months.

In the SCU Maliana indictment issued on 10 July 2003, Apricio Guterres (aka Mali Dao aka Mau Buti) is indicted for murder as a crime against humanity of a number of civilians, at Mulau on 9 September 1999, including as being one of the direct perpetrators in the alleged stabbing of former UNAMET staff member Carlos Maia who was one of the victims allegedly killed while hiding at Mulau. The victims, including the former CNRT leader for Bobonaro district, Manuel Magalhaes, had fled to Mulau from Maliana Police station following the killings there on 8 September 1999.

The 56 other accused persons indicted in the Maliana indictment include the former Indonesian TNI Military Commander, Police Commander and District Administrator for Bobonaro district. All 56 accused are currently at large in the Republic of Indonesia with most believed to be living near the border in Indonesian West Timor.

## **SCU Withdrawal of Indictment Against 4 former Aitarak militia members**

On 12 February 2004, the SCU Prosecution withdrew charges against four accused former Aitarak militia members at a preliminary hearing held at the Special Panel for Serious Crimes. The four accused had been indicted with persecution as a Crime against Humanity for the abduction and beating of independence supporter Longuinhos da Silva de Jesus. The SCU Prosecution withdrew charges of persecution as a crime against humanity against Domingos Amati, Antonio Maukasa, Jorge Manuel Lopes and Jose Lopes after reviewing the evidence and reaching the conclusion that the evidence was insufficient to prove the charges of Persecution as a Crime against Humanity.

While the charges against the four accused have been withdrawn, an indictment against Mateus de Carvalho, Company Commander D of Aitarak Militia was filed with the Special Panel for Serious Crimes on 25 September 2003. The Aitarak militia commander of Company D - Mateus de Carvalho is charged with other multiple counts of crimes against humanity including charges for the abduction and disappearance of Longuinhos da Silva de Jesus on 1 May 1999.

The four accused are no longer charged with above crimes. However, one of the accused in the withdrawn case, Domingos Amati remains indicted in two other SCU indictments. In one indictment, Amati is charged together with Francisco Matos with the murder of Antonio Pinto Soares in the Hera area of Dili on 5 September 1999. In a separate indictment Domingos Amati is charged with 7 other accused with two counts of crimes against humanity, involving the alleged persecution by abduction, and torture of Sebastiao Gusmao and Thomas Ximenes at the TNI compound in Akanunu in Dili district on 8 May 1999. The trial is scheduled to commence in May 2004 at the Special Panel for Serious Crimes.

## **Brief Submitted to the Special Panels on Wiranto Arrest Warrant Application**

Former General Wiranto is the highest-level official indicted by the Serious Crimes Unit (“SCU”) since investigations and prosecutions began in 2000. The indictment filed on 24 February 2003 accused General Wiranto, six other high-level Indonesian military commanders and one East Timorese official of command responsibility for Crimes Against Humanity. The indictment alleges that General Wiranto, at the time Minister of Defense and Security and Commander of the Indonesian Armed Forces, was responsible under international law for the Crimes Against Humanity of murder, deportation and persecution for failing to punish or prevent crimes committed by his subordinates or those acting under his effective control in the period before and after the 1999 popular consultation in East Timor.

On 28 January 2004, the Deputy General Prosecutor for Serious Crimes in Timor Leste filed a motion with the Special Panel of Judges for Serious Crimes requesting a public hearing regarding the pending application for an arrest warrant against General Wiranto. On 18 February 2004, an International Judge at the Special Panels for Serious Crimes denied the motion on the grounds that such an oral hearing was not provided for in the regulations of the Special Panels and indicated that the application for an arrest warrant would be decided based upon written submission.

On 19 March 2004, the Deputy General Prosecutor for Serious Crimes submitted a “Brief in Support of the Application for the Issuance of an Arrest Warrant for Wiranto” to the Special Panels for Serious Crimes. The document summarises the relevant law regarding the charges of command responsibility for Crimes against Humanity and the voluminous evidence that has been filed with the Special Panels in support of the charges. Approximately 15,000 pages of evidentiary material have now been filed with the Special Panels in support of arrest warrants for General Wiranto and the seven other high level accused in the indictment.

At present, all charges in the indictment against General Wiranto and others remain pending. An arrest warrant against one of the accused, Lt. Col. Yayat Sudrajat was issued by the Special Panels in November 2003, while the applications for warrants for the other seven co-accused still await rulings by the Special Panel for Serious Crimes.

#### **SCU RELATED INFORMATION**

#### **Ceremony to Mark Appointment of Deputy Prosecutor General for Serious Crimes**

On 19 January 2004, a ceremony was held at the Palace of Ashes to mark the appointment of Mr. Nicholas Koumjian as Deputy General Prosecutor for Serious Crimes in Timor Leste. Mr. Koumjian was a prosecutor in the United States for twenty years before spending the last three years before taking up his post in East Timor prosecuting war crimes for the United Nations at the International Criminal Tribunal for the Former Yugoslavia.

President Xanana Gusmao began the ceremony by speaking of the delicate and difficult task of seeking justice and reconciliation noting that those pursuing these goals could help each other to achieve the ultimate benefit of a brighter future for the citizens of East Timor living in a free and just society.. The Prosecutor General of East Timor, Longuinhos Monteiro, stressed the importance of the development of the judicial sector to the development of Timor Leste: “Justice and democracy cannot be separated, no peace is possible if justice is not done”. The Prosecutor General then administered the oath of office, in which Mr. Koumjian swore to perform his duties “independently...without improper influence from any source, whether within or outside the civil administration of East Timor.”

Mr. Koumjian thanked President Gusmao for hosting the event stating that he recognized the solemn responsibilities he was undertaking and the great challenges ahead in the work of the Serious Crimes Unit. He stated that he recognized the great hopes of the East Timorese people that the crimes they suffered would be recognized and the perpetrators brought to justice and the sense of

responsibility within the international community to fight against impunity for those that committed crimes against humanity.

### **Proposal on SCU in UN Secretary General Report to the UN Security Council**

On 13 February 2004, in a public report to the UN Security Council concerning the UNMISSET mission, the UN Secretary General, Kofi Annan reported on the current status of the Serious Crimes process in East Timor: “The great majority of those indicted for serious crimes remain outside of East Timor. Progress in [the Serious Crimes Process] will also depend upon the support of other [UN] Member States, whose close cooperation with international and Timorese officials will be crucial. I firmly believe that the perpetrators of serious crimes in 1999 in Timor-Leste must be brought to justice.”

In the Report, the UN Secretary General specifically recommends that the continuation of assistance and funding from the international community to the investigations and prosecutions of the Serious Crimes Unit, the Special Panels for Serious Crimes and the Defence Lawyers Unit continues until May 2005 “with an increasing emphasis on defence and the judiciary, rather than investigation, reflecting the current phase in the process”. The UN Secretary General recommended the provision of assistance to the Serious Crimes process for a further year “as essential to make progress towards completing the serious crimes process, including in particular the 10 "priority" cases”<sup>4</sup>.

### **SCU and the Commission on Reception, Truth and Reconciliation (CAVR)**

Between October 2002 and February 2004, SCU has received a total of 1542 statements from CAVR in relation to deponents from across the districts of Timor Leste volunteering for the CAVR Community Reconciliation Process. SCU has examined every statement received from the CAVR against the SCU database of suspects who are believed to have participated in serious crimes in 1999. From the 1542 statements received SCU has exercised its jurisdiction in 84 cases stopping those individuals from entering into Community Reconciliation agreements due to suspected participation in serious crimes.

### **SCU Training**

The Serious Crimes Unit continues to provide training to national trainee staff through bilateral funds from the Norwegian Government. Five trainee prosecutors who have worked at SCU since 2002 are now gaining practical experience working in the national public prosecution service under the Deputy Prosecutor General for Ordinary Crimes. A trainee prosecutor and case manager work on SCU Prosecution teams while a data-coder, an evidence custodian and three IT trainee staff work in SCU support teams.

### **SCU PNTL Investigation Training Programme**

With the completion of the intensive training course in investigations, 17 PNTL officers are presently assigned to SCU operational investigation teams. Under the supervision of UNPOL and UN International investigators, the PNTL officers are undergoing a practical training programme in the continuation of their training at SCU.

On 9 March 2004, the New Zealand Consul General in Dili, Mr. Peter Guinness, presented a grant of \$20,000 from the New Zealand Agency for International Development (NZAID) under the New Zealand Ministry of Foreign Affairs and Trade to the Serious Crimes Unit. The grant follows a project proposal from the Prosecutor General to NZAID requesting funding for SCU to assist in the development of the practical skills of PNTL trainee investigators at SCU through investigative

<sup>4</sup> United Nations S/2004/117 Paragraph 32 and 33. For further details of the 10 Priority cases see page 2 and in relation to the 5 accused in three of the 10 Priority cases currently on trial or awaiting trial -see pages 3, 9 and 10.

experience in the field. The grant will be spent mainly on investigation support equipment including Global Position System (GPS) equipment for identifying crime scenes and assisting investigations in remote areas as well as per diem payment for PNTL officers carrying out investigations in the field. The project will continue until 30 June 2004.

### **Correction to Reports on SCU in East Timor National Print Media.**

In March 2004, the East Timorese national print media published comments in separate reports that the work of SCU is 90% completed and also that the work of SCU is completed. This information is incorrect as many SCU investigations into cases of Crimes Against Humanity from 1999 remain under investigation and the preparation of further SCU indictments continues. The prosecution of SCU cases of Crimes Against Humanity and serious crimes continues at the SPSC with 16 cases currently proceeding or schedule to proceed in trials.

### **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 two Special Panels for Serious Crimes in Timor Leste are comprised of two International Judges and one East Timorese Judge.

Since trials began at the Special Panels in 2001, a total of **50 defendants have been convicted with 2 defendants having now been acquitted** of all charges. Those convicted in trials include East Timorese TNI soldiers, East Timorese militia members and an East Timorese Falintil resistance fighter. Of the 50 defendants convicted by the SPSC more than 50% (27 defendants) have received sentences of under 10 years imprisonment from the Special Panels with 13 of those 27 defendants receiving sentences of 5 years or under.

At present, **16 cases with a total of 34 defendants** are currently proceeding or are scheduled to commence at the Special Panels for Serious Crimes in the coming months.

#### **The Conviction of former Laksaur militia member from Covalima**

On **6 February 2004**, Judges at the Special Panels for Serious Crimes convicted Joanico Gusmao of one count of murder as a Crime against Humanity. The former Laksaur militia member from Covalima district had pleaded guilty shortly before his trial for the murder of independence supporter Felix Mali in Sukaer Laran Village in Suai subdistrict on 5 September 1999. Taking into account his plea of guilt, the Panel of three Judges at the Special Panel for Serious Crimes sentenced Joanico Gusmao to 7 years imprisonment with time deducted for time spent in detention. A written judgment will be issued by the Special Panels for Serious Crimes at a later date.

#### **The Conviction of former Besi Merah Putih militia member from Liquica**

On 9 March 2004, Judges at the Special Panels for Serious Crimes convicted Abilio Mendes Correia of inhumane acts as a Crime against Humanity. The former Besi Merah Putih (BMP) militia member had pleaded guilty to inhumane acts against Mariano da Costa in Liquica district on 9 August 1999. Taking into account his plea of guilt, the panel of three judges at the Special Panels for Serious Crimes sentenced Abilio Mendes Correia to 3 years imprisonment.

On 8 March 2004, Abilio Mendes Correia had publicly expressed his regret for his actions before judges at the Special Panel for Serious Crimes. A plea agreement between the SCU Prosecution and

the accused and his Defence Counsel was submitted to the Special Panels. Due to the defendant's admission of guilt to the charge of inhumane acts as a Crime against Humanity, the SCU Prosecution withdrew one count of murder as a Crime against Humanity for the murders of Tobias Alves Correia and Elias Ataidi on 27 April 1999 and one count of torture as a Crime against Humanity for the torture of Mariano da Costa on 9 August 1999. The original SCU indictment alleges that Mariano Da Costa was severely beaten and tortured by militia members before Indonesian military (TNI) Intelligence Officer Tome Diogo and BMP commander Zacharia Alves ordered that the victim be taken to West Timor to be killed.

The SCU Prosecutor in the case, Mr Per Halsbog, explained that the SCU Prosecution decided to withdraw the charge of the murder of Tobias Alves Correia and Elias Ataidi based upon an evaluation of the available evidence to prove that charge. Abilio Mendez Correia was not a direct perpetrator but had been present with the perpetrators at the time of the murders. From the evidence available, it was not possible to prove any action on the part of the defendant at the time of the murders, and the prosecution concluded it would be unlikely that the judges of the Special Panel could be convinced beyond a reasonable doubt that the mere presence of Corriera had contributed to the murder.

The original SCU indictment against Correia alleges that TNI Intelligence Officer Tome Diogo and TNI member Rozedine Brek ordered the arrest of three men including Tobias Alves Correia and Elias Ataidi by TNI soldiers and BMP militia members. The indictment alleged that two BMP militia members were ordered to kill Tobias Alves Correia and Elias Ataidi on 27 April 1999. The withdrawal of the charges of murder and torture against Correia in the plea agreement does not in any way alter the charges against the 9 other persons who remain indicted in the Liquica indictment for these specific crimes in addition to other crimes committed across Liquica district between April and September 1999.

In the Liquica indictment issued on 22 November 2001, 9 individuals were specifically charged with individual and superior criminal responsibility for Crimes against Humanity in relation to the murder of Tobias Alves Correia and Elias Ataidi 27 April 1999 and the enforced disappearance and inhumane acts against Mariano Da Costa on 9 August 1999. The 9 accused persons include Liquica TNI Commander Lt. Colonel Asep Kuswani and the Liquica Police Chief Lt. Colonel Adios Salova, Liquica District Administrator Leoneto Martins and TNI intelligence officer Tome Diogo who are charged with these specific crimes.

The Liquica indictment charges a total 21 individuals with Crimes against Humanity including extermination and persecution for crimes committed across Liquica district between April and September 1999. The crimes include the attack on Liquica church compound by TNI soldiers, Police and BMP militia on the on 6 April 1999. Of the 21 accused in the Liquica indictment, 9 accused individuals were members of the Indonesian security including Lt. Colonel Asep Kuswani, Lt. Colonel Adios Salova and Liquica Deputy TNI Commander Captain Purwanto. All of the accused persons in the Liquica indictment are believed to be resident in Indonesia and INTERPOL Arrest Warrants have been issued for the 21 accused persons.

### **The Conviction of former Saka Loromonu militia commander from Batugade**

On 17 February 2004, Judges at the Special Panels for Serious Crimes convicted Lino de Carvalho of murder as a Crime against Humanity. The from Batugade in Bobonaro district had pleaded guilty to the murder of independence supporter Sabino Pereira from Maliana in Palaka village in Balibo subdistrict on 6 September 1999. Taking into account his plea of guilt, the Panel of three Judges at the Special Panels for Serious Crimes sentenced Lino de Carvalho to 7 years imprisonment.

The SCU indictment alleges that Batugade Saka Loromonu militia members including the accused abducted Sabino Pereira from Atambua in Indonesian West Timor where he had fled in September 1999. It is alleged that Pereira was taken to the Saka Loromonu militia headquarters in Batugade in East Timor where he was allegedly severely beaten and orders to kill Pereira were given by Saka Loromonu militia commander Ruben Monteiro Goncalves. Pereira was taken to Palaka village where he was stabbed to death by the accused and other militia members. The victim was later decapitated.

In the plea agreement between the SCU Prosecution and the accused and his Defence Counsel, the SCU Prosecution agreed to withdraw two counts of inhumane acts as Crimes against Humanity against the accused due to his plea of guilt to the count of murder. In the SCU indictment the accused had been charged with the abduction and beating of independence supporters on 14 April 1999 and the abduction and beating of four teachers on 7 May 1999 by Indonesian military (TNI) and militia members including the defendant at the Saka Loromonu Militia headquarters in Batugade in Bobonaro district.

The SCU indictment issued in May 2001 also charges former Saka Loromonu militia commanders Ruben Monteiro Goncalves and Ruben Pereira Tavares with one count of murder as a Crime against Humanity for the murder of Sabino Pereira and three counts of inhumane acts as Crimes against Humanity including those mentioned above. SCU Investigators believe that the two accused are currently living in Atambua in Indonesian West Timor.

### **The Conviction of Umbertus Ena and Acquittal of Carlos Ena from Oecussi district**

On 23 March 2004, Judges at the Special Panels for Serious Crimes gave an oral decision in the trial of brothers Umbertus and Carlos Ena. The Judges announced that they had found Umbertus Ena guilty of murder and inhumane acts as crimes against humanity while acquitting co-accused Carlos Ena of all charges. The panel of three Judges at the Special Panel sentenced Umbertus Ena to 11 years imprisonment.

The former Sakunar militia member Umbertus Ena, aka Mala Cloe, from Naetuna village in Oecussi was found guilty of murder and inhumane acts as crimes against humanity in relation to the murder of two independence supporters and the commission of inhumane acts against a third independence supporter. The Special Panel Judges convicted Umbertus Ena of the murder of Ernesto Lafu and Vicente Quelo aka Mala Quelo who were hacked to death during a Sakunar militia attack on Nakome village on or around 9 September 1999. Umbertus Ena was also convicted for inhumane acts committed against Serafim Tolo who sustained severe injuries.

In the oral decision, the Special Panel Judges announced that they had acquitted Carlos Ena of the charges of murder and inhumane acts as crimes against humanity. Carlos Ena had been accused of the same charges as Umbertus Ena. A written decision explaining the reasons behind both the conviction and acquittal is expected shortly.

### **Ongoing Trials at the Special Panels**

#### **The Trial of Former Sakunar militia member in Passabe <sup>5</sup>**

<sup>5</sup> The Passabe Case is one of the 10 Priority Cases



The trial of Florencio Tacaqui commenced at the Special Panels for Serious Crimes within Dili District Court on **11 July 2003**. From 3 to 5 March 2004, in an initiative of the Special Panel for Serious Crimes, witnesses testified in the trial at a temporary courtroom set up in Passabe Police Station in Oecussi district. The former Sakunar militia member is currently on trial charged with 8 counts of crimes against humanity including murder and extermination for his alleged participation as a direct perpetrator in the murder of 18 men in three villages in Nitibe subdistrict on 8 September 1999 and 47 men in Nifu Panef in Passabe on 10 September 1999 in what has become known as the Passabe massacre.

This was the first time that a Special Panel trial has been conducted outside Dili, community leaders attended the public trial in Passabe and responded positively to seeing at first-hand one of the accused in the Passabe massacre facing justice. The SCU Prosecutor in the trial, Mr. Charles Nsabimana commented: “The large number of people who came to the trial shows that communities in East Timor remain adamant that the perpetrators of the many crimes against humanity in East Timor in 1999 must continue to be brought to justice at the Special Panels for Serious Crimes.”

Florenco Tacaqui is one of 11 accused persons charged in the SCU Passabe indictment issued on 27 September 2001. The Passabe indictment charges for crimes against humanity of murder, extermination, inhumane acts, persecution and deportation committed in Oecussi district including the murder of 18 men in three villages in Nitibe subdistrict on 8 September 1999 and the murder of 47 men in the Passabe massacre in Nifu Panef on 10 September 1999. The accused include the Indonesian military (TNI) commander in Passabe subdistrict Anton Sabraka and TNI Sergeant Andre Ulan, Passabe village chief Gabriel Kolo and Sakunar militia commanders Simao Lopes, Laurentino Soares alias Moko and Bonifacio Bobo alias Bone and Florenco Tacaqui. INTERPOL Arrest Warrants have been issued for the remaining 10 accused in the Passabe indictment who are believed to be at large in Indonesia.

The trial of Florenco Tacaqui is scheduled to continue at the SPSC in Dili on **4 May 2004**. The trial of two other former Sakunar militia members charged in a separate indictment with the Passabe massacre is expected to commence at the Special Panels for Serious Crimes in the coming months. The former Passabe subdistrict Sakunar militia commander Januario da Costa and former Sakunar militia member Mateus Punef are charged, *inter alia*, with extermination as a crime against humanity in relation to the Passabe massacre on 10 September 1999.

### **The Trial of Former Aitarak Company A Commander and Aitarak militia member from Dili**

The trial of Beni Ludji and Jose Pereira began at the SPSC **12 February 2004**. The former Aitarak Company A Militia Commander from Wenapu in Indonesia and the former East Timorese Aitarak member from Maserinhas in Dili are accused of murder as a Crime against Humanity in relation to the murder of independence campaigner Guido Alves Correia, at his home in Mascarinhas, Dili on 1 September 1999. Beni Ludji is the first Indonesian national to stand trial in Timor Leste for crimes against humanity committed in Timor Leste in 1999. The trial is scheduled to continue on **3 May 2004**.

### **The Trial in the Case of the 17 April Dili Attack on the House of Manuel Carrascalao<sup>6</sup>**

The trial of **Marculino Soares** is scheduled to commence on **10 May 2004**. The former Besi Merah Putih militia commander from Guico village in Liquica district is accused of persecution, murder and other inhumane acts as Crimes against Humanity. The charge of murder as a Crimes Against Humanity against Marculino Soares specifically relates to his alleged participation in the joint TNI-BMP militia attack on the house of Manuel Carrascalao in Bairro Lecidere on 17 April 1999 in which 12 people were killed including the son of Manuel Carrascalao.

<sup>6</sup> The Dili Rally 17 April 1999 indictment is another of the SCU 10 Priority Cases.

On 18 February 2002, the Deputy Prosecutor General for Serious Crimes filed the Dili Rally indictment which charged 17 accused including former PPI Deputy Commander Eurcio Gueterres, Liquica TNI intelligence officer Tome Diogo, 6 East Timorese TNI soldiers and 4 BMP commanders with persecution, murder and other inhumane as crimes against humanity. The indictment alleges that on 17 April 1999 PPI militia commanders organized the pro-autonomy Dili rally in front of the main government office in Dili. During the rally, Eurico Guterres, ordered all militia from that day onwards 'to seek out and capture' pro-independence supporters and turn them into an 'international tribunal' stating that if they resisted 'to shoot them.' In the speech, Guterres identified the Carrascalao family as traitors to the integration cause. After the rally, TNI soldiers and BMP militia members attacked various Dili neighbourhoods including house of Manuel Carrascalao where many individuals were seeking refuge. While the accused Marculino Soares is currently on trial at the SPSC in Timor Leste, the remaining 16 co-accused in the Dili Rally case remain at large in the Republic of Indonesia.

### **THE COURT OF APPEAL**

The Court of Appeal was established under UNTAET regulation 2000/11 and began to hear appeals in July 2000. 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 Court of Appeal is currently functioning as the highest court of law and the guarantor of a uniform enforcement of the law, and has jurisdiction throughout all the national territory. The Court of Appeal is currently operating as the last instance for all legal matters and administers justice on matters of legal, constitutional and electoral nature.

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 continue to be heard by the Court of Appeal.

### **The Reduction of the Sentence of Carlos Soares from Ermera district**

On 31 May 2001, the Special Panel for Serious Crimes under section 340 of the applicable Indonesian Criminal Code found Carlos Soares guilty of the premeditated murder of Louis De Deus in Auleun in Lete Fohu on 10 September 1999. The SPSC judges sentenced the former Darah Integrasi militia member to 15 years and 6 months imprisonment. On 6 July 2001, the Defence Counsel of Carlos Soares filed an appeal against the conviction and the sentence imposed by the SPSC.

On **11 February 2004**, the Court of Appeal handed down a decision which confirmed the SPSC conviction of Carlos Soares for premeditated murder and reduced his sentence from 15 years 6 months to 13 years imprisonment. Accordingly, Carlos Soares will serve the remainder of his sentence at Becora Prison.

### **The Confirmation of the Conviction and Sentence of Jose Valente from Los Palos**

On 19 June 2001, the Special Panel for Serious Crimes found Jose Valente, a former Tim Alfa militia member, guilty of committing premeditated murder of Benedito Marques Cabral on 25 September 1999 in Lautem district. Valente was sentenced to 12 years 6 months imprisonment. On 26 July 2001,

the Defence Counsel of Valente filed an appeal against the decision of the SPSC arguing that Valente had not committed premeditated murder but should only be found guilty of manslaughter. The Defence Counsel also sought a reduction in the length of the sentence.

On **5 April 2004**, the Court of Appeal confirmed the conviction and the sentence imposed by the SPSC. Accordingly, Jose Valente will serve the remainder of his sentence at Becora Prison.

### **The Future Prosecution Appeal of the Acquittal of TNI soldier Paulino de Jesus from Bobonaro**

On **8 December 2003**, the Special Panel for Serious Crimes 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. The former East Timorese soldier in the Indonesian military (TNI) from Bobonaro district 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.

The Special Panel published its written decision acquitting the defendant on **23 February 2004**. In the written decision, the Special Panel judges did not dispute that the crimes occurred, but rather that the prosecution failed to provide convincing evidence that Paulino de Jesus was the one who committed the crimes: "There is no solid and clear evidence with regard to the authorship of the crimes imputed to the accused, Paulino de Jesus".

In accordance with UNTAET Regulation 2001/25, the Prosecution filed a notice of appeal of final judgment on **25 February 2004** and submitted its written appeal statement detailing the grounds of appeal on **29 March 2004**. After the Defence Counsel files its response to the Prosecution appeal, the Court of Appeal will set a date to hear the appeal.

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