



UNMIT/Serious Crimes Investigation Team (SCIT) newsletter issue 7 Feb 2011

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**Investigating 1999 to assist Justice in Timor-Leste**

[www.unmit.org/rule of law/serious crimes investigation team](http://www.unmit.org/rule%20of%20law/serious%20crimes%20investigation/team)

• **In February, the Parliament postponed debate on laws on reparations** for the victims of human rights violations (1974-1999) and on the creation of "Memory Institute" to implement recommendations from the two truth commissions—CAVR and CTF. A group of parliamentarians filed a petition to postpone debate until issues regarding compensations for veterans are solved

• **The United Nations Working Group on Enforced and Involuntary Disappearances (WGEID)** visited Timor-Leste from 7-14 February. Among their conclusions: "without effective criminal justice for serious crimes there cannot be lasting peace"

• **The UN Security Council** met in February and decided to extend UNMIT's mandate until February

## Questions & Answers



### **If I gave my statement to the CAVR, is SCIT going to investigate the case?**

Until 2005, all the Serious Crimes cases committed in 1999, such as, murder, rape, torture, that were reported to the Reception, Truth and Reconciliation Commission (CAVR in Portuguese acronym) were forwarded to the former Serious Crimes Unit at the Office of the Prosecutor-General of Timor-Leste for investigation and consequent prosecution, in case there was enough evidence. The less serious cases went through the Community Reconciliation Process organized by the CAVR.

### **If I talk to a SCIT investigator, or the Prosecutor, will other people be able to read my statement?**

Article 75 of the Criminal Procedure Code, provides that the criminal proceedings only become public after the indictment is presented in the court and even then, access to the documents in the case file is subject to the authorization of the court. During the investigation only the investigators and the prosecutors have access to the files. Also judges when deciding about a particular issue e.g pre-trial detention have access to evidence supporting the claim. After the indictment is filed with the court judges have full access to the files. The accused, his/her defender as well as the aggravated person may ask for copies of the proceeding records. The prosecutor (during the investigation) or the judge (during the trial) may authorize it if it is in the interest of justice. (art. 77). All these people, as well as the court clerks who handle files are obliged by law to keep them confidential. Timorese law – the Criminal Procedure Code, article 74 – guarantees that "Every procedural participant and any person who, in whatever capacity, come into contact with the proceeding and become acquainted, in entire or in part, with the content thereof, are not allowed to make it public". In addition if a witness is afraid to give a statement, he/she can always inform the police or the Prosecutor and request for protection, under the Witness Protection Law nr. 2/2009.

### **Can I refuse to give a statement to SCIT, if I witnessed a crime in 1999?**

According to Timorese law – Criminal Code, article 279 – whoever gives a false statement or refuses to give a statement can be tried for a crime of obstruction of justice and sentenced up to 5 imprisonment.

### **After I give a statement to the investigator, do I still have to go to court and tell the same thing?**

Yes, according to the law the Court has to hear the witness. Article 266 of the Code of Criminal procedure says that "The court's opinion may only be based on proof that has been either produced or examined at the hearing". This means the witness has to go to the court, also to allow for prosecution, defence and judges to ask questions. Furthermore, if necessary the State will assist the witness by providing transport, accommodation and/or meals to allow people to fulfill their duty citizens.

### **What is going to happen after SCIT concludes the investigations?**

Every time SCIT concludes investigations in a case, it sends all the evidence it collected about the case and its recommendations to the Office of the Prosecutor-General. The OPG will then analyze the case and decide whether there is enough evidence to file an indictment with the court or to close the case. Once SCIT concludes all investigations into serious crimes of 1999, the Team will be closed, in its current design. However Timor-Leste has the legal framework and institutions to follow-up on this work.

# SCIT info

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## Receiving information about the law is good for peace



UNMIT Photo/Júlia Alinhho

From the end of 2009 and during 2010, UNMIT's Serious Crimes Investigation Team, Human Rights and Transitional Justice and Democratic Governance Support units conducted outreach activities in 62 of the 64 sub-districts of Timor-Leste. A total of 9481 people participated in the activities which included the screening of the CAVR film "Road to Peace" and community meetings on democracy and justice. Participants asked us to extend these activities to the suco level because "information about the law can prevent conflict".

The objectives of the outreach programme were to raise awareness about what UNMIT is doing to support Timorese institutions in their efforts to promote accountability for past human rights violations, to establish a programme of reparations for the victims and to promote good governance.

We also explained our legal framework and procedures. We answered questions about the process, gathered perspectives and collected their questions regarding specific cases being investigated by SCIT.

External partners were invited to participate. Organizations such as the Ombudsman for Human Rights, Post-CAVR secretariat, former commissioners of the Truth and Friendship Commission and the NGO Community transformation institute participated in some of the sub-districts. A total of 7518 people watched the film "Dalan ba Dame" and 1963 people attended the meetings.

Participants were very positive about the initiative, which they recommended to be extended to the suco level. "People need to know more about the law and their rights". "This can prevent conflict", said Inácia dos Santos in Nain Feto, Dili. "UNMIT should also invite political party members and the Government representatives should also come to talk about these issues", said Gregorio Santos in Liquiça.

The Ministry of Justice and the Court of Appeal provided 460 copies of the Penal Code that were distributed to sucos, PNTL agents and teachers.



SCIT works under the direction and supervision of the Office of the General Prosecutor of Timor-Leste

### **Editorial:**

In this first issue of 2011 of our newsletter, we wish to inform you about the outreach effort we made last year, to explain our work in the most remote communities. We thank the sub-district administrators and all organizations such as the Ombudsman for Human Rights for their support and cooperation, for providing documents and participating in the meetings. We are pleased to project two organizations that represent the victims and their families of past human rights violations. We also answer questions that people put forward during the community meetings.

**Marek Michon**  
Head of SCIT

## 12th November Committee locates victims of the Santa Cruz massacre

"The families have the right to know what happen to their relatives, said Gregório Saldanha. 12th November Committee tasks involve registration and selection of the victims of the Santa Cruz Massacre for medals and humanitarian assistance. Since 2008, the 12th November Committee, a non-governmental organization, has been making efforts in locating and assisting in exhumations, and returning remains to the families.

On 12 November 1991, Gregório Saldanha was one of the leaders of the Timorese Youth Association (OJETIL) that organized and participated in the pro-independence rally on the way to Santa Cruz Cemetery in Dili. The Indonesian military intervention resulted in the death of dozens of people and in the arrest of Saldanha and others.

Saldanha was tried for his role in the organization of the Rally and convicted to life imprisonment by an Indonesian court. Upon his return to Timor-Leste in 1999, after eight years of imprisonment in Cipinang prison, Jakarta, he decided to find out what had happened to his companions after the massacre. It took him eight years to set up a team for the registry of victims, not only the ones who were killed, but also the survivors.

The Committee has registered a total of 2,261 people who participated in the 1991 demonstration. Of those, 74 have been identified as having been killed that day and 127 as having died later due to several causes. This leaves the number of survivors at 2,060. "But the numbers can change, since we are still receiving new information", said Saldanha.

Based on the registry, the 12th November Committee makes recommendations for decoration of the participants of the demonstration. A total of 969 already received medals from the State. The Committee also makes recommendations to the Government for humanitarian assistance to the victims who are in the greatest need.

"We also realized the need to look for the remains of the missing victims. So, we establish a Committee of the Families of the Missing", stated Saldanha. This is one of the most important activities of the 12<sup>th</sup> November Committee. In 2008, the Committee started to have the support of an International Forensic team from Australia



and Argentina to locate and exhume the remains of the victims.

"We did the first excavation at Tibar, which had a good result", said Saldanha. When the Committee receives a request from a family, it contacts the forensic team that has authorization from the Government and Prosecutor-General to do this work. The Committee assists the Team in performing the exhumation. Saldanha confirmed the police is kept informed that oversees the exhumation process.

The work of the Committee is restricted to the victims of Santa Cruz. Saldanha is positive about the prospect of the Parliament approving the new laws on a reparation programme for the victims and the creation of a new institution mandated to search for all victims of the 1974-1999 conflict.

Once the new institution is in place, the Committee plans to handover the results of its work. "It is better to have a strong institution based on law doing this work rather than ad-hoc activities", said Saldanha.

Regarding the judicial process, Saldanha said: "We are not against a tribunal but our priority is to find the whereabouts of the victims. This is a very sensitive issue. So if we bring the perpetrators to the court it gets difficult to retrieve information. It is complex and we must find a balance". With its work, the 12th November Committee tries to bring some relief and comfort to the families of the victims and restore their dignity. Explaining further, Saldanha said: "people have the right to be buried in an appropriate place the families have the right to information about the whereabouts of their relatives."

Augusto Pires, President of Association of Victims and Families of Victims of Human Rights Violations – Conflict 1974-1999

## "Victims feel that justice has not yet been served"

**This association was founded in September of 2009 to advocate for the interests of victims of human rights violations during the period from 1974-1999. Representatives of the 13 districts chose Augusto Pires to preside over the Association. Pires explained the primary objective of the Association is "the fight for justice, in the broader sense, because "the victims feel that justice has not yet been served."**

### How did the idea arise to create the Association?

The idea came from the community, especially the victims who feel isolated in the villages and sub-districts. They had already been demanding the authorities to provide for justice and reparations through local and district associations and organizations. So we brought together all these ideas and sought out national and international partners and donors. The HAK association and the ICTJ (International Center for Transitional Justice) responded positively and they helped organize the National Congress of Victims of 1974-1999 Human Rights Violations in September of 2009. During this congress, we created the national victim's association of Timor-Leste.

### What are the primary objectives of the Association?

The primary objective of the Association is to fight for justice. To this day, victims and victim's families do not feel justice (social and criminal justice) has been delivered. This is what led us to create the association, to demand from the Government of Timor-Leste to ensure a viable justice for all families that suffered during the conflict and struggle for independence.

### How do you intend to achieve these objectives?

To achieve these objectives, first we believe we must strengthen our organization and consolidate it down to the sub-district level. We will prepare an advocacy plan and then initiate a dialogue with the Government of Timor-Leste to implement a programme for reparations to victims such as money, monuments, and collective reparations, like scholarships and health facilities for the most affected communities. We wish to achieve this objective within the next five years and we are optimistic because the Parliament has already initiated debate on two new laws for this purpose. Our struggle for justice includes lobbying so that family members of the disappeared can find out where the bodies of their loved ones are located. To date, the great majority of families do not know where they are. Some were buried in hidden graves, and others were taken to Indonesia. This is why we ask the Government of Timor-Leste to aid the victims' families to locate their loved ones. Moreover, there are still many criminals walking around freely on the other side



of the border. This all must be resolved. This is what the victims' families wish to happen as soon as possible. This is what we call justice.

### Can you explain how your Association wants it to be 'resolved'? What do you call justice?

Bring the perpetrators to the court. That is what we understand as justice. We need a viable justice. Whoever murdered or massacred people, justice must decide. If the court says that their actions were the result of circumstances of war, we will accept that. But, if the court says that they are to be held responsible, that they deserve a certain punishment, according to the law, then that is what must be done. I think this is completely normal, to let the justice system decide. That is what we demand for the future.

### In March 2010, you were present when the court convicted an ex-member of the Mahidi militia, tried in the Dili Court. What did you feel at that moment?

I think it is very good that justice be performed in this manner, because they committed crimes and therefore deserve punishment. It was very important, and this is what Timor-Leste demands. What makes me feel less satisfied is that the law was not enforced in the same manner in the case of Maternus Bere, who was released. He was accused of a serious crime. How can Timor-Leste, a country under the rule of law, release Maternus Bere and allow him to go to Indonesia? We understand the need to foster friendship between Timor-Leste and Indonesia. I think, however, that defending justice is also defending this friendship, because Maternus Bere should not have been released. He should have been given the opportunity to face justice in the courts of Timor-Leste.