



Agreement

between

**the United Nations and the Democratic Republic of Timor-Leste concerning
assistance to the Office of the Prosecutor-General of Timor-Leste**

The United Nations and the Democratic Republic of Timor-Leste,

Recalling that United Nations has supported the investigation and prosecution of serious crimes committed in Timor-Leste in 1999, in particular through the work of the Office of the Deputy Prosecutor-General for Serious Crimes, which was a division of the Office of the Prosecutor-General of Timor-Leste; and

Being mindful that voluminous and sensitive records have been accumulated and compiled in the course of this work, and the need for credible accountability for the serious human rights violations committed in East Timor in 1999; and

Recalling Security Council resolution 1704 (2006) of 25 August 2006, in which the Security Council decided that the United Nations Integrated Mission in Timor-Leste will assist the Office of the Prosecutor-General of Timor-Leste, through the provision of a team of experienced investigative personnel, to resume investigative functions of the former Serious Crimes Unit (SCU), with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999;

Recalling further that in accordance with resolution 1704, the Serious Crimes Investigation Team was created in January 2007;

Wishing to conclude agreement for the purpose of setting out the scope of functions and operations of the Serious Crimes Investigation Team, its access to the former Serious Crimes Unit archives, rules governing the operation of the Serious Crimes Investigation Team and its relationship with the Office of the Prosecutor-General of Timor-Leste

HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

- 1.1 "Parties" means the United Nations, acting at this time through the Special Representative of the Secretary-General in Timor-Leste, and the Democratic

Republic of Timor-Leste ("RDTL"), acting at this time through its Prosecutor General, together with a plenipotentiary of the State.

- 1.2 "Serious Crimes Unit" or "SCU" means the former division of the Office of the Prosecutor General of Timor-Leste which was headed by the Deputy Prosecutor General for Serious Crimes, or any successor under the laws of RDTL.
- 1.3 "OPG" means the Office of the Prosecutor-General of Timor-Leste.
- 1.4 "SRSG" means Special Representative of the Secretary-General in Timor-Leste
- 1.5 "Serious Crimes Investigation Team" or "SCIT" means the Serious Crimes Investigation Team, which was created pursuant to Security Council resolution 1704 in January 2007 as a part of the Office of the Deputy Special Representative of the Secretary-General for Security Sector Support and Rule of Law.
- 1.6 "SCIT database authorized staff" means the SCIT staff members who are authorized to update the former SCU archives and databases, namely Information Management Officer, Associate Information Management Officer, National Database Administrator Assistants and Information Technology Assistants.
- 1.7 "SCIT authorized staff" means the SCIT staff members who are authorized to access the former SCU archives and databases, excluding administration and language support staff including Administrative Assistants, Drivers, Language Assistants and Translators/Interpreters,
- 1.8 "UNMIT" meant the "United Nations Integrated Mission in Timor-Leste established pursuant to Security Council resolution 1704 (2006)"
- 1.9 "SCU Records" means documents or materials, regardless of their form or medium, held by the SCU, containing or embodying substantive information on matters investigated or prosecuted by the SCU during the course of its work. They accordingly include, inter alia, documents and materials pertaining to investigations of Serious Crimes, as defined in the applicable law of RDTL, which were conducted by or under the direction of the Office of the Prosecutor General during the UNTAET period, such records having passed to and remained under the authority of the Prosecutor General of Timor-Leste. SCU Records do not include objects or chattels having the nature of real or demonstrative evidence.
- 1.10 "Senior Investigator" means the head of the Serious Crimes Investigation Team.
- 1.11 "Supervisor/Coordination Officer" means the Serious Crimes Investigation Team officer responsible for coordinating preparation of drafts of the final documents, including indictments and requests for arrest warrants as well as indictment briefs.

2. SCOPE OF OPERATIONS OF THE SCIT

2.1 The main task of SCIT is to assist the Office of the Prosecutor General of Timor-Leste with a view to completing investigations into outstanding cases of serious human rights violations committed in the Timor-Leste in 1999.

2.2 The SCIT international staff members will provide professional training for their national counterparts working in the Team.

2.3 Depending on needs and its capabilities, the SCIT may provide professional training to organizations and offices in Timor-Leste whose activities are of relevance to its scope of operations.

3. THE FORMER SCU ARCHIVES

Content

3.1 The former SCU archives consist of:

- a) SCU Records, which include documents and materials, such as photographs, tape recordings, video recordings and automatic recordings, pertaining to investigations of Serious Crimes
- b) physical evidence collections;
- c) case files of completed cases;
- d) case files of pending cases.

Location

3.2.1 The former SCU archives mentioned in Paragraph 3.1 (a) – (c) remain in the custody of and in the premises of the OPG.

3.2.2 The Prosecutor General of Timor-Lest shall provide the SCIT database authorized staff full access to SCU records to enable it to make copies of the electronic databases thereof and keep such records in the SCIT premises in the old UN House in Dili or such other place as the United Nations may decide to locate the SCIT.

3.2.3 The case files of ongoing investigations will be relocated from the OPG to SCIT premises in the old UN House in Dili or such other place as the United Nations may decide to locate the SCIT.

3.2.4 The OPG will make an inventory of case files handed over to the SCIT, the contents of which the SCIT will confirm upon receipt.

3.2.5 The SCIT will ensure secure storage and confidentiality of the existing case files of ongoing investigations and copies of the electronic databases made pursuant to section 3.2.2, and documents acquired in the course of investigations.

Update

3.3 The SCIT database authorized staff shall once a month update the former SCU archives of original documents, physical evidence collections and electronic databases of SCU Records located in the OPG.

Confidentiality

3.4 Confidential information regarding both completed and ongoing investigation shall not be disclosed to any third party. In particular, identities of witnesses shall be absolutely protected.

Access and research by the SCIT staff members

3.5.1 In order to fulfill its functions and only for investigative purposes, the SCIT authorized staff shall have unrestricted access to the former SCU archives.

3.5.2 Access to copies of electronic databases will be executed through the IT network of the SCIT available exclusively for the SCIT authorized staff.

3.5.3 SCIT shall ensure that copies of the former SCU electronic databases held in SCIT's custody are not accessible to unauthorized staff members or any third party.

3.5.4 Research in the former SCU archives mentioned in Art. 3.1 (a) and (b), will be executed by or in the presence of at least one of the SCIT database authorized staff.

Access and research on request of the Prosecutor-General of Timor-Leste

3.6.1 The Prosecutor-General of Timor-Leste or any member of staff of the OPG authorized by the Prosecutor General shall have full and unlimited access to the archives mentioned in Article 3.1.

3.6.2 Research requests pertaining to ongoing investigations issued by the Prosecutor-General of Timor-Leste or any member of staff of the OPG authorized by the Prosecutor-General shall take precedence over other requests.

Access and research on the third party's request

3.7. The SCIT will not authorize any third party requests for access to the former SCU archives. Such requests will be immediately referred to the OPG for consideration and, as appropriate, approval.

4. COOPERATION BETWEEN THE SCIT AND THE OPG

Introduction

4.1 The SCIT will perform its investigative duties under the coordination, direction and supervision of the Prosecutor-General of Timor-Leste. The Prosecutor-General may delegate his powers under this Agreement to the Deputy Prosecutor-General or any Prosecutor.

Planning and evaluation

4.2.1 The SCIT will prepare and provide a list of its ongoing investigations to the OPG.

4.2.2 The SCIT will evaluate pending cases and prioritize their investigation.

4.2.3 The SCIT shall prepare a work plan and investigations plans consistent with its mandate. The methodology, timetable, work plan and action plans of the SCIT and any modifications thereto shall be submitted to the Prosecutor-General for approval.

4.2.4 Upon request of the Prosecutor-General of Timor-Leste, the Deputy Prosecutor-General or Prosecutor appointed by the Prosecutor-General the SCIT will revise the documents mentioned in the foregoing paragraph, following any consultations as may be required.

Course of investigations

4.3.1 The SCIT investigations shall be supervised by Prosecutors appointed by the Prosecutor-General in accordance with the criminal procedure law of Timor-Leste.

4.3.2 The SCIT investigations shall be carried out in collaboration with the National Police of Timor-Leste, as directed by the Prosecutor-General of Timor-Leste, the Deputy Prosecutor-General or a Prosecutor appointed by the Prosecutor-General and in accordance with the criminal procedure law of Timor-Leste.

4.3.3 The Prosecutor-General of Timor-Leste, the Deputy Prosecutor-General or a Prosecutor appointed by the Prosecutor-General may at any time request the SCIT to submit case files of ongoing investigations for review, and such request will be satisfied without unreasonable delay.

4.3.4 Corrections in the directions of the investigations made by the Prosecutor-General of Timor-Leste, the Deputy Prosecutor-General or a Prosecutor appointed by the Prosecutor-General within the review pursuant to section 4.3.3 will be executed as soon as practicably possible following, as may be required any additional consultations.

4.3.5 If, in the course of investigation, it transpires that potential suspect remains in the territory of Timor-Leste, the case files will be submitted for further action to the Office of the Prosecutor-General.

Completion of investigations

4.4.1 Upon completion of an investigation, the SCIT will prepare drafts of the final documents, including indictments and requests for arrest warrants as well as indictment briefs and submit them, along with case files, to the Prosecutor-General of Timor-Leste.

4.4.2 Any requests of the Prosecutor-General of Timor-Leste, the Deputy Prosecutor-General or a Prosecutor appointed by the Prosecutor-General for further investigation in cases submitted to him pursuant to the foregoing paragraph will be executed as soon as reasonably possible.

Reporting

4.5.1 Once a week the Senior Investigator or the Supervisor/Coordination Officer will brief the Prosecutor-General of Timor-Leste or the Deputy Prosecutor-General on the progress in pending investigations.

4.5.2 Once a month the SCIT will provide the OPG with a written report on pending investigations.

4.5.3 The Prosecutor-General of Timor-Leste or the Deputy Prosecutor-General may at any time request oral or written information regarding the current work of the SCIT and such information will be provided without unreasonable delay.

Other issues

4.6 The SCIT may submit to the OPG proposals of amendments in indictments filed with the former Special Panel for Serious Crimes by the former SCU in cases in which the

final decision has not been yet rendered, if, in the course of investigations in ongoing cases, it transpires that such amendments are necessary.

5. APPLICABLE LAW

The SCIT staff members will perform their duties in accordance with the Constitution of the Democratic Republic of Timor-Leste, the established criminal justice system of Timor-Leste, current national laws governing criminal law and procedure and the SCIT mandate provided by the UN Security Council.

6. MISCELLANEOUS PROVISIONS

6.1 RDTL shall hold the United Nations, including UNMIT, and their officials, personnel, experts, agents and contractors harmless from and against any liability, either to RDTL or to any third party, that might arise in any way from or as a result of the implementation of this Agreement or any event related thereto.

6.2 Nothing in or relating to this Agreement shall be deemed to constitute a waiver, express or implied, of any of the privileges and immunities of the United Nations or UNMIT or of their officials, experts or other personnel.

6.3 During any such time as former SCU Records or any part thereof may be in the possession of the United Nations pursuant to Article 4 of this Agreement, they shall enjoy the inviolability that is enjoyed by all documents held by the United Nations pursuant to Article 105 of the Charter of the United Nations and Article II, Section 4 of the Convention on Privileges and Immunities of the United Nations.

7. FINAL PROVISIONS

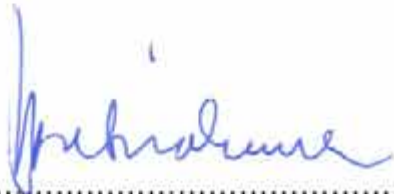
7.1 This Agreement shall enter into force upon signature by both Parties. It will remain in effect until such time as investigations into outstanding cases of serious human rights violations committed in Timor-Leste in 1999 are completed or UNMIT's mandate expires, whichever is the earlier.

7.2 This Agreement may be amended by means of written agreement between the Parties.

7.3 This Agreement is concluded in two original copies in the English Language.

8. EXECUTION

Signed at Dili, Timor-Leste, this 12th Day of February in the year 2008.



Longuinhos Monteiro
Prosecutor-General of the Democratic
Republic of Timor-Leste



Finn Reske-Nielsen
Acting Special Representative of the
Secretary-General in Timor-Leste



Lucia Lobato
Minister of Justice of the Democratic
Republic of Timor-Leste,

On behalf of the United Nations

Plenipotentiary
On behalf of the Democratic Republic of
Timor-Leste