



JUSTICE UPDATE

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The Special Panels for Serious Crimes Hear their Final Case

On 12 May 2005 the Special Panels for Serious Crimes (“SPSC”) conducted its final hearing when it delivered the written decision for the case of Sisto Barros and Cesar Mendonca (discussed below). Following the summation and delivery of the decision, Judge Rapoza, presiding over the panel, closed the session by expressing his gratitude for the assistance of all court staff, defence counsel, prosecutors and judges who had been involved in the work of the SPSC since commencement in 2000.

Approximately 1/3 of all persons indicted by the Serious Crimes Unit were tried before the SPSC with the remainder located beyond the territorial jurisdiction of Timor Leste. Furthermore, there are a significant number of crimes committed during and prior to 1999 which were not investigated and for which, as a result, indictments were not issued. Therefore, with the conclusion of the SPSC, and in the absence of fresh initiatives with international support, there are unlikely to be any prosecutions of those primarily responsible for crimes against humanity perpetrated during and immediately after the 24 years of Indonesian occupation of Timor Leste. Nevertheless, with the UN-appointed Commission of Experts recently concluding its investigations into the serious crimes process in Timor Leste and being accepted into Indonesia for that purpose, there is hope that high level perpetrators will yet be brought to justice.

It is, therefore, an appropriate time to present final case statistics for the SPSC which will shed some more light on the successes and failures of the serious crimes process for Timor Leste.

Statistical Summation of Performance

Statistic Type	2000	2001	2002	2003	2004	2005	Total
No indictments issued	12	21	13	35	14	0	95
No defendants indicted	21	56	59	259	45	0	440
No cases for which trials have been completed	0	12	9	13	13	8	55
No defendants for whom trials held	0	21	9	17	29	11	87
No defendants convicted	0	21	9	16	27	10	84
No defendants acquitted	0	0	0	0	2	1	3

No defendants whose cases were withdrawn/dismissed	2	5	0	1	5	0	12
No defendants ruled unfit to stand trial	0	0	0	0	0	1	1
Number of indicted persons beyond jurisdiction							339

Laksaur Militia Members Sentenced to Nine Years for Crimes Against Humanity

Final Judgment in the last case before the SPSC was handed down in Dili on 12 May 2005. Laksaur Militia members Sisto Barros and Cesar Mendonca were each sentenced to nine years imprisonment for committing the Crimes Against Humanity of Murder and Persecution, and attempting to commit the Crime Against Humanity of Murder, in the Suai region in October 1999. Josep Nahak, originally indicted with Barros and Mendonca, was declared unfit to be tried in March this year.

The Panel, constituted by Judge Rapoza (presiding), Judge Blunk and Judge dos Santos, found that Barros and Mendonca were part of militia group sent into the forests around Suai to carry out reprisal attacks against independence supporters following the September 1999 Popular Consultation. The SPSC held that they participated in the murder of Fredrico Barros in the forest near Fatubele on 4 October 1999; in a brutal raid upon men, women and children camped in the forest in which two people were killed on 5 October 1999; and in the forced transfer of survivors of that attack to West Timor. They were also found to have participated in the arrest, beating and detention of independence supporters Vincente Alves Quintao and Francisco do Espitu Santo in April 1999. These acts were held to amount to the Crime Against Humanity of Persecution, as well as the individual charges of the Crime Against Humanity of Murder, and the attempted Crime Against Humanity of Murder.

This was the latest in a series of cases to address whether statements made by the accused to investigators may be admitted as evidence – a vexed issue throughout the history of the SPSC.¹ After a comprehensive discussion of the law this Panel held that such statements may be admitted if they were made in circumstances where the accused voluntarily waived his or her right to remain silent, understanding the nature of that right.² The SPSC held, however, that the Prosecution could not prove that Barros gave a knowing, intelligent and voluntary waiver,³ to his right to silence, and that his pre-trial statements would not be admitted. The Panel found there were significant problems with the translation of Barros’ rights prior to the interview and that he was “essentially ...abandoned by his own lawyer”,⁴ who signed a form allowing investigators to interview him without legal representation. According to the SPSC: “the right to silence belongs to the client and not to his lawyer and such a waiver by counsel should be given no effect by the Court”. There was, however, sufficient evidence from other sources to convict him of all charges.

¹ See JSMP Justice Update 9/2004: ‘Admission of Prior Statements as Evidence Before the SPSC’.

² At [35]. This is consistent with the decisions in *Alarico Mesquita & Ors* (28/2003) and *Damiao da Costa Nunes* (1/2003) but cf. *Anigio de Oliveira* (7/2001) and the majority opinion in *Francisco Pereira aka Siku Gagu* (34/2003).

³ At [56].

⁴ His previous lawyer, not the lawyer who represented Barros at trial.