



OIOS

Office of Internal Oversight Services

INTERNAL AUDIT DIVISION

AUDIT REPORT

Serious Crimes Investigation Programme in UNMIT

**Delays in commencement of investigative work
has resulted in a backlog of cases**

10 February 2009

Assignment No. AP2008/682/05

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

OFFICE OF INTERNAL OVERSIGHT SERVICES - BUREAU DES SERVICES DE CONTRÔLE INTERNE
INTERNAL AUDIT DIVISION - DIVISION DE L'AUDIT INTERNE

TO: Mr. Atul Khare, Special Representative of the Secretary-

DATE: 10 February 2009

A: General

United Nations Integrated Mission in Timor-Leste

REFERENCE: IAD: 09- 02215

FROM: Fatoumata Ndiaye, Acting Director

DE: Internal Audit Division, OIOS

SUBJECT: **Assignment No. AP2008/682/05 – Audit of the management of the serious crimes investigation**

OBJET: **programme**

1. I am pleased to present the report on the above-mentioned audit.
2. Based on your comments, we are pleased to inform you that we will close recommendations 2, 3, 4 and 8 in the OIOS recommendations database as indicated in Annex 1. In order for us to close the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendation 3), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Takahisa Kawakami, DSRSG SSSROL, UNMIT
Mr. Hubert H. Price, Chief of Mission Support, UNMIT
Mr. Marek Michon, Head of Serious Crimes Investigation Team, UNMIT
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Ms. Maria Gomez Troncoso, Officer-in-Charge, Joint Inspection Unit Secretariat
Mr. Seth Adza, Audit Response Team, Department of Field Support
Mr. Moses Bamuwanye, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Programme Officer, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

“The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization” (General Assembly Resolution 48/218 B).

CONTACT INFORMATION

ACTING DIRECTOR:

Fatoumata Ndiaye: Tel: +1.212.963.5648, Fax: +1.212.963.3388,
e-mail: ndiaye@un.org

CHIEF PEACEKEEPING AUDIT SERVICE:

Eleanor T. Burns: Tel: +1.212.963.2792, Fax: +1.212.963.3388,
e-mail: burnse@un.org

EXECUTIVE SUMMARY

Management of the serious crimes investigation programme

OIOS conducted an audit of the serious crimes investigation programme in the United Nations Integrated Mission in Timor-Leste (UNMIT). The overall objective of the audit was to assess the effectiveness and efficiency of the serious crimes investigation programme. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

A Serious Crimes Investigation Team (SCIT) was established in January 2007 to assist the Office of the Prosecutor General of Timor-Leste in investigating serious human rights violations that were committed in 1999.

Overall SCIT has made satisfactory progress in achieving its mandate. However, there were delays in the commencement of investigative work resulting in a backlog of cases. Opportunities for improvement were identified, including the need to:

- Develop a comprehensive work plan with measurable goals and timeframes;
- Improve the communication with the families of victims and keep them informed about the outcome of completed investigations;
- Strengthen internal controls over the safeguarding of confidential case files; and
- Provide professional and cultural awareness training to staff members of the SCIT.

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I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the serious crimes investigation programme in the United Nations Integrated Mission in Timor-Leste (UNMIT). The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. Security Council Resolution 1704 on 25 August 2006 mandated UNMIT "...to 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, with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999".

3. The former Serious Crimes Unit (SCU) was part of two preceding missions in East Timor: United Nations Transitional Administration in East Timor (UNTAET) and the United Nations Mission of Support in East Timor (UNMISSET). SCU was responsible for investigating and prosecuting cases of serious human rights violations that were committed in Timor-Leste in 1999. At the end of UNMISSET's mandate on 20 May 2005, approximately 450 cases pending investigation were handed over to the Office of the Prosecutor-General (OPG).

4. In accordance with Resolution 1704, a Serious Crimes Investigation Team (SCIT) was established by UNMIT in January 2007 to resume the investigative functions of the SCU. The SCIT is headed by a Chief Investigator who arrived in the Mission in May 2007. The Chief Investigator reports to the Deputy Special Representative of the Secretary General, Security Sector Support and Rule of Law. The following table shows the staffing summary of the SCIT.

Table 1: Staffing summary of the SCIT as at 31 August 2008

Post Title	No of Posts	Staff on Board
Senior Investigator	1	1
Investigators*	11	11
Coordination Officer	6	6
Forensic Pathologist	1	1
Forensic Anthropologist	1	1
Language Assistant	3	-
Gender Affairs Officer	1	1
External Relations Officer	1	1
Information Management Officer	1	-
Associate Information Management Officer	1	1
Administrative Assistant	1	1
National Staff	22	21
Total	50	45
* Includes 1 United Nations Police investigator seconded to the SCIT for gender based crimes		

5. On 12 February 2008, the United Nations and the Democratic Republic of Timor-Leste signed an agreement (the agreement) concerning the Mission's assistance to the OPG of Timor-Leste. This agreement provides UNMIT with access to the archives of the SCU, which had been handed over to the OPG in 2005. These archives and any copies made by the SCIT will remain the property of the OPG. As per the agreement, all investigations performed by the SCIT must be conducted under the coordination, direction and supervision of the Prosecutor General of Timor-Leste. In essence, the SCIT works directly for the Office of the Prosecutor General and its work plan, investigations plan, timetable and methodology have to be approved by the Prosecutor General. Upon completion of an investigation, a draft investigation report including arrest warrants and indictment briefs will be prepared by the SCIT and submitted to the Prosecutor General for further action.

6. Pursuant to the agreement, the SCIT prepared a detailed inventory of 458 case files that were obtained from the OPG. After preliminary analysis, it was determined that only 396 of these cases warranted investigations. This is because multiple copies of some case files were maintained and indictments had already been filed for other cases.

7. Table 2 below provides a summary of the nature of crimes committed and the number of victims involved.

Table 2: Summary of cases of serious human rights violations

Nature of Crimes Committed	Number of Crimes	Number of Victims involved
Murder and Manslaughter	316	531
Attempted Murder	13	15
Enforced Disappearance	9	9
Rape	19	20
Assault	12	16
Torture	11	18
Unlawful Imprisonment	14	58
Theft and Possession of Drugs	8	0
Total	402	667

8. Comments made by UNMIT are shown in *italics*.

II. AUDIT OBJECTIVES

9. The main objectives of the audit were to:

(a) Assess the resource allocation, policy direction, organization, programme coordination, management support and monitoring roles in respect of the Serious Crimes Investigation Team;

(b) Assess the efficiency and effectiveness of the Serious Crimes Investigations Programme and compliance with existing policies, rules and regulations; and

-
- (c) Assess the adequacy and effectiveness of internal controls.

III. AUDIT SCOPE AND METHODOLOGY

10. The audit covered the operations of the Serious Crimes Investigations Programme from the inception of the Mission on 25 August 2006 to 31 August 2008 and focused on planning, execution and reporting activities of the programme.

11. The audit included interviews with the SCIT, analysis of applicable data, review and assessment of internal controls and review of available documentation and other relevant records.

12. The audit did not review details of the case files being investigated by the SCIT. These files contain sensitive and confidential information and access is prohibited by the agreement with the Prosecutor General of Timor-Leste.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Programme Coordination and Planning

Delays in the commencement of investigations

13. In May 2008, the SCIT commenced investigations into the cases of serious human rights violations committed in 1999. This was approximately two years after the establishment of UNMIT. The delay was mainly attributed to the lack of an agreement between the UN and the Government of Timor-Leste (the Government).

14. The agreement which laid out the scope and rules of operations of the SCIT was signed on 12 February 2008. Without such an agreement in place, the SCIT was unable to commence any investigative work. OIOS found that the first draft of the agreement was submitted to the Prosecutor General in June 2007, just one month after the arrival of the Senior Investigator in the Mission. However, the signing of the final agreement was delayed as it had not been considered a high priority by the Government and UNMIT.

15. Another factor that contributed to the delay was inadequate staffing resources. At the time the agreement was signed, only 32 of the 50 authorized staff members were onboard, reflecting a 36 per cent vacancy rate. The SCIT was able to commence actual investigative work in May 2008, at which time the vacancy rate had dropped to 27 per cent. At the time of the audit, 96 per cent of the authorized staff members were onboard. OIOS takes note of this development and therefore does not issue a recommendation.

Lack of a comprehensive work plan

16. Annual work plans are derived from the overall mandate of the Mission and should describe the objectives, activities to be performed and quantifiable measures to facilitate the day-to-day management and monitoring of the programme. A review of the 2007-2008 and 2008-2009 work plans of the SCIT showed that indicators of achievements were not clearly specified. As an example, the table below shows one of the goals and related tasks reflected in the work plans for which there was no quantifiable indicators of achievement:

Goal	Related tasks
Carrying out the former SCU ongoing investigations in cooperation with the office of the Prosecutor General of Timor Leste.	(i) To locate and interview witnesses. (ii) To collect available physical evidence. (iii) To prepare and carry out necessary exhumations. (iv) To prepare drafts of necessary investigation and trial documents, including but not limited to exhumation requests, arrest warrant request and indictments. (v) To assemble case files, supporting physical evidence and to make cases indictment ready.

17. The lack of a comprehensive work plan with measurable indicators of achievements, timelines and resources needed to complete investigative tasks impeded the effectiveness of monitoring achievements. This could result in investigations not being completed in a timely manner. For example, as at the date of the audit, of the total case load of 396, the SCIT had completed investigations (indictments being drafted) into 3 cases, and 24 cases had been analyzed and concluded as unsuitable for further investigations. The number of cases completed to date is concerning given the length of time that has elapsed since the inception of UNMIT's mandate.

Recommendation 1

(1) The UNMIT Serious Crimes Investigation Team should ensure that a comprehensive work plan is developed that clearly specifies goals to be achieved, timeframe for achieving tasks and staff members responsible for completing these tasks.

18. *The UNMIT Serious Crimes Investigation Team accepted recommendation 1 and stated that a plan with clear objectives, allocation of responsibilities and target dates is being developed. Completion of cases*

depends on the cooperation of the Prosecutor General and the availability of witnesses. Recommendation 1 remains open pending confirmation by UNMIT that a comprehensive work plan with clear objectives, allocation of responsibilities and target dates has been developed.

Lack of a system in place for keeping families of victims informed

19. One of the activities listed in the 2007-2008 and 2008-2009 work plans is the establishment of a “system of informing families of victims of completed investigations in full respect for confidentiality of files”. At the time of the audit, this system had not yet been established. As noted above, 24 cases had been concluded as unsuitable for further investigations. However, family members of the victims had not been informed about this decision.

20. During a public outreach activity organized by the SCIT in September 2008, the public raised concerns regarding the lack of information on cases that had already been investigated. They also questioned why there has been no indictments filed. In OIOS’ view, these questions underscore the importance of a mechanism to inform families of progress being made.

Recommendation 2

(2) The UNMIT Serious Crimes Investigation Team should liaise with the Office of the Prosecutor General and establish a mechanism to keep families informed about the outcome of completed investigations whilst ensuring the confidentiality of case files.

21. *The UNMIT Serious Crimes Investigation Team did not fully accept recommendation 2. The SCIT stated that it liaised with OPG on the matter, which is part of a nationally owned process codified by the criminal procedural code. The Prosecutor General is of the view that the mechanism established under the criminal procedural code is adequate and that no additional mechanism should be set up.* OIOS is of the opinion that the present mechanism described by SCIT could be improved. Nonetheless, as they are working directly with OPG, and assurances have been provided by the Prosecutor General that an additional mechanism is not required, recommendation 2 has been closed.

B. Internal Controls

Safeguarding of confidential case files

22. Section 3.4 of the agreement states that “confidential information regarding both completed and ongoing investigations shall not be disclosed to any third party. In particular, identities of witnesses shall be absolutely protected”. The SCIT performs work that entails the collection of very sensitive and confidential information about victims, witnesses and perpetrators of various crimes. It is therefore essential that case files of both ongoing and completed cases are securely kept and not easily accessible to third parties.

23. OIOS conducted a site visit to the investigative field office in the district of Baucau and also inquired of investigators in the districts of Suai and Maliana. It was found that confidential case files were being maintained on open shelves in the investigators' office that can easily be reviewed by individuals with access to the offices. Due to the high level of confidential information that is being maintained in these files, it would be a good practice for such files to be stored in secured cabinets.

Recommendation 3

(3) The UNMIT Serious Crimes Investigation Team should ensure that confidential case files are securely maintained and cannot be easily accessed by third parties.

24. *The UNMIT Serious Crimes Investigation Team accepted recommendation 3 and stated that since December 2008, all files generated by SCIT are under lock and key in locked offices. Additional locking cabinets will be delivered to regional offices by 15 January 2009.* Based on the action taken by UNMIT, recommendation 3 has been closed.

Database access controls

25. The SCIT currently uses a document database to store scanned records of ongoing and completed case files. Access to the database is limited to investigators, legal officers and Information Technology (IT) officers. However, there is no formal process in place for granting and monitoring access to the database.

26. Access rights are supposed to be granted by the Information Management Officer after receipt of a verbal request from the Senior Investigator. The Communications and Information Technology Section (CITS) has the ability to retrieve the database access logs which can be used to monitor access to the database. However, the CITS has not been provided with a list of authorized staff members who can access the database and there is no procedure in place for the periodic review of access logs. Bearing in mind the high level of confidential information being maintained in the database, it would be a good practice to ensure that there is effective monitoring of the database access logs.

Recommendation 4

(4) The UNMIT Serious Crimes Investigation Team should ensure that the Communication and Information Technology Section is provided with an authorized list of staff members with database access rights and put in place a system of periodic review of the access logs.

27. *The UNMIT Serious Crimes Investigation Team accepted recommendation 4 and stated that the SCIT ZylImage database was installed on a separate server dedicated to SCIT and a list for review of authorized network*

access for ZyImage server was supplied to CITS on 14 January 2009. Based on the action taken by UNMIT, recommendation 4 has been closed.

C. Procedures and Guidelines

28. According to the 2008-2009 work plan, the SCIT should prepare “Standard Operating Procedures (SOPs) regarding investigation procedures and techniques, templates of investigative documents, incoming and outgoing documents flow, rules of accessing, using and updating the former SCU archive and databases and levels of confidentiality of information about the SCIT and its cases”.

29. At the time of the audit, comprehensive SOPs regarding investigation procedures and techniques had not been developed. However, various guidelines had been issued to staff through e-mails and inter-office memoranda. Whilst such means of disseminating standard procedures are useful, they can be ineffective in providing adequate guidance to staff members as some relevant procedures may not be addressed. For instance, during an inquiry of one of the investigative teams, it was found that there was no procedure in place requiring the presence of a Police Officer when interviewing suspects. Although the team had not yet performed any interviews of suspects, this was of concern to OIOS due to the high level of security risk involved. Based on further inquiry of the Legal Coordinator, it was found that guidelines had been subsequently communicated to the investigative teams.

30. Furthermore, there were no specific guidelines covering the work of the Forensic Unit, specifically regarding the collection and preservation of evidence and dealing with families of victims during exhumations. The Forensic Unit staff uses several standards published by the International Committee of the Red Cross as guidance. However, Mission-specific guidelines that address the current work of the Forensic Unit were yet to be developed.

Recommendation 5

(5) The UNMIT Serious Crimes Investigation Team (SCIT) should ensure that comprehensive guidelines on the various activities of the SCIT are developed, compiled and distributed to staff members.

31. *The UNMIT Serious Crimes Investigation Team accepted recommendation 5 and stated that the current practices would be compiled into a comprehensive SOP and distributed to SCIT staff.* Recommendation 5 remains open pending OIOS’ confirmation that a comprehensive SOP has been compiled and distributed to staff members.

C. Training

Professional training

32. Section 2.2 of the agreement between the United Nations and the Democratic Republic of Timor-Leste concerning the Mission's assistance to the OPG of Timor-Leste (the agreement), states that "the SCIT international staff members will provide professional training for their national counterparts working in the Team". This requirement is also reflected in the work plans which list the execution of in-house and on-the job training programs as one of the tasks of the SCIT.

33. OIOS inquired of selected national and international staff members and found that there were inadequate training specifically geared towards the work of the SCIT. Although several training classes are periodically organized by the UNMIT Training Unit, these classes are not always relevant to the work performed by the SCIT. Furthermore, it was found that some of the national interpreters are in need of additional training to further develop English language skills. However, due to the fact that they are stationed in the regional offices, they do not always have access to language courses that are organized by the Training Unit.

Recommendation 6

(6) The UNMIT Serious Crimes Investigation Team and the UNMIT Office of Mission Support should ensure that adequate training and professional development is provided to both national and international staff members of the Serious Crimes Investigation Team.

34. *The UNMIT Serious Crimes Investigation Team and the UNMIT Office of Mission Support accepted recommendation 6 and stated that all international hires are already experts in their respective field and do not require additional technical training. In March 2009, technical professional training will be provided to the national staff members by their international colleagues. Language assistants have been provided with guidelines on translation and interpretation and will be provided with additional training on translation and interpretation techniques to strengthen their capacity. Dili-based language assistants also have access to additional English language training. Recommendation 6 remains open pending the development of the training program for national staff members and the provision of English language training courses to staff members based in the regional offices.*

Cultural awareness training

35. The nature of the work performed by the SCIT requires a high level of awareness about cultural differences, traditional customs and values. This is especially critical when dealing with families of victims and village chiefs and in the performance of exhumations. Such awareness can be achieved through the provision of related training to staff members in collaboration with members of

the local population who are familiar with the customs and values in Timor-Leste.

36. OIOS found that cultural awareness training had been provided to some staff members of the SCIT. However, OIOS was unable to obtain any relevant course materials as evidence of the training provided. As part of the induction programme for new staff members, a brief overview of local customs is presented by the UNMIT Training Unit. This, however, does not fully address cultural issues related to the work of the SCIT.

Recommendation 7

(7) The UNMIT Serious Crimes Investigation Team and the UNMIT Office of Mission Support should ensure that adequate training material is developed to address traditional customs, values and cultural differences that are relevant to the work of the Serious Crimes Investigation Team.

37. *The UNMIT Serious Crimes Investigation Programme and the UNMIT Office of Mission Support accepted recommendation 7 and stated that all international team members have received both general and specific background briefings, including a cultural awareness module from both UNMIT and a representative of the host government. A refresher session will be held in March 2009 to include new team members. Recommendation 7 remains open pending OIOS' confirmation and review of course materials of the refresher session.*

D. Challenges faced by the SCIT

Lack of prosecuting powers

38. During the months of August and September 2008, the SCIT in collaboration with the Public Information Office organized a series of public outreach activities with the aim of educating the public on the differences between the mandate of the SCIT and that of the former SCU. OIOS reviewed briefing reports from previous outreach activities and also accompanied members of the SCIT on an outreach activity in the district of Ainaro. One common issue noted was the public frustration over the slow judicial process and reservations about whether the cases being investigated will be prosecuted.

39. In accordance with UNMIT's mandate, the SCIT does not have any authority to prosecute perpetrators of crimes. Their work is limited to investigating cases and the decision to prosecute lies exclusively with the Prosecutor General. This presents a challenge for the SCIT as they are sometimes faced with criticism for not bringing the perpetrators of crimes to justice.

40. The outreach activities have proven to be a very effective means of educating the public on the limitations of the SCIT in bringing people to justice.

OIOS takes note of this limitation and is pleased with the ongoing outreach activities for managing public expectations of the Mission.

Lack of DNA Testing Facility

41. There is currently no access to a DNA testing facility for the positive identification of victims in Timor-Leste. The Forensic Unit currently uses presumptive identification which requires the matching of anthropological findings with the biological profiles of the victims as provided by the family members.

42. Although presumptive identification can be used as an effective way of identifying human remains, it however limits the work of the investigators as some cases cannot be fully investigated without positive identification of the victims by DNA testing. The establishment of a DNA testing facility can be very costly and would require the cooperation of the Government of Timor-Leste.

Recommendation 8

(8) The UNMIT Administration should pursue the establishment of a DNA testing facility with the Government of Timor-Leste.

43. *The UNMIT Administration accepted recommendation 8 and stated that though not the responsibility of UNMIT nor its Administration to establish a DNA testing facility, the SCIT advocated the establishment of such facility to the Prosecutor General who has included it in his plans to set up a national forensic laboratory. Based on the action taken by UNMIT recommendation 8 has been closed.*

V. ACKNOWLEDGEMENT

44. We wish to express our appreciation to the Management and staff of UNMIT for the assistance and cooperation extended to the auditors during this assignment.

STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	Recommendation	Risk category	Risk rating	C/O	Actions needed to close recommendation	Implementation date ²
1	The UNMIT Serious Crimes Investigation Team should ensure that a comprehensive work plan is developed that clearly specifies goals to be achieved, timeframe for achieving tasks and staff members responsible for completing these tasks.	Operational	Medium	O	Confirmation by UNMIT that a comprehensive work plan with clear objectives, allocation of responsibilities and target dates has been developed.	31 January 2009
2	The UNMIT Serious Crimes Investigation Team should liaise with the Office of the Prosecutor General and establish a mechanism to keep families informed about the outcome of completed investigations whilst ensuring the confidentiality of case files.	Operational	Medium	C	Action completed.	Implemented
3	The UNMIT Serious Crimes Investigation Team should ensure that confidential case files are securely maintained and cannot be easily accessed by third parties.	Operational	Higher	C	Action completed.	Implemented
4	The UNMIT Serious Crimes Investigation Team should ensure that the Communication and Information Technology Section is provided with an authorized list of staff members with database access rights and put in place a system of periodic review of the access logs.	Information Resources	Medium	C	Action completed.	Implemented
5	The UNMIT Serious Crimes Investigation Team should ensure that comprehensive guidelines on the various activities of the SCIT are developed, compiled and distributed to staff members.	Operational	Medium	O	Confirmation that comprehensive SOPs have been compiled and distributed to staff members	15 February 2009
6	The UNMIT Serious Crimes Investigation Team and the UNMIT Office of Mission	Human Resources	Medium	O	Confirmation by UNMIT that a training program for the national staff members has	March 2009

Recom. no.	Recommendation	Risk category	Risk rating	C/O ¹	Actions needed to close recommendation	Implementation date ²
7	Support should ensure that adequate training and professional development is provided to both national and international staff members of the Serious Crimes Investigation Team. The UNMIT Serious Crimes Investigation Team and the UNMIT Office of Mission Support should ensure that adequate training material is developed to address traditional customs, values and cultural differences that are relevant to the work of the Serious Crimes Investigation Team.	Human Resources	Medium	O	been developed and English language training courses provided to staff members based in the regional offices. Confirmation that UNMIT has conducted a refresher session that addresses traditional customs, values and cultural differences relevant to the work of the SCIT.	March 2009
8	The UNMIT Administration should pursue the establishment of a DNA testing facility with the Government of Timor-Leste.	Governance	Medium	C	Action completed	Implemented