



UNITED NATIONS

NATIONS UNIES

ETTA
East Timorese Transitional Administration
DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 8/2001
Date: 25/7/2001
Original: English and Bahasa
Indonesia

IN THE TRIAL CHAMBER

Before:

Judge Sylver Ntukamazina, Presiding
Judge Marcelo Dolzany da Costa, Rapporteur
Judge Maria Natercia Gusmao Pereira

Registrar: João Nauro

Judgment of: July 25, 2001

THE PROSECUTOR
v.
FRANCISCO DOS SANTOS LAKU

JUDGEMENT

The Office of the Public Prosecutor:
Ms. Brenda Sue Thornton assisted by Mr. John Cina
Counsel of the accused:
Mr. Nuno Pinheiro Torres and Ms. Marcia Sarmento

INTRODUCTION

The trial of Francisco dos Santos Laku (born in Balibo, Bobonaro, East Timor, on 12 June 1956, former Indonesian Armed Forces - TNI sergeant) before the Special Panel for Serious Crimes in the District Court of Dili, responsible for the handling of serious criminal offences (hereafter: the "Special Panel"), commenced on 30 May 2001 and concluded today, the 25th July 2001, with the rendering of the decision.

After considering all the evidence presented during the trial, and the written and oral statements from the office of the Prosecutor General (hereafter: the "Public Prosecutor") and also the Defendant and the defense for the defendant, the Special Panel

HEREBY RENDERS ITS JUDGEMENT.

A. THE SPECIAL PANEL

The Special Panels were established, within the District Court in Dili, pursuant to Section (hereafter "Sect.") 10 of UNTAET Regulation (hereafter "U.R.") No. 2000/11, in order to exercise jurisdiction with respect to the following serious criminal offences: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as specified in Sections 4 to 9 of U. R. 2000/15.

B. PROCEDURAL BACKGROUND

On 21 March 2001, the Public Prosecutor presented before the Dili District Court a written indictment (in English and Indonesian) with a charge of murder against Francisco dos Santos Laku, Armindo dos Santos and Mario de Carvalho. Attached to the indictment were also typed and handwritten copies of the following documents:

- the statements of the accused; and the
- statements of the witnesses Abel da Cruz, Ronaldo de Carvalho, Claudino Gouveia Leite and Francisco Pereira;
- crime scene sketch plan and photographs.

The originals were served to the Court on the 2 May 2001 during the preliminary hearing.



On 2 May 2001, the Defense of Francisco dos Santos Laku raised a preliminary motion to ask for the severance of counts against its client in a different and autonomous indictment. He was under detention at Becora prison; the other defendants were at large, in an unknown place, believed to be somewhere in West Timor. That circumstance would lead to a delayed trial ant to the violation of the rights of the accused to a fair and quick trial. In response to the accusation against the defendant, the Defense stated that there was no fact in the indictment to support the charge that he committed the murder of Celestino Fernandes. On the contrary, the Defense emphasized, the evidence showed that the other two defendants – Armindo dos Santos and Mario de Carvalho – had stabbed the victim. Therefore, not a single fact supported the charge of murder against the defendant (p. 80/82).

The Prosecution, on 27 April 2001, submitted a request for an extension of detention (f. 169/171). The Special Panel decided, in chambers, to accept the grounds also emphasized during the preliminary hearing held on 9 May 2001 (p. 195/198) and ordered the defendants' detention for the duration of the trial (f. 176/179). During that hearing, the Court rejected the motion to dismiss the charge of committing the murder of Celestino Fernandes, considering that this point was linked to the ordinary trial in view of the evidence submitted by both parties. However, the Special Panel granted the request to separate the count as submitted by the Defense. The Prosecution amended the indictment. Consequently, the defendant was given an opportunity to make a statement, including a plea of guilt. After consultation with his counselor, he declared that he could not accept an charge made against him only. The Pānel closed the hearing by inviting the parties to present their evidence and set a date for the trial.

The ordinary trial, scheduled for 30 May 2001, was held over three sessions (30.5.2001, 6.6.2001 and 13.6.2001). The Court also notified both parties that the rapporteur judge, considering that there were no audio or video recording apparatus, no stenographers and no shorthand writers available to the judicial administration in East Timor, would provide the record of the hearing. The rapporteur judge made a record after summarizing as accurately as possible on a portable computer the statements made by the parties and the questions, orders and decisions of judges during the hearing. The Special Panel decided that this record was authoritative with regard to the one made by the Court clerk.

The Public Prosecutor submitted as evidence the statements of the accused and four witnesses. Also it was noted that a DNA test had been conducted to identify the body of the victim. Nonetheless, the Prosecution considered that an autopsy report would be sufficient to prove the matter. The Defense objected that the trial should be suspended while waiting the results. However, before the closing statement, the Defense agreed that the DNA tests were not necessary because it was undisputed that the body really belonged to the victim as established through other evidence, especially the testimony of witnesses and photographs.



The Defense did not present any witnesses or evidence. The Public Prosecutor read out the indictment in an open hearing; the accused maintained his stance by refusing to make an admission of guilt. At that opportunity, the Defense objected that his client's statement could be addressed after the presentation of the evidence. In his opinion, the Court could change the sequence of the presentation of evidence provided for in Sect. 33.1 of UR-2000/30. The presiding judge overruled the objection because of the absence of grounds, but the Defense filed an appeal. So far, no results are available from the High Court.

The Court and both parties questioned the accused. The following witnesses were questioned and gave testimony under oath: Ronaldo de Carvalho, Francisco Pereira, Abel da Cruz, Claudino Gouveia Leite and Claudina Siqueira.

The Court closed the presentation and hearing of evidence and immediately allowed the parties to make their closing statements. Finally the Court then gave an opportunity to the Defendant to make any additional statements. He preferred to remain silent.

On 13 June 2001, the Court read to the public the verdict and the sentence and adjourned to 10 July 2001 to release the written judgment. Nevertheless, because of issues relating to the trial of a complex case (*Los Palos Case*) to be conducted on the same date, the decision was adjourned to 24 July 2001.

Interpreters into English, Bahasa Indonesia and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

As specified in UNTAET Regulations No.1/1999, No.11/2000 and No. 15/2000, the Special Panel for Serious Crimes shall apply:

- UNTAET Regulations and directives;
- Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;
- Pursuant to Sect. 3 UNTAET Regulation No. 1/1999, the law applied in East Timor prior 25.10.1999, until replaced by UNTAET Regulations or subsequent legislation, insofar as they do not conflict with the internationally recognized human rights standards, the fulfillment of the mandate given to UNTAET under the United Nations Security Council Resolution 1272 (1999), or UNTAET Regulations or directives.



Therefore, the Court will apply U.R. No. 2000/15, No. 2000/11, the Penal Code of Indonesia (hereafter PCI) and U.R. No.2000/30 on Transitional Rules of Criminal Procedure.

D. THE FACTS

Factual allegations of the case

The Prosecutor's factual allegations may briefly be set out as follows.

According to the Prosecution, on 7 September 1999, members of the Indonesian Armed Forces (*Tentara Nasional Indonesia* – TNI), led by Francisco Laku, traveled in vehicles to a checkpoint on the road, outside the village of Berame, sub-district of Balibo. The checkpoint was manned by individuals including Armindo dos Santos, Francisco Laku, Mario de Carvalho, Estani Lau, Hilario Leri, Orlando Ramos, Bento dos Santos, Jose Asmakin and Nikolau da Silva. At that checkpoint, members of the TNI removed Celestino Fernandes from one of the vehicles. Francisco Laku fired two shots in the air and ordered Armindo dos Santos, Mario de Carvalho, Estani Lau, Hilario Leri, Orlando Ramos, Bento dos Santos, Jose Asmakin and Nikolau da Silva to beat Celestino Fernandes. Francisco Laku then ordered them to kill Celestino Fernandes; he warned them, if they did not, he would kill them when he passed along the road on his return from Maliana. Celestino Fernandes was forced by them to walk along a track running off the road. They stopped in front of a dry river bed that crosses the track. Armindo dos Santos then stabbed Celestino Fernandes twice in the stomach. After the stabbing, they carried Celestino Fernandes off the track, on a path that runs parallel to the dry river. Celestino Fernandes died from these wounds.

In her final statement, the Prosecutor considered that there was sufficient evidence in relation to the offence. In her viewpoint, both the defendant and two eyewitnesses testified that Francisco Laku, arrived in a convoy of trucks, handed Celestino over to the members of the militia and ordered him to be killed. He admitted he did it because he was "afraid". But this excuse was not supported by the evidence. Laku was an armed TNI member and knew several of the militia members, including his two brothers Armindo dos Santos and Bento dos Santos. The same witnesses stated that it was Laku that fired the shots from the front cab of the truck and ordered the militiamen to kill the victim, but the defendant imputes that conduct to sergeant Alo, his commander. The fact that one of the witnesses is a brother of Mario de Carvalho, one of the perpetrators, is irrelevant, since all the witnesses have nothing to gain from coming to state under oath and there is no benefit for them to testify. The Court in its decision-making should assess such inconsistency. Those witnesses also testified about the murder of the victim by stabbing. Family and friends recognized the remains of the



victim and a post mortem was done and identified the death of the individual as homicide. Further, the defense did not contest that Celestino Fernandes was killed on that day.

The Defense, on the other hand, firstly stressed that the evidence presented by the Prosecution was inconsistent. Thereby, the Prosecution had failed to prove the *actus reus* of the crime. An eyewitness whose brother was the actual perpetrator of the crime had confirmed that the alleged order given by the defendant, so he can not be an impartial witness. Further, this testimony was untrustworthy since the witness could not hear and see at a distance what Francisco Laku was doing when the victim was allegedly given to militia members surrounding the truck with the motor running. Another witness also gave an inconsistency testimony to the Court in regard to what he had stated to the police. In short, both witnesses have lied before the Panel, a fact highlighted by the Defense. Finally, the Prosecution failed to prove the link between the accused and the militia group and also to establish the cause-effect relation between the alleged order and the action carried out by the militiamen.

Factual findings

According to the evidence in the files, the Court considers as undisputed facts:

- A convoy of trucks under command of TNI soldiers arrived in the village of Berami on 7 September 1999. Francisco and two eyewitnesses admitted this.
- Francisco was armed. He and the same two eyewitnesses admitted this.
- When the convoy reached the militia post in Berame, Celestino Fernandes was handed over to members of the militia.
- Two other militia members were brothers of the accused (Bento and Armindo dos Santos). The accused initially denied that he knew any militia members, but after he agreed on this fact. He agreed that he knew three militia members.
- The militia members took the victim and killed him. The accused does not know who killed Celestino Fernandes, but the eyewitness Ronaldo de Carvalho followed the group of militiamen and saw the victim being stabbed by Armindo and Mario.
- The death of the victim is admitted both by the defense counselor and the witnesses.



The Court deems that the following facts have been proved in relation to what was charged and what the defendant acknowledged and what the defense affirmed during the trial:

- The conduct of the accused
- The victims' cause of death and the link between the conduct and the outcome proved

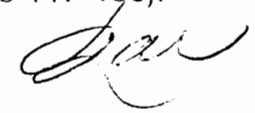
a) *The conduct of the defendant*

a.1) *The statement of the defendant before the Court*

The accused declared before the Court that, at the time of the crime, he was a sergeant of Indonesian Army at Oeleu village. He said that he was on the road driving in a three-truck convoy from Atambua to Maliana. When he reached the point where the militia members were operating, the convoy stopped. He was in the second car; the victim was in the first car. Then he saw the militia dropping Celestino Fernandes off. After that he continued his journey to Maliana (cf. p. 244, lines 160-190).

Replying to the Prosecution's questions, he stated that he was carrying a gun at the time. The convoy stopped for about 5 minutes to drop the victim off. He could see that the victim was younger than him. He didn't know the names of the militia members, but soon acknowledged before the Court that his two brothers Armindo dos Santos and Bento dos Santos were among them (p. 254, lines 216-227). He refused to admit he had given any order to kill Fernandes, but also denied to have received an order from sergeant Alo (p. 246, line 265). "Everybody shouted at me", he justified (p. 246, line 267), but afterwards he stated that "there was no order to murder" the victim (p. 247, line 299). Finally, he admitted that he, after giving the victim to the militia, told the militia commander: 'You have to question him first. Don't do anything until you question him and find out the truth'. However, he denied that he had given an order to kill Fernandes (p. 249, lines 375-389).

When cross-examined by his legal counsel, the defendant replied that he was only an assistant to sergeant Alo at the time. He heard someone ordering him when he was still sleeping in the car: 'Take this person!' (p. 250, line 427-428). He became afraid (p. 250, line 431). "If I didn't take him out from the car, the militia would assault me", he justified. "I called him: 'Get out from the car!'. We got him out of *my car* and then we went straight ahead to Maliana". After several minutes he imputed to sergeant Alo the responsibility for handing Celestino over to the militia (p. 250, lines 438-440). He added: "Many people were shouting. These people were in the first truck; they were militia members. (...) They were on the back of the truck". Sergeant Alo and the driver were in the cabin (p. 250, lines 447-450).



Francisco Laku, replying to judge Maria Natercia's questions, once again alleged that he called Celestino Fernandes out from the car because "he was afraid", "he was a member of TNI (...) and could not do anything", "had no authority, or power to fight against the militia" (p. 251, lines 470-485).

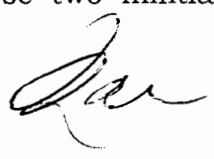
Those statements reveal at least two inconsistencies:

Firstly, the defendant declares he was traveling in the second car and the victim was in the first car. But, when questioned by his counselor, he stated that he was in the same car as the victim, admitting that "we got him out of *my car* and then we went straight ahead to Maliana" (p. 250, line 433-434). If the victim was in the same car where Laku was with the driver, the Court concludes both of them were in the second car, not in the first. It is unbelievable that Laku was woken up by the crowd to hand Fernandes over if they were not in the same truck.

Secondly, it is not clear where the order to hand over the victim came from. In his initial deposition to the Court, the defendant said that the militia shouted him to hand over the victim. People were shouting at him: '*Take this person out from the car, otherwise you will be killed*' (p. 250, line 438). When asked by the Defense about who ordered that Celestino should be killed, he answered: "Many people were shouting. These people were in the first truck; they were militia members" (p. 250, line 447-448). Among those people in the back of the truck was Celestino (p. 250, line 457). After hearing the shouting, he declares that he "had to follow the orders of sergeant Alo" (p. 250, line 440). However, when earlier asked by the Prosecution, he admitted that the victim was handed over to the militia upon his recommendation: '*You have to question him. Don't do anything until you question him and find out the truth*' (p. 249, line 376-380).

a.2) *The testimony of the witnesses*

The eyewitness Ronaldo de Carvalho is a brother of one the perpetrators, Mario de Carvalho. Under oath, he stated that he saw his brother and Armando dos Santos killing the victim, after the militia members beat and maltreated him outside the car. He saw them "passing by the street after they took him out from the car" (p. 252, lines 526-540). He also remembered that Francisco Laku was previously in the front seat of the car with the victim (p. 252, lines 546-552). He could hear Francisco Laku ordering the militia members Armindo dos Santos and Mario de Carvalho: '*Come on, take him out from the car and kill him!*' (p. 253, line 557-561). This witness was watching the scene from the top of a tree and also could hear Laku shouting at the victim: '*Now you can take him way*. After that, Laku fired two shots and Celestino Fernandes passed across the street (p. 253, lines 588-590). From above, the witness also saw those two militiamen stabbing the victim (p. 253, line 567-581).



To the Defense, the eyewitness Carvalho stated that he could hear the shots fired by Laku as well as when he gave the order to the militia members, even when the truck motor was on (p. 255, line 663). Also he clarified that the side window of the truck was down, so it was not possible to see if it was dark or not (p. 255, lines 676-680).

The Court deems that this testimony is trustworthy and consistent. In isolated areas, as it is a remote hinterland in East Timor, the sound waves are more audible than in urban areas. The vastness of the fields in countryside regions allows that some sound details can be heard, even under simultaneous noises, in different frequencies and tones. Everyone agrees on that at a distance of 100 meters in the countryside one can perfectly hear sounds non-recognizable in urban areas. The Panel agrees with the doubt raised by the Defense that the windows of the truck cabin are irrelevant, since the side windows were down at the time. Severe weather conditions in East Timor in relation to a traveling military vehicle explain why the windows were down.

The same eyewitness knew the victim as a former bus driver in the surroundings and identified the clothes and belongings of Celestino Fernandes as the same as those he was wearing the day he was murdered (p. 256, lines 690-700).

The eyewitness' family ties with one of the perpetrators do not disqualify his testimony. The alleged interest he could have to negate his brother's criminal liability cannot be presumed after he made it under an oath.

At this point the Court makes some brief remarks on the credibility of the witnesses:

Would the eyewitness Ronaldo de Carvalho be interested in the conviction of Francisco Laku, considering that Mario de Carvalho is his brother? The Panel does not see what kind of interest. If a conviction results, that would not provide acquittal or exemption of responsibility to the witnesses' brother; on the contrary, such testimony enhances the conduct of one of the perpetrators. The fact that the Court granted the Defense with the severance of counts does not mean at all that Armindo de Carvalho would not be prosecuted for the same charges now attributed to the defendant Francisco Laku.

The credibility of the statement of the accused in relation to what the eyewitnesses testified has to be interpreted as a defense, not as a testimony. Firstly, he said he did not take the victim out of the truck; later, he admitted that he called him out of the truck. Secondly, he denied handing the victim over to the militia; later, he told the Court that he handed him over and said that he was ordered and afraid. Thirdly, he did not recognize any of the militia members; after, he identified his two brothers and another person.



Fourthly, he stated that he never heard or was aware about any act of killing in Bobonaro district by the militia, around January, that militia were killing people and that he never heard about TNI soldiers in those incidents.

The eyewitness Francisco Pereira also knew the victim as a driver of a popular bus named Ulu Hatim (p. 256, line 720). He testified about the day Francisco Laku and other TNI soldiers brought Fernandes from Balibo. He was playing checkers in a kiosk nearby when the convoy came and dropped the victim. He saw the scenes that occurred in front of the car (p. 262, line 967-969). He could see them grabbing the victim by his arms and taking him down. From his place he could hear Francisco Laku saying: *'Bring him down there; kick him there, kill him! If you don't kill him, when I came back from Maliana I'll kill you if you don't do it. (...) Bring him down to the river, keep him there and then kill him'* (p. 256, line 725-732 and p. 257, lines 743-744). As the first eyewitness, Francisco Pereira could also recognize the belongings of the victim when he was murdered (p. 258, lines 785-787).

Questioned by the Defense, the eyewitness confirmed that he had seen two trucks – and not three trucks as stated by the accused. They were stopped on the side of the road, but he could not remember which one Laku was in (p. 259, lines 840-850), but anyway he testified that Laku was seated inside and on the front side of the truck (p. 259, lines 843-844). About the color of the side window, the witness reported the same as the first witness: "They put down the window" (p. 259, line 850). However, he could not confirm who fired the shots, in spite of having seen Laku pointing the gun (p. 260, line 876), but agreed with the question that the truck motor was running. He was at a distance of 30 meters.

The witness Abel da Cruz, village chief in Oeleu, testified that he saw the victim for the last time on a particular day in September 1999. After receiving a letter from Mario de Carvalho at the West Timor border (p. 285, lines 110-129) about the murder of the victim, he went to the place where the body had been buried. He could identify the corpse as Celestino Fernandes' because an ID card was found amid the bones. Before the Court, he was able to recognize the remains (p. 284, lines 64-88 and p. 285, lines 130-146 and p. 286, lines 147-164). This eyewitness has close ties with the main perpetrator Mario de Carvalho – his uncle (p. 287, line 213) and the defendant Francisco Laku – also a member of his family (p. 287, lines 229-234).

Finally, Claudino Gouveia Leite and Claudina Siqueira, the victim's parents, came before the Court and recognized the remains of their son through photographs (p. 288, lines 262-280, p. 289, lines 283-317). They took the opportunity to ask to the Court for an order of compensation for their son's death. The Prosecution pointed out that Sect. 49.2 of UR-2000/30 allows the Court to rule on a criminal sentence and civil compensation. The Defense disagreed: the victims might start a civil claim, but not on the grounds of Sect. 49.

UR-30/2000 allows the alleged victims in a criminal proceeding to claim compensation for damages or losses suffered or inflicted by a suspected crime by filing a civil action before a competent judge (Sect. 49.1). It also allows a judge to decide about the civil compensation within the criminal case (Sect. 49.2). However, in present case, the victim's parents did not make a complete request with enough elements to allow the Court to decide on that issue. For example, the Court even has not evidence whether the deceased provided financial support to his parents.

a.3) *Conclusion on the evidence by testimonies and the defendant's statement*

The standings of the witnesses Ronaldo de Carvalho and Francisco Pereira converge on some points admitted by the defendant. It is undisputed that he handed the victim over to the militia members, but not afraid or under duress by sergeant Alo. As a matter of fact, he not only handed him over, but also stressed that the victim should be killed after questioning him. The alleged pressure could not come either from sergeant Alo or from the militia. Firstly, the defendant had the same hierarchical position as the other TNI member; therefore, they were not subordinated to each other. Secondly, the actions carried out by pro-autonomy militia groups in East Timor were widely supported by the ruling Indonesian military authorities.

The victim's cause of death and the link between the conduct and the outcome proved

It is also undisputed that the victim's death, according to the post mortem report and the witnesses' testimonies, resulted from the stabbing carried out by the militia members Armindo dos Santos and Mario de Carvalho.

The dead body really belonged to Celestino Fernandes, a fact recognized as unquestionable by the Defense.

The evidence provided by the eyewitnesses Ronaldo de Carvalho Francisco Pereira also leads to the conclusion that the order to murder the victim indeed came from Francisco Laku. By ordering the militia to "question him before killing him", Laku was clearly demanding to that paramilitary group an extreme act to take the life of Celestino Fernandes. This action was implemented as a part of a main purpose of a widespread and organized strategy intended to kill the villagers and to burn their houses in retaliation to the results from the popular consultation in the preceding month. In addition, the plan outlined and executed by Indonesian military forces and its supported local militia groups was the forced deportation of hundreds of thousands of East Timorese residents. Those facts do not call



for any formal evidence in the light of what even the humblest, and the most candid man in the world can assess.

E. THE LAW

The Special Panel Deems that the evidence on record proves beyond any reasonable doubt that all the essential elements of murder – as alleged in the charge made by the Public Prosecutor – are met.

Pursuant to Sect. 8 U.R. 15/2000 and Article 340 PCI, “the person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished...”.

- ◆ The evidence clearly show that Francisco dos Santos Laku did participate in the operations that resulted in the death of Celestino Fernandes on 7 September 1999.
- ◆ Even if Francisco dos Santos Laku was not the main perpetrator of the murder, he ordered the murder, thereby his individual responsibility is met in Sect. 14.3(b) of UR-2000/15. (...a person shall be criminally responsible and liable for punishment for a crime ... if that person orders, solicits or induces the commission of such a crime which in fact occurs or is attempted”)
- ◆ Premeditation means that there is time between when the intent to murder arises and when the intent is actually realized. Francisco Laku knew and could calmly think about how the murder was to be committed. For him, it was sufficient to be aware that he was ordering the actions to get the results. He handed over the victim the militia members; he ordered them to question him and to kill him. The premeditation, in this case, is assessed since the time the accused picked up the victim until the time he ordered to kill him. The militiamen immediately and exactly followed up the order. The time between when the decision arose to join and participate in the militia campaigns and operations to kill can be assessed as the element of *premeditation*.

Pursuant to the consideration of the aforementioned elements, it is found legitimately and in accordance with the law that the Defendant has committed the crime as specified article 340 of PCI, pursuant to what provides Sect. 8 of U.R. 2000/15.

F. VERDICT

For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond



reasonable doubt and therefore finds Francisco dos Santos Laku guilty of murder, as a violation of Sect. 8 U.R. 2000/15 and article 340 of PCI.

G. SENTENCING

Pursuant to these findings of guilt, the Special Panel will proceed to sentence Francisco dos Santos Laku, in order to determine the appropriate penalty.

According to the applicable law, in particular Art. 340 of PCI, the penalties that the Special Panel could impose on a person convicted of murder are capital punishment, life imprisonment or a maximum of 20 years of detention. U.R. # 1999/1, Sect. 3.3, excludes capital punishment. Finally, U.R. No. 15/2000, Sect. 10, excludes life imprisonment by providing that it has to be for a specified numbers of years, which may not exceed a maximum of 25 years.

The Prosecution had no suggestion for the penalty.

The defendant did not plead guilty and a trial had to be conducted.

Aggravating circumstances:


The Special Panel deems that there are no aggravating circumstances in this case.

Mitigating circumstances

The accused ordered the militia members to kill Celestino Fernandes, an activist in a pro-independence party (p. 284, line 99-100). He acted to carry out an order from a government who was supporting militia groups in East Timor as reprisal to the popular consultation who decided on the independence of this territory. Thereby, the Special Panel deems that the attenuating circumstance provided by Sect. 21 U.R. 2000/15 are applicable in this case. Francisco Laku was not the main perpetrator; he was acting under orders.

The Special Panel bears in mind that the accused is married with children. However this may be said of many accused persons and cannot be given any significant weight in a case of this gravity. The accused has no previous convictions.

Sentencing policy



According to Sect. 10 U.R. 2000/15, for the crimes referred to in Sect. 8 of the aforementioned regulation "the penalties prescribed in the respective provisions of the applicable Penal Code in East Timor (i.e. the PCI) shall apply". "In imposing sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person".

The penalties imposed on accused persons found guilty by the Special Panel must be directed, on one hand, as retribution of the said accused, who must see their crimes punished (*punitur quia peccatur*). Over and above that, on other hand, as a deterrence, namely to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of law and human rights (*punitur ne peccetur*).

Finally, the objective to prosecute and punish the perpetrators of the serious crimes committed in East Timor in 1999 is to avoid impunity and thereby to promote national reconciliation and the restoration of peace.

Taking into account the mitigating circumstances, the gravity of the crime and the abovementioned consideration, the Special Panel, deems appropriate the punishment of 8 (eight) years of imprisonment.

H. DISPOSITION

For the aforementioned reasons, having considered all the evidence (statements from the witnesses and the defendant before the Court) and the arguments of the parties, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the defendant FRANCISCO DOS SANTOS LAKU:

- (1) GUILTY for the charge of murder, in violation of Article 340 of the Penal Code of Indonesia, pursuant to Section 8 of UNTAET Regulation 2000/15;
- (2) In punishment of the aforementioned crimes, sentences FRANCISCO DOS SANTOS LAKU to an imprisonment of 8 (eight) years.
- (3) Orders the defendant to pay the costs of the criminal procedure

Credit for time served

According to Section 10.3 U.R. 15/2000, section 42.5 UR-30/2000 and Article 33 of Indonesian Penal Code, the Special Panel deducts the time spent in detention by FRANCISCO DOS SANTOS LAKU, due to an order of an East Timorese Court. The defendant FRANCISCO DOS SANTOS LAKU was arrested on 20 January 2001, therefore he has been under detention for



6 (six) months and 5 (five) days. Accordingly, previous detention shall be deducted from the sentence today imposed. Together with such additional time, he may serve pending the determination of any final appeal.

Enforcement of sentence

Pursuant to Sections 42.1 and 42.5 of UR-2000/30, the convicted shall be immediately imprisoned and shall spend the duration of the penalty in East Timor.

The sentence shall be executed immediately, providing this disposition as a warrant of arrest.


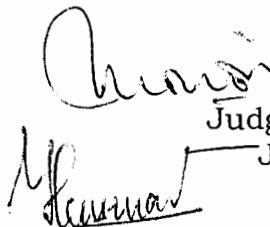
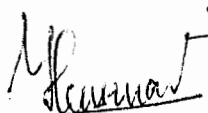
This decision is provided in one copy to the defendant and his legal representative, Public Prosecutor and to the prison manager.

The Defense has the right to file a Notice of Appeal within the coming 10 days and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

Civil compensation

The Special Panel does not have enough elements to decide on the claim orally submitted by the Celestino Fernandes' parents and endorsed by the Prosecution. However, this decision does not disregard any future civil action suited by Celestino Fernandes' ascendants or descendants before a compensation court.

This judgment was rendered and delivered on the 25th of July 2001 in the courtroom of the Court of Appeal building in Dili by

Judge Sylvester NTUKAMAZINA (presiding)
 Judge Marcelo Dolzany DA COSTA (reporting)
 Judge MARIA NATERCIA Gusmão Pereira.

(Done in English and Bahasa Indonesia, the English text being authoritative)