

UNITED NATIONS



NATIONS UNIES

ETTA
East Timorese Transitional Administration
DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 08/2000
Date: 24/8/2001
Original: English and Bahasa Indonesia

IN THE TRIAL CHAMBER

Before:

Judge Maria Natercia Gusmao Pereira, Presiding

Judge Sylver Ntukamazina, Rapporteur

Judge Marcelo Dolzany da Costa

Registrar: João Nauro

Judgment of: August 24, 2001

THE PROSECUTOR

v.

Mateus Tilman

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Essa Faal assisted by Ms Shyamla Alagendra

Counsel of the accused:

Mr. Cancio Xavier

INTRODUCTION

- 1 The trial of Mateus Tilman (aged 35, farmer, born in Hola Rua Village in Same Sub District, Manufahi District, East Timor, single, before the Panel for Serious Crimes in the District Court of Dili, responsible for the handling of serious criminal offences (hereafter: the “Special Panel”), commenced on 29th May 2001 and concluded today, the 24th August 2001 with the rendering of the decision.
- 2 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

3 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

- 3 On 30 November 2000, the Public Prosecutor presented before the Dili District Court a written indictment (in English) with the charges of attempted murder, serious maltreatments and destruction of property against the defendant Mateus Tilman. Attached to the indictment were also typed and handwritten copies of the following documents, in English and Tetum versions: statements of the witnesses Artur Laranjeira (14.12.1999 and 30.03.2000), Mariana Corte Real (14.12.1999) and Teresinha Carvalho (14.12.1999).
- 4 The Court clerk provided notification of the receipt of the indictment to the accused (12.01.2000) and to his legal representative (21.12.2000), pursuant to Sect. 26.1 and 26.2 U.R. 2000/30 (p. 34).
- 5 Mateus Tilman was arrested and detained on 25 March 2000 when he was returning from West Timor. The Court issued a warrant of arrest on 12 January 2001, after the case came from the investigating judge. On 29.01.2001, the Court decided to order the extension of detention for the duration of the trial (p.52). The decision was confirmed on 27.02.2001.
- 6 The preliminary hearing commenced on the 29th January 2001 and finished on 27 February 2001, after one adjournment. On 29 January 2001, the Court decided that count 3 (Serious maltreatment of Artur Laranjeira, Teresinha Carvalho, Orlando Corte Real and Juliana Corte Real) is included in Count 1 (attempted murder of Artur Laranjeira) and count 2 (attempted murder of Teresinha Carvalho, Orlando Corte Real, Juliana Corte

Real, Mariana Corte Real and Manuela Corte Real), and that count 3 cannot be considered as a separate count, considering that the Public Prosecutor acknowledged that count 3 is subsidiary to count 1 and 2, and that Mariana and Manuela Corte Real did not receive any injury. The Court checked also if the defendant had read the indictment or if the indictment had been read to him. It asked if he understood the nature of the charges, his right to be represented by a legal advisor, his right to remain silent, to plead guilty or not guilty to the charge, as provided for in Sect. 30.4 U.R. no. 30/2000. The accused said that he did not understand the indictment because it was not translated in Bahasa Indonesia, or Tetum. As a response to the statement of the accused, the Court decided, according to Section 6.3(b) of UNTAET Regulation 2000/30, that the accused should be provided with the indictment translated in Tetum by Friday 2 February 2001.

- 7 On 27 February 2001, the defendant made a statement that he had read the indictment and that he understood the charge against him. The defense did not submit any list of evidence. The Court admitted the evidence submitted by the Public Prosecutor with the indictment (p.56).
- 8 The defendant did not plead guilty. He stated that at the time he was with the group who attacked and burnt Laranjeira's house, but he did not know what there were going to do. He did not burn the houses or stab the victim Laranjeira, and consequently was not guilty. He denied responsibility about the attempted murder and serious maltreatment of Artur Laranjeira, Teresinha Carvalho, Orlando Cortreal, Juliana Cortreal, Mariana Cortreal and Manuela Cortreal.
- 9 The ordinary trial was scheduled for 29 May 2001 (p. 56).
- 10 On 29.5.2001, the Public Prosecutor read out the indictment in an open hearing; the accused maintained his stands by refusing to make an admission of guilt. The Court and both parties questioned him. The following witnesses were questioned and gave testimony under oath: Artur Laranjeira, Teresinha Carvalho, Orlando Cortreal, Juliana Cortreal, Mariana Cortreal and Manuela Cortreal. The Court closed the presentation and hearing of evidence and then postponed the trial hearing to 05 June 2001 to allow the parties to make their closing statements.
- 11 On 05 June 2001, the Public Prosecutor submitted a written statement (in English version only) and read it out. The Defense submitted also a written closing statement. Finally the Court then gave an opportunity to the Defendant to make any additional statement. He preferred to remain silent.
- 12 On 14 June 2001, the Court read to the public the verdict and the sentence and adjourned to the 16 July 2001 to release the written judgment.
- 13 The hearing was postponed to 24 August 2001 due to the trial of an important and complex case (Los Palos case) everyday during July and August 2001.
- 14 Interpreters into English, Bahasa Indonesia and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

16 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.

17 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.

C. THE FACTS

Factual allegations of the case

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

19 In the year 1999, the accused joined the Ablai Militia group in his home village. This militia was very active in the Manufahi District committing a great number of criminal acts and causing many people to leave their villages and hide in the mountains. Prior to the ballot in East Timor, which took place on 30 August 1999, members of Ablai Militia threatened to kill all people who dare to vote for independence. On 2 September 1999, the accused Mateus Tilman, together with the militia leader Guilhermino Marcal, Marcal's 12 years old son Jaimeto and one Joao proceeded to the house of Artur Laranjeira and that one of his daughters Mariana Cortreal, Manuela Cortreal and Teresinha Carvalho both located on the same plot at main street in Hora Lua village. The militiamen intended to kill the residents and to burn the houses because Laranjeira and his daughters were deemed to be pro-independent. For that purpose the accused Mateus Tilman and his accomplices carried machetes and a jerry can filled with petrol. On arrival Guilhermino shouted that they would kill everyone that did not vote for autonomy. Then he and his son put fire on the straw/wooden-constructed house of Artur Laranjeira. Joao poured petrol to the build brick house of Laranjeira 's daughters and lighted it. The perpetrators knew that there were people inside the houses. They waited for them to come out in order to kill them. At first Laranjeira ran out. The accused Mateus Tilman and Joao hitting him with their machetes on the left leg and slashing his face, the side of his head and neck area causing serious wounds, attacked him. The 12 years old son of Teresinha Carvalho, Orlando Cortreal managed to get out of the other house. An arrow hit him to his left lower cheek coming out the other side through his neck. Furthermore, a machete cut his right

ankle. Teresinha and her 4 years old Juliana Cortreal were trapped inside the burning house. To escape they have to run through the fire. Teresinha Carvalho suffered severe burns to her feet, legs and arms. Juliana suffered burns to her arms. After having left the burning house she was attacked by Joao who struck her across her head with his machete causing a cut to her forehead. She succeeded in running away. Mariana and Manuel Cortreal managed to leave the house uninjured. When they saw their father being attacked by the accused Mateus Tilman and Joao, they started shouting. This made the perpetrators to flee.

- 20 In final statement, the Prosecutor considered that there was sufficient evidence in relation to the offence, which took place in Same on 22 September 1999. The witnesses, upon the prosecution's viewpoint, positively identified Mateus Tilman as one of the attackers of Artur Laranjeira. All the prosecution witnesses confirmed in both their testimony and their statement to the police that the houses were set on fire. For the Public Prosecutor it has been proved beyond reasonable doubt that Mateus Tilman was part of the group of Ablai Militia that attacked Artur Laranjeira and his family. It is also quite clear that Mateus Tilman and his co-perpetrators with deliberate intent and premeditation attempted to take the lives of Artur Laranjeira, Orlando Cortreal, Manuel Corrtreal, Mariana Cortreal, Teresinha Carvalho and Juliana Cortreal. The Prosecution adds that the accused is charged as a co-principal with other perpetrators in the commission of a common plan. One act of each co-perpetrator is legally deemed to be the act of the other. Finally, The Prosecution encouraged this Court to find Mateus Tilman guilty of count 1 and 2 of the indictment and requested to drop the charge against the accused concerning count 3 about arson /destruction of property.
- 21 *The Defense*, on the other hand, firstly stressed that there is a contradiction between the analysis of the prosecutor's charge and the articles used by the prosecutor to charge the defendant. In his opinion Section 8 of UR 2000/300 and article 340 of IPC are the two-sections that provide the criminal act of murder, where the perpetrator has deliberately and with premeditation taken the life of the victim. The fact is that there was no victim his life was taken. The wounds suffered by the victim are not of serious nature at all. If an attempted murder was committed by the perpetrator with the use of sharp weapon or machete, as was claimed by the victims, where the defendant supposedly aimed sharp blows at sensitive or vulnerable parts of the body such as the chest, neck, stomach and head with the knowledge that this act would take the life of the victim, and where its performance was not completed due to the circumstances independent on his will, in the last the victim would be suffering from life long disabilities. This was not the case. For the Defense, the accused was only holding a machete but did not attack the victims. The accused Mateus Tilman cannot be responsible for actions of others or other perpetrators who attacked several victims. Those actions, except for the victim Artur Laranjeira, did not involve the participation of Mateus Tilman whatsoever. In response to the third charge against the Defendant on damage to property, namely in which the Prosecutor in his analysis has stated that this actions have violated article 410, 412, 63 and 65 IPC, the Public Defender advances that it can not be proven that the Defendant was involved in the criminal act of arson (damage to property). Guilhermino Marcal and his son Jaimeto in fact committed this act. Also this charge against the defendant did not indicate that the Special Panel has the competence to try cases of arson/damage of property.

Factual findings

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

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

The conduct of the accused

23 It is undisputed that:

- Mateus Tilman was with the group, which attacked and burned Laranjeira's house, but he was not the leader.
- The group set fire on houses, knowing that there were people inside. The Public Prosecutor and Public Defender agree on that.
- Laranjeira was attacked when he ran out the house.
- Orlando Corte Real was also attacked when they fled the burning house.
- Mateus Tilman was carrying cans of petrol.
- Mateus Tilman agreed he was given an order from Guilherme to burn the houses

24 It is undisputed that the accused Mateus Tilman was Member of Ablai Militia in Hora-Rua Village. The accused himself declared before the Court that he became member of the militia group longtime after he went to Hora Rua village because he was forced to. He told the Court: " *if I did not join I would be killed*" (P.132). It is also undisputed that Mateus Tilman was with the group who attacked and burned Laranjeira's house, but he was not the leader of the group. The group set fire on the houses knowing that there were persons inside. Laranjeira was attacked when he ran out of the house. Orlando Corte Real was also attacked when they fled the burning house. Mateus Tilman was carrying a jerry can of petrol. The parties, the Public Prosecutor and the Public Defender agree on those facts.

25 The accused advanced that he was part of the group that attacked Laranjeira family but he did not know what there were going to do there. He told the Court: " *I went there, but I did not do anything. I did not know what we were going to do.*"(p.129). And responding to the question of the Public Prosecutor he said: " *You were part of the group not knowing what you were supposed to do? Yes*"(p.134). But after when questioned by the same Public Prosecutor he admitted he was hired to burn houses and to kill people. " *I was given petrol to burn houses*"(P.135).

26 Mateus admitted he was present at the place of Laranjeira 's house but he did not do or carry anything. " *Yes [I was there]. I did not carry anything. I went there but I did not do anything...*"(129). But after he admitted he was carrying a jerry can containing petrol. The accused gave the following answers during his deposition: " *When you reach the house of*

Laranjeira did you carry anything? Petrol. Where did you take petrol? Guilhermino gave me. Did he tell you anything? I was given petrol to burn houses”(p.135). He admitted also (p.130) and the Defense agreed that he was holding a machete (P.157).

- 27 He told he was given an order but he did not obey the order. He refuses to burn the houses; he admitted he just dropped petrol on balcony. *“If I burnt any house I will say it. They asked me to burn houses, so I threw the petrol away. (...) On the veranda. Why? Because he was a neighbor”(138).*
- 28 The witnesses Laranjeira, Mariana Corte Real, and Juliana confirmed that Mateus Tilman set fire on the houses. The witness Artur Laranjeira told the Court that Mateus is the one with others who set fire on his house: *"This militia (showing Mateus Tilman in the Courtroom) burnt my House. How did you know he was militia? Because he came and burn houses. Who was commander? Guilhermino Marcal(...)They were many of them. We were inside the house, we heard the voice telling "burn the house"(...) Which house was burnt first? The White House (p.139)".*
- 29 The witness Mariana Cortreal told the Court that there were many in the house. All of them ran out when the house was set on fire, some ran out of the front, others from rear. Her daughter Juliana got burnt. She saw the group that set fire on the house, which was composed by Mateus Tilman and Joao, and commanded by Guilhermino Marcal. She said: *" I was in the house, they burned the houses, all of us run away. From inside the houses, I could see outside. I saw the militiamen (p.150)".*
- 30 The witness Teresinha Carvalho, one of the persons who were inside the houses with her two children during the attack, told the Court: *"We were inside. They burned the houses. I did not see who did it. (P.153). When the fire came we ran in different directions".* The witness knew that the militiamen burnt the house but he did not know particularly which militiaman did it: *"Do you know who burned the house? The militia. Did you see among the militia who burned the house? We were inside, they burnt the house, and I did not see who did it"(P.153)*
- 31 Mateus Tilman and one Joao attacked Atweir Laranjeira. Mateus hit him first with machete cutting his knee and Joao also hit him with his machete cutting him on several places on his face. Teresinha Carvalho and her two young children Orlando and Juliana Cortreal were also injured in the attack. Laranjeira clearly identified Mateus Tilman as the perpetrator. Responding to the question of the Court, he said, *“I saw my house already burnt. I brought my children and when I went out, they cut me. (...) Firstly Mateus cut my leg, and then Joao cut my face. (...) I only saw Mateus and Joao”(pp140-141).* When asked by the Public Prosecutor, he told the Court again the following: *“Did you see the people who attacked you? Mateus and Joao. (...) When I came out these two people [Mateus and Joao] attacked me. After that my children went to the police. Who attacked you? Mateus and Joao. Were you able to see them? Yes I saw them. (...) Could you tell the Court which of the two persons hit you? Yes he is this one (showing Mateus). Where did he hit you? On the leg”. (Pp142-143).*

- 32 Mateus and Joao stopped hitting Laranjeira when his daughters came to his rescue. Mariana Cortreal told the Court: “*Mateus cut my father. My father cried. We came out of the house. My father was still stand like this (showing the standing up position). And they cut my father’s face (...) I saw Mateus and Joao*”. (...) *We went to inform the police, they are neighbors (pp.148-149)*. The witness Manuela Corte Real said to the Court “*I saw the militiamen cutting my father. They pushed him to the ground. They cut my father’s face. -Did you see who cut your father? Mateus. (p.150)*. The witness identified positively the accused during her testimony?” *I saw Mateus Tilman [during the attack]*. She pointed Mateus Tilman in the Courtroom and added:“(…) *he was wearing a blue shirt*”(p.152).
- 33 During the attack Teresinha's daughter Juliana ran to the fire and was injured on the thigh and the knee. Juliana came before the Court to show her injuries. Her son Orlando also was injured. She told the Court that she did not see the person who cut him. He told her he was running and militiamen came to him and cut him with a machete. But she did not see which militiamen cut him with a machete. She did not witness any arrow, which hit her son.
- 34 From the comparison between those statements the first conclusion is that the accused is one of the perpetrators of the burning of houses and the wounds of Laranjeira. The Court deems that the accused really was with the group who attacked and burned Laranjeira’s house. That is clear from the statement of the accused himself even if his testimony is fraught with inconsistencies and contradictions. He admitted also he was holding a machete and was carrying petrol after he stated before that he was present to Laranjeira house but did not do or carry anything. The witnesses positively identified him as one of the attackers. He was identified by the witnesses except Teresinha Carvalho as the one who struck Laranjeira on the knee with machete and the one who put petrol to the house on which was set on fire.
- 35 The second conclusion is that there is no evidence about Tillman’s conduct about the wounds by arrow and machete in Orlando Corte Real. However the burning brought other injuries in Orlando (ears and cheek) and his little sister’s thigh and knee. And even if Mateus Tilman did not directly cut Orlando, he participated as member of the group to Orlando’s injuries.
- 36 *The victims’ attempt of death and the link between the conduct and the outcome proved*
- 37 It is undisputed that Mateus Tilman was a member of the Ablai Militia and in this quality he went, on 22 September 1999, with Guilhermino Marcal and other members to attack and burn Laranjeira’s house. The Defense agrees that the accused was part of the group that attacked Laranjeira’s family but he did not know what there were going to do there. It is proved also that the groups set fire on houses knowing that there were persons inside and attacked every person who tried to escape the burning house.
- 38 The Court has to assess here two important controversial points raised by the defendant and the defense for the defendant: 1) the result aimed by the group in the attack of Laranjeira's family whether or not it was the death of the victims of the attack. 2) The individual criminal responsibility of attempt murder and its exemption by the duress. The Court shall point out its belief according to what it has been proved by both parties and pursuant the legal provisions on the matter.

Result aimed by the group in the attack.

- 39 About the incidents related to both counts, the defense relies on the fact that the accused was part of the group and was present at the attack, but he did not participate in it, because he felt sorry of the old man. He even did not know what they were going to do. He was given orders to burn houses, but he did not. Instead, he threw petrol away.
- 40 This Court, however, has a different sight from the same facts and circumstances relied on by the defense. The aim of the group can be understood from the orders given by Guihlermino Marcal who said: "*Burn the houses and kill all those who voted for independence*". The accused admitted that and Laranjeira confirmed it: "*Did they say that they want to kill you? They said it. What did they say? They said kill all pro-independence (...) why the militiamen wanted to kill you? They wanted us to vote for autonomy and not for independence*"(p.147). The accused person and his co-perpetrators went ahead and did exactly what they were told.

The individual criminal responsibility of attempted murder and its exemption by duress.

- 41 The Defense submitted that Mateus was forced to join the Ablai Militia. The accused himself told the Court that if he did not join, he would have been killed. He declared also that he was given orders to burn houses and to kill people. For him, his actions were with coercion from the militia leaders.
- 42 The accused told the Court "*I became member of the militia longtime after I went to Hora Rua. (...) If I did not join, I would be killed [by Leader Guilhermino]*"(p.132). About the attack of Laranjeira's family, the accused advanced that "*I went there, (...) if did not follow them [other militia members], they could kill me*".
- 43 The alleged duress can be assessed not only the day the accused attacked Artur Laranjeira's house, as stressed by the accused who told the Court he was ordered, but also along his whole activity in the militia group. The accused joined the militia in 1999; he did it supposedly to avoid to be killed by Guilhermino. However, such constraint is not plenty to put aside his criminal responsibility for the acts he was later involved. He alleged that the militia could kill him if he refused to join. But asked why he didn't not escape form the time he joined until the moment of the attack (5 months) he told the Court he was guarded:" *Marcellino guarded me [during this period]. He was a close neighbour, but we did not leave in the same house. Did Marcellino guard you 24 hours? I did not kill. This is not the question. Yes*"[*I was free to leave Hora Rua during those five months*].
- 44 No one should be supposed to stand a heroic behavior by challenging the alleged constraint to join. However, the Court is persuaded that the accused had several choices to do as long as he was not guarded 24 hours and agreed himself that he had opportunities during 5 months to leave Hora-Rua village. Mateus admitted also that many other persons resisted joining the militia. The accused chose to be in line with the militia groups.

- 45 By going with other members of Ablai Militia to the house of Artur Laranjeira carrying jerry can of petrol with immediate involvement in the attacks, the accused had deliberate intent to provide sufficient means to accomplish the purposes of the militia group. The attack of Laranjeira's house was not a casual fact; they were carried out as a part of a longer planning to commit violence against the People of Hora-Rua in Same sub-District who they believed supported independence of East Timor.
- 46 Section 14.3 of UR-2000/15 provides that "a person shall be individually responsible and liable for punishment for a crime within the jurisdiction of the panels if that person, (a) commits such a crime, whether as an individual, jointly with another, (...), (c) for the purposes of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission,(d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the panels; or be made in the knowledge of the intention of the group to commit the crime".
- 47 Since he joined the militia, the accused obviously knew about the purposes of the group. To participate in those attacks, carrying a jerry can of petrol, setting fire on houses knowing that there were persons inside, and attacking everybody who ran outside, is clearly a commission of a crime, with others, according to Section 14.3(a) of UNTAET Regulation 2000/15. Even if that kind of criminal responsibility was not proven, what is not the case here, Mateus Tilman would be criminally responsible, for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its attempted commission. At least he will be responsible for the contribution to the attempted murder of Artur Laranjeira and his family. The evidence he was carrying a jerry can full of petrol, as the Court could asses above enhances his performance to the results. Just holding a petrol and machete, during a siege maneuver against unarmed civilians, he played an undoubting role to the commission of the attempted murders.
- 48 From the time when he joined until the operation came after the ballot in August 1999, he had many chances to refuse to share the purposes of the militia group. The retaliation would come as soon as the results pro-independence were confirmed. More than five months after he joined, would Mateus Tillman still be afraid to be killed? The Court is convinced that his personal condition was not worse nor better than what forced the rest of the population who fled to the forests.
- 49 Sect. 19.1(d) of U.R 2000/15 provides that "the conduct which is alleged to constitute a crime within the jurisdiction of the panels has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that persons or another person, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be made by other person or constituted by other circumstances beyond that person's control".
- 50 The Special Panel deems that the aforementioned circumstance of exclusion of criminal responsibility is not applicable to the attempted murder committed by Mateus Tilman since he joined the purposes of the group for 5 months. By joining also the operation

launched on 2 September, he previously and intentionally shared the aim of furthering the criminal activity of the group (Sect. 14.3(a)[I] UR-2000/15). Even though he did not share these criminal purposes, the Special Panel has no doubts that the accused gave his contribution “in the knowledge of the intention of the group to commit the crime” (Sect. 1414.3(d)[ii] UR-2000/15).

- 51 “The fact that an accused acted pursuant to an order of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment...” (Sect. 21 of U.R. 2000/15). The accused incessantly alleged that he was forced to join, to work together with the militia’s criminal purposes and to attack Laranjeira's family. First, there are no grounds of such submissions. Second, even if it was proved that Mateus Tilman was acting following an order of a superior, as says the law, such circumstance shall not result in impunity, but in an easing punishment.
- 52 It is clear Mateus Tilman participated in the attack of Artur Laranjeira, on 2 September 1999, pursuant to what is considered as individual criminal responsibility according to UNTAET regulations.

D. THE LAW

- 53 The Special Panel deems that the evidence on record proves beyond any reasonable doubt that all the essential elements of attempted murder – as alleged in the charge made by the Public Prosecutor – are met.
- 54 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...”. And Article 53 PCI provides that “ Attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will.”
- 55 The actus reus of murder is to "taking the life of another person". An attempted is to take the step necessary to produce the desired consequences. For an act to constitute an attempt, it must be immediately and not merely remotely, connected with the commission of the offense. It must to be more than mere preparation for the commission of the offence. The evidence clearly shows that Mateus Tilman and his co-perpetrators set the house on fire knowing that Artur Laranjeira and his family were in the houses. It also has been proved that the accused Mateus Tilman and his co-perpetrators attacked Artur Laranjeira, Teresina Carvalho and Orlando Cortreal when they fled the burning houses. All those acts, and each of them were capable of resulting to the death of the victims. By their acts, the accused and his co-perpetrators took steps to kill the victims. They did not succeed only because of elements independent to their own will, especially because they were able to escape, secondly because the victims received a quick medical assistance. The court agrees with the Public Prosecutor that those acts were more than preparatory steps.
- 56 The mental element for murder is deliberate and premeditation. The same element applies to attempted murder. A deliberate intent is that in law, a person intent the consequences of his voluntary act when he desires the consequences to happen, whether or not he

foresees that it probably will happen, or when he foresees it probably will happen, whether he desires it or not. Premeditation is often used to denote a plan, and means that there is a time between when the intent to murder arises and when the intent is actually realized. Mateus Tilman knew and could calmly think about how the murder is to be committed. For him, it was sufficient to be aware he was contributing to all the results he had undertaken by joining the group. It is clear from the evidence and the accused admitted the existence of the plan and a plan to burn the houses and to kill all those who voted for independence. The accused knowledge of the plan. In the present case he confirmed that there was a plan to burn the houses of Laranjeira family knowing that there were persons inside. The time between when the decision arose to join and participate in the militia campaigns and operations to kill those who voted for independence, or at least the time the accused decide to join others and burn the houses of Laranjeira, knowing that there were persons inside, can be assessed as the element of *premeditation*.

- 57 The Defense submitted that there was at least not an attempted murder but maltreatment. Article 354 of IPC provides that: "The person who deliberately cause to another serious physical injury shall being guilty of maltreatment be punished... It is clear that as proven above, the intent was not to cause injury to Laranjeira's family, but to burn houses and kill villages who were pro-independence supporters or activist in general. In the present case they burnt Laranzeira's houses, knowing that there were persons inside. Beyond that, they attacked everybody who went out the burning houses. The militia group, including Mateus Tilman, cut them with machetes. Obviously, it was a way to prevent them to go outside the burning house and to be burnt inside or to be killed by machetes once outside.
- 58 Even if Mateus Tilman was not the main attempted murder perpetrator, his individual responsibility is met in Sect. 14.3(c and d) of UR-2000/15.
- 59 In response to the charge of attempted murder (count 1 and 2), the Defense submitted also that there is a contradiction between the analysis of the Prosecutor's charges and the provision of the law (Section 8 of UNTAET Regulation 2000/15 and article 340 IPC) used by the Public Prosecutor to charge the defendant, since those provisions relate to the criminal act of murder. For the defense there was no victim his or her life was taken. The elements of article 53 of IPC are not met "because the wounds suffered by the victims are not of serious nature at all".
- 60 The Defense submitted also that the Special Panel does not have jurisdiction to deal with the attempted murder (counts 1&2 of the indictment) and the destruction of property (count no 4). According to Section 10 of UNTAET Regulation 200/11, and Section 1&3 of UNTAET Regulation 2000/15, the Special Panel shall exercise jurisdiction with respect to the following serious criminal offences: Genocide, war crimes, crimes against humanity, murder, sexual offences and torture.
- 61 The charge of destruction of property that is mentioned in count 4 of the indictment is not within the jurisdiction of the Special Panel and has to be dismissed. In this case, the Public Prosecutor asked to drop it.
- 62 Concerning the charge of attempted murder, the law does not provide particular jurisdiction for attempted crimes different to the jurisdiction for the same completed

crimes. Whether attempted or completed, it is still a crime of the same nature. Article 53 IPC only says that the maximum of the basic punishment imposed on the crime in case of attempt shall be mitigated by one third, and that the additional punishments for attempts are the same as for the completed crimes. Therefore, the Special Panel shall exercise jurisdiction to the crime of murder, whether attempted or completed, insofar as the crime was committed in the period between 1 January 1999 and 25 October 1999.

63 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 of attempted murder as specified in Sect. 8 U.R. 2000/15 and articles 53& 340 of PCI.

E. VERDICT

68 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 Mateus Tilman guilty of attempted murder, as a violation of Sect. 8 U.R. 2000/15, articles 53 and 340 of PCI.

F. SENTENCING

69 Pursuant to these findings of guilt, the Special Panel will proceed to sentence Mateus Tilman, in order to determine the appropriate penalty.

70 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. # 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. Article 53 (2) of PCI provides that “The maximum of the basic punishments imposed on the crime in case of attempt shall be mitigated by one third.”

71 The Prosecution had no suggestion for the penalty.

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

73 The defense underlined that Mateus Tilman acted under the pressure of militia and T.N.I. and that he has a family with children.

64 The Special Panel has taken into account the following:

Aggravating circumstances:

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

Mitigating circumstances

66 The accused has no previous convictions.

Sentencing policy

67 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 the sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”.

68 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 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*).

69 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.

70 In this case there is only an attempt to take the lives of Artur Laranjeira, Orlando Corte Real, Manuela Corte Real, Mariana Corte Real, Teresinha Carvalho and Juliana Corte Real.

71 Taking into account the mitigating circumstances, the gravity of the crime and the abovementioned considerations, the Special Panel deems appropriate the punishment of four (4) years of imprisonment.

DISPOSITION OF THE SENTENCE

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

73 With respect to the defendant MATHEUS TILMAN:

74 DISMISS the charge of MATEUS TILMAN concerning destruction of property;

75 GUILTY for the charges of attempted murder, in violation of Section 8 of UNTAET Regulation 2000/15 and Articles 340 and 53 of the Penal Code of Indonesia;

76 In punishment of the aforementioned continued crimes, sentences MATEUS TILMAN to an imprisonment of 4 (four) years.

77 Orders the defendant to pay the costs of the criminal procedure.

Credit for time served

78 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 MATEUS TILMAN, due to an order of an East Timorese Court. The defendant MATEUS TILMAN was arrested on 25 March 2000, therefore he has been so far under detention for 1 (one) year, 4 (four) months and 29 (twenty-nine) 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

79 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.

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

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

Dili, 24 August 2001.

Judge MARIA NATERCIA Gusmao (presiding)

Judge Sylver NTUKAMAZINA (reporting)

Judge Marcelo DA COSTA

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