

UNITED NATIONS



NATIONS UNIES

ETTA

East Timorese Transitional Administration

DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 02/2001

Date: 28/9/2001

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: September 28, 2001

THE PROSECUTOR

v.

Augusto Asameta Tavares

JUDGMENT

The Office of the Public Prosecutor:

Mr. Brenda Sue Thornton assisted by Ms Molly Groom

Counsel of the accused:

Mr. Cancio Xavier

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INTRODUCTION

- 1 The trial of Augusto Asameta Tavares (aged 38, born in Becou, Subdistrict Atabai, Bobonaro District, married, father of 4 children, son of Bilikasa and Kakimau, East Timorese), 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 12th June 2001 and concluded today, the 28th September 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

- 4 On the 1st February 2001, the Public Prosecutor presented before the Dili District Court a written indictment (in English and Bahasa) with the charge of murder against the defendant Augusto Asameta Tavares. Attached to the indictment were also typed and handwritten copies of the following documents, in English and Tetum versions: the statement of the accused Augusto Asameta Tavares (29.10.2000), the statements of the witnesses Francisco Pedro alias "Geger"(18.11.1999 and 06.01.2000), Claudino Barreto (08.12.1999), Domingos Casimira (08.12.1999 and 05.01.2000), Bernardino da Costa (05.01.2000), Veronica Perreira Martins (05.01.2000), Guilhermino Lopes (09.02.2000 and 05.01.2001), Casimiro Lopes (18.02.2000 and 13.04.2000), Natalino do Santos (29.09.2000), Domingos

dos Santos (29.10.2000), Anabela Moreira (29.10.2000), Bernardino Loceto (05.01.2001), Inasio do Santos (05.11.2000, 09.01.2001 and 09.04.2001).

- 5 The Court clerk provided notification of the receipt of the indictment to the accused (06.02.2001) and to his legal representative (05.02.2000), pursuant to Sect. 26.1 and 26.2 U.R. 2000/30 (p. 19).
- 6 Augusto Asameta Tavares was arrested and detained on 31 October 2000. The Court issued a warrant of arrest on 07 February 2001 (p.22). On 07.03.2001, the Court decided to order the extension of detention for the duration of the trial (p.23).
- 7 The preliminary hearing commenced and finished on 27 February 2001. The Court considered that the date of 07.09.1999 indicated by the Public Prosecutor in the indictment may be wrong, but that does not mean that the charge is a nullity, according to section 54 of UTAET Regulation No 2000/30. In fact the statement of the indictment describe the crime very precisely. The wrong date can be remedied by the amendment of the indictment requested by the Public Prosecutor. The Court then decided to admit the amendment of the indictment requested by the Public Prosecutor. It ordered to the Public Prosecutor to submit to the Court and to the legal representative of the accused a clear indictment as amended. 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 charge, 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 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 (pp.25&26).
- 8 The defendant did not plead guilty. He stated that at the time he was with the group who attacked the victim. They came in 5 convoy and he burned houses and stabbed the victim because Joao ordered him.
- 9 The ordinary trial was scheduled for 12 June 2001 (p.26).
- 10 On 12.6.2001, 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: Bernardino da Costa, Guilhermino Lopes, Claudino Barreto, Veronica Perreira Martis, Argentina

Amaral. The Court closed the presentation and hearing of evidence and then postponed the trial hearing to 15 June 2001 for the parties to make their closing statements.

- 11 On 15 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.
- 12 On 15 July 2001, the Court read to the public the verdict and the sentence and adjourned to the 24th July 2001 to release the written judgment.
- 13 The hearing was postponed to 28 September 2001 due to the trial of an important and complex case (Los Palos case) everyday during July, August and September 2001.
- 14 Interpreters into English, Bahasa Indonesia and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

15 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.

16 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.



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C. THE FACTS

Factual allegations of the case

- 17 The Prosecutor's factual allegations may briefly be set out as follows:
- 18 The accused August Asameta Tavares was member of the Halilintar Militia. In the last eight days of August 1999, on an undetermined date, Joao Tavares instructed the accused Augusto Asameta Tavares and others, to go to the village of Memo, Maliana subdistrict, to burn the houses and to kill the people there. On arrival in the village of Memo, a militia leader Paul instructed the accused and others to search for Paulino Lopes Amaral because he was involved with the CNRT. The militia members, including the accused Augusto Asameta Tavares, went to the house of one Guilhermino Lopes, where he, Paulino Lopes and one Bernardino Loeleto were hiding and searched all the rooms of the house. During the search the accused person Augustino Asameta Tavares heard a noise from the ceiling in the kitchen and called Joao Meyer, a leader of the militia. Paulino Lopes Amaral was hiding in the ceiling of the kitchen. When Joao Meyer arrived in the kitchen, the accused got a chair and Joao Meyer stood on it and thrust his spear through the ceiling boards. Paulino Lopes Amaral, who was hiding in the ceiling, began to scream as the spear stabbed into his flesh. The accused Augusto Asameta Tavares then thrust his machete in the same place and heard Paulino Lopes Amaral scream again. Paulino Lopes Amaral wreathed in the ceiling; the ceiling collapsed and Paulino fell into the floor. As a result of the multiple stabs wounds, Paulino Lopes Amaral died.
- 19 In his final statement, the Public Prosecutor stated that the evidence before the Court show that the accused aided, abetted or otherwise assisted in the murder of Paulino. Further, the same evidence proved that the accused acted with a group of persons with a common purpose to effectuate the murder of Paulino. His action gives rise to criminal responsibility for the murder.
- 20 *The Defense*, on the other hand, firstly stressed that the Public Prosecutor, when compiling the facts in the indictment, did not use the statement compiled by CivPol as a basis. The arrangement of the indictment by the Public Prosecutor placed more emphasis on the estimations and initiative of the Prosecutor, it is as if the Public Prosecutor was there as an eyewitness to the murder of the victim Paulino Lopes Amaral. There was not one bit of evidence or any one ground to strengthen the Prosecutor's arguments when describing in details the statement of the facts. It is possible that this

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statement of facts was based entirely on the estimations of the Public Prosecutor. For those reasons, the indictment should be disregarded or deemed unacceptable. The Defendant had essentially stated that it was not he who ordered or carried out a plan to go to Maliana, which resulted in the murder of the victim Paulino. Joao Meyer was the actual perpetrator of this murder. In fact Joao Meyer was mentioned in this murder case by the Public Prosecutor but was not indicted of the murder of Paulino. The Defendant admitted that he was ordered by the perpetrator Joao Meyer to stab the arm of the victim with a knife. But the victim was already dead. The confession of the Defendant does not mean that he was entering a guilty plea. He admitted that he stabbed his knife into the victim's arm at the order of Joao Meyer. Although Joao Meyer was not the commander of the Defendant, the Defendant felt that anybody from a militia group in a dangerous situation could order anybody else who passed in front of them. This matter is in relation to the fact that the Defendant was powerless when ordered to take out his knife and stab the corpse of the victim. The confession of the Defendant, when clarified with the autopsy report submitted by the Public Prosecutor, did not explain what wounds in what part of the victim's body caused the death of the victim. The autopsy report only explained the size of the wounds, the part of the body that were wounded and was noted on the body. For the Defense, there was no evidence found to support the confession of the defendant that he stabbed his knife into the victim's arm. The witness Bernardino Loeloto stated that he did not see who killed the victim and only heard from the locals that the victim Paulino has been killed. The witness did not see the Defendant at that time. The witness Guilhermino Lopes stated that when the militia entered the house where he was hiding he was unable to identify the militia. He did not see who killed the victim or how he was killed and also did not see Augusto Asameta Tavares at that time. The witness Claudino Barreta only saw the corpse of Paulino at the hospital. The witness was only able to identify a militia commander when the attack occurred. The witnesses did not see Augusto Asameta Tavares. The witness Veronica Perreira Martins did not see who killed her husband or how he was killed. At that time she was in the town of Maliana and only heard news via her hand phone that the victim has been killed and that the body was at the Maliana hospital. It is the same for the witness Argentina Amaral who was also in Maliana and did not know about the murder of her son.

- 21 The defense concluded that the statement of the witnesses and the autopsy report revealed that there is nothing to prove that the defendant committed the murder of the victim Paulino. He therefore requested the Panel of judges to find the defendant not guilty for the charge of murder.

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' cause of death and the link between the conduct and the outcome proved

The conduct of the accused

23 It is undisputed that the accused Augusto Asameta Tavares was a member of Halilintar Militia in Atabai Village. The accused himself declared before the Court that he became member of that militia group during the crisis, but he does not remember exactly on which month (p.249). When they attacked the village of Memo, he told the Court that there were many militia groups. "*We had militia the groups Baburus, Merah Putih, Firmi, Saka, Abelita, and those from Cailaku*"(p.245). Concerning his group he gave the following information, responding to the question of the Court: *Which group did you belong? Halilintar. How long you belonged to the militia? Not so long (...)*" (p.245).

24 It is also undisputed that, in the last days of August 1999, precisely on the 27 August 1999, the accused with others went to the village of Memo, Maliana Subdistrict, Bobonaro District, to burn the houses and to kill people there. The militia leader Paulo, upon their arrival in Memo instructed them, to search for Paulino Lopes Amaral because he was involved to CNRT. The accused Augusto Asameta Tavares, with other militia members, carried out the order. Since the 7th February 2001, during the review hearing, the accused admitted it before the Court: "*We came in 5 trucks convoy. The victim went to hide. I went to burn houses. After I returned and Joao told me to take a chair and to stab the victim. The victim was hiding in the ceiling. After that the victim fell down and Joao forced me to stab him. After that we left. Then someone named Paulo asked whether the victim has already died. I said the victim has already died*" (pp.243&244).

25 During the preliminary hearing, the accused recognized also that: "*At the*



time, more than 10 trucks were coming from Maliana in a convoy. We found the victim inside the house. Many trucks were there, everyone got down and assaulted the house. I burned the house. After that people surrounded the victim. After, Joao took me and stabbed the victim"(p.244). These affirmations were substantially repeated with a little bite detail in the statement made by the accused during the trial hearing. He said: "At the time, during the campaign, we entered Memo, we went there, and all of us were in the trucks. At the time we heard an order before we went to Memo. We went to Memo to kill the victim. When we got out from the car, the commander was with us together. Then we found the victim there. I went to burn two houses. When I returned, Joao called me and many people were surrounding him. Joao said: "Pick him up. Take a chair! I stabbed the victim that was in the top of the house. He was still alive; they forced me to stab him. At the time, many people were surrounding the victim. Then we left. Commander's name was Paulo"(p.244).

26 The accused admitted that he burned houses and stabbed the victim because he was ordered and felt afraid, but argued that he did not have any plan to burn houses or to kill people. The accused told the Court: "*we went there; the commander gave the order to kill and to burn. We killed and we burned*"(p.249). He advanced that he did not acknowledge any plan to kill people or to burn houses. He did not discuss that plan with his colleagues, may be he was not there when such a plan has been discussed. He was normal member, so he does not know. To the following questions of the Court, the accused responded: "*What were you supposed to do everyday as militia member? To report (...). The fact that the militia members had to burn houses and to kill people was a plan known in advance or an accident? It depended on the commander. The commander ordered we followed. The commander did not tell you what was going to happen? No. (...) We were to follow the order if not we would be killed*" (p.249).

27 The Public Defender and the Public Prosecutor are also of the opinion that the accused was following an order. For the Defense, the accused made a statement saying that it was not him who ordered to go to Maliana, but Joao Meyer who was the actual perpetrator of this murder. The Defendant was ordered by the perpetrator Joao Meyer to stab the arm of the victim with a knife. The Public Prosecutor agreed with that when she says in her closing statement that " *This accused is not the only individual responsible for the crime. He participated in the crime along with numerous other individuals. He participated because he was ordered to do so*"(p.240).

28 The various witnesses' testimonies corroborate the story of the attack but did



not see or recognize the militiamen who attacked and kill Paulino Lopes Amaral. The witness Bernardino Loeleto tried to hide first in the ceiling with his brother, Paulino, but did not feel it was safe and went to hide under a bed. He was discovered and attacked by the militia. He did not see how his brother was attacked, as he told the Court responding to the questions of the Public Prosecutor: *"When did you find your brother Paulino was killed in the house? When I was shot, when I collapsed, the contingent started to tell me that one young man has been killed (...)"*(p.252).

29 The witness Guilhermino was also hiding under a bed when the militia went into the house. He was very afraid and terrified, and could not see the militia men from his hiding place. *"I only saw the militia's feet. I could not see their faces. Paulino was killed, I could not see because I was hidden under the bed. I was afraid [covering the face]. I could not see how he died"*(p.254). But when the militia left, he came out and saw Paulino's blood.

30 The Witness Claudino Barreto, the father of the victim, was only able to identify a militia commander when the attack occurred. The witness admitted that he did not see who killed the victim and how the victim has been killed. He only saw the corps of Paulino at the Hospital. The witness declared: *"Did you see any militia member coming to your house? At the time a crowd of militia members threw stones, shot the guns, I was very afraid. Could you recognize them? I only recognize one of them. His name is Chico Alto, the Head of Public Service. Do you know him? I went out, I knew they are inside the house, and then I went out, I saw him. He did not shoot; of course, he was the boss, the leader, and the one who gave the orders. You were able to recognize only one militia member? Yes, only that. And further he added about the death of Paulino: " No, [I do not know the circumstances of his death]"*(p.256).

31 The witness Veronica Perreira Martins, widow of the victim, also told the Court that she does not know how her husband was killed. She was at that time in Maliana and only heard by phone that her husband has been killed and that the body was at Maliana hospital. She told the Court: *"I did not see how they killed Paulino. At the time, I was at home with my children when he was brought to the hospital. Who told you about the death of Paulino? I only heard it at the telephone, I do not know who. How do they say to you at the telephone? That Paulino is now to the hospital"*(p.257). After that Veronica went to the Hospital to see her husband.

32 The witness Argentina Amaral, the mother of the victim stated that she did not witness the death of her son: *"I do not know about his death. (...)* We



were hiding in separate places. He went out first (...) all the men who testified were hiding together. Did you see when the militia entered your village? Yes, (...) we were inside the house then we close the door. We hear people screaming outside saying arrest them, stab them, and others saying just arrest them do not kill. (...) After they burned the house, the militia took us into the car. They brought us to the head of the district house. (...) The following day, on 28/08/1999, they told us" your son Paulino was killed"(p.258).

33 From the statements of the accused, which are corroborated by the statement of the witnesses Bernardino, Guilhermino Lopes, Claudino Barreto, and Argentina Amaral, the court concludes that there was an attack, on 27th August 1999 against the victim Paulino Lopes. The Court deems also, as clarified many times before the Court by the accused himself, that Augusto Asameta Tavares, as a member of Halilintar Militia, participated in the attack against Paulino Lopes Amaral. By searching him, finding him, calling Joao Meyer and getting for him a chair to stand up on it in order to stab the victim with a spear, and finally, by stabbing the victim with a machete, the accused obviously participated, with others to cause multiple stab wounds to Paulino Lopes Amaral.

34 As second conclusion, the Court deems that it is not contested that the accused was ordered to go to the village of Memo to burn houses and kill people there, as well as to search and stab the victim. All thee parties agreed on that.

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

35 For the Defense, the Defendant admitted that he stabbed the arm of the victim with a knife, and that the victim was already dead when he stabbed his knife into the victim's arm. *The confession of the defendant when clarified with the autopsy report submitted by the prosecutor did not explain what wounds in what part of the victim's body caused the death of the victim. The autopsy report only explained the size of the wounds, the part of the body that were wounded and what was noted on the body"*(p.232).

36 The testimony of the accused is fraught with inconsistencies and contradictions. When asked by the Court why in his initial statement before the police he said that he had stabbed the victim in the same place the others stabbed, but before the court he is changing and telling that he stabbed the victim on the hand, the accused preferred to remain silent. That is his right,

and the Court cannot interpret such silence as an admission (Section 6, (a) U.R 2000/30). But, beside that, his legal representative who said before that the defendant admitted that he stabbed his knife into the victim arm advanced that there was no stab made by the accused at all. In his closing statement, he submitted, *"there was no evidence found to support the confession of the defendant that he stabbed his knife into the victim's arm"*(p.232).

- 37 When questioned by the Public Defender, he told the Court that he stabbed the victim on the hand and that could not remember on which hand. The victim fell on the ground, and was still alive because he could not stand (p.247). But before that he himself recognized that he stabbed the victim while he was still alive. Responding to the questions of the Public Prosecutor, he told the Court that: *After Joao stabbed him he rolled from the ceiling (...) He was bleeding. People that stand by the door over me also stabbed. At the time, he did not die, after we stabbed him again*"(p.247). During his statement before the Court, he clearly admitted that the victim was still alive when he stabbed him: *I stabbed the victim that was in the top of the house. He was still alive; they forced me to stab him. At the time many people were surrounding the victim. Then we left*" (P.244).
- 38 The autopsy report says, without going further into detail, as submitted by the Defense, that the cause of death is the multiple force injuries. It does not precise what wounds and on which part of the victim body caused the death of the victim. The autopsy report says also that the force sharp injuries of the left hand may be defensive injuries. But, as we know, at any time the victim tried to defend him. The accused said that he did not stand, so he could think that he died (p.247).
- 39 From the statement of the accused, it is clear that he stabbed, with others, the victim Paulino Lopes Amaral. And he was the last one to stab the victim, when ordered, because this one was still alive. On which part of the body? Even the accused is not sure about it. What is important is that the accused participated in this attack, and caused wounds with others, which are the causes of the death.
- 40 The victim Paulino Lopes Amaral was killed because he was involved with CNRT. The witness Bernardino told the Court that his brother Paulino was a pro-independence activist (p.251). The pro-autonomy supporters did not tolerate that the villagers of Tapomemo refused to participate on the ceremonies of 17 August 1999, which meant the celebration of the Timor and Indonesia union (p.251). The victim, as well as his brother Bernardino,



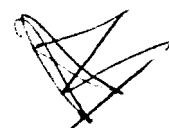
did not participate in those ceremonies.

- 41 The witness Veronica Perreira, the widow of the victim, told the Court that her husband was involved in the campaign pro-independence. *"That is why they took revenge "(p.257).*
- 42 The Defense submitted that Augusto Asameta Tavares was forced to join the Halilintar 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.
- 43 The Court has to assess the individual criminal responsibility of the murder and its exemption by duress. The accused told the Court he *"became member of the militia not for a longtime and that he had no intention to join the militia (p.245). He had no plan to kill the victim but it happened (p.2477). For the accused, he participated to burn houses and to kill people because he was ordered and he was afraid to be killed. Yes [I really heard the orders given by the commander] (...) When we arrived we immediately burn the houses (...) Yes [it is true, about the killing of Paulino Lopes I was afraid (...) at that time I was afraid to die (...) I started to be afraid when I handed over and pass a chair to Joao, if I refused, I would be killed. I was afraid (p.248). (...) We were to "follow the order, if not we would be killed"(p.249).*
- 44 The alleged duress can be assessed not only the day the accused attacked Paulino Lopes Amaral, 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 some time before the attack. He does not recall the time, what he knows is that it was during the crisis and that he did not want to do it. His chiefs obliged him. However, such constraint is not plenty to put aside his criminal responsibility for the acts he was later involved. From the time he joined until the moment of the attack, he could escape.
- 45 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 could escape like many other persons who resisted joining the militia. The accused chose to be in line with the militia groups.
- 46 By going with other Militia members to attack Paulino Lopes Amaral carrying knife, and his colleagues carrying machetes and swords, 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 Memo village and Paulino in particular was not a casual fact; they were carried out as a part of a longer planning to commit violence against the People of memo village who they believed supported independence of East Timor and especially Paulino because of his political involvement with CNRT.

- 47 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 commission of such a crime, aids, abets or otherwise assists in its commission. At least he will be responsible for the contribution to the murder of Paulino Lopes Amaral. The evidence that he was carrying knife, got a chair for Joao to stand on it and help him to reach the victim, and to stab the victim himself, as the Court could assess above, enhances his performance to the results. From the time when he joined until the operation, he had many chances to refuse to share the purposes of the militia group. 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.
- 48 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”.
- 49 The Special Panel deems that the aforementioned circumstance of exclusion of criminal responsibility is not applicable to the murder committed by Augusto Asameta Tavares since he joined the purposes of the group. By joining also the operation launched on 27 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. 14.3(d)[ii] UR-2000/15).

50 "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 alleged that he was not willing to join, but he was following orders. He was afraid and if he did not follow the orders and attack Paulino he would have been killed. It has been proved that Augusto Asameta Tavares was acting following an order of a superior, but, as says the law, such circumstance shall not result in impunity, but in an easing punishment.

51 It is clear Augusto Asameta Tavares participated in the attack of Paulino Lopes Amaral, on 27 September 1999, pursuant to what is considered as individual criminal responsibility according to UNTAET regulations.

THE LAW

52 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 *actus reus* of murder is to "taking the life of another person". The evidence clearly shows that Augusto Asameta Tavares and his co-perpetrators attacked Paulino Lopes Amaral and killed him.
- The mental element for murder is deliberate intent and premeditation. 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. Augusto

Asameta Tavares 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 that the accused joined the militia, attacked and stabbed Paulino Lopes Amaral because he was involved with CNRT. The time between when the decision arose to join and participate in the militia campaigns and operations to kill those who are involved with CNRT or at least the time the accused decide to join others, burn the houses and kill Paulino Lopes Amaral, can be assessed as the element of premeditation.

- Even if Augusto Asameta Tavares was not the main murder perpetrator, his individual responsibility is met in Sect. 14.3(c and d) of UR-2000/15.

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

VERDICT

54 For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond a reasonable doubt and therefore finds Augusto Asameta Tavares guilty of murder, as a violation of Sect. 8 U.R. 2000/15 and Art.340 of PCI.

SENTENCING

- 55 Pursuant to these findings of guilt, the Special Panel will proceed to sentence Augusto Asameta Tavares, in order to determine the appropriate penalty.
- 56 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.

- 57 The Prosecution had no suggestion for the penalty. The accused did not plead guilty and a trial had to be conducted. The defense underlined that Augusto Asameta Tavares acted under the pressure of militia leaders and T.N.I. and that he has a family with children.
- 58 The Special Panel has taken into account the following:
- 59 **Aggravating circumstances:** The Special Panel deems that there are no aggravating circumstances in this case.
- 60 **Mitigating circumstances:** The accused was following an order and has no previous convictions.
- 61 **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 the sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person”.
- 62 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*).
- 63 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 considerations, the Special Panel deems appropriate the punishment of sixteen (16) years of imprisonment.

DISPOSITION OF THE SENTENCE

64 For the foregoing reason, having considered all the evidence (statements from the witnesses and the defendant, autopsy report and report of postmortem examination) 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 AUGUSTO ASAMETA TAVARES:

- (1) GUILTY for the charge of murder, in violation of Section 8 of UNTAET Regulation 2000/15 and Article 340 of the Penal Code of Indonesia;
- (2) In punishment of the aforementioned crime, sentences AUGUSTO ASAMETA TAVARES to an imprisonment of 16 (sixteen) years.
- (3) Orders the defendant to pay the costs of the criminal procedure

Credit for time served

65 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 AUGUSTO ASAMETA TAVARES, due to an order of an East Timorese Court. The defendant AUGUSTO ASAMETA TAVARES was arrested on 29 October 2000 therefore so far he has been under detention for ten (10) months and 29 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

- 66 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.
- 67 The sentence shall be executed immediately, provided this disposition as a warrant of arrest.
- 68 This decision is provided in one copy to the Defendant and his legal representative, Public Prosecutor and to the prison manager.



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Rendered on the 28th September 2001 in the District Court

Judge MARIA NATERCIA Gusmao (Presiding)

Judge Sylver NTUKAMAZINA (reporting)

Judge Marcelo DA COSTA (member)

[Handwritten signatures of Judge MARIA NATERCIA Gusmao, Judge Sylver NTUKAMAZINA, and Judge Marcelo DA COSTA]

PROSECUTOR

[Handwritten signature]
B.S. Thornton
3/10/01


DEFENDER

[Handwritten signature]
CARREIO XAVIER 01/10/2001

PRISON BECORA DILI

[Handwritten signature]
FRANCISCO DRAHYA AMARAL
1-10-01

TERDAKWA / CASE


AUGUSTO ASAMEIA TAVARES

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