



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
RDTL
TRIBUNAL DISTRITAL DE DILI
SECÇÃO CRIMES GRAVES

Case No. 041/2001
Date: 7 /12/2002
Original: English

Before:
Judge Sylver Ntukamazina, Presiding
Judge Benfeito Mosso Ramos
Judge Maria Natercia Gusmao Perreira

Registrar: Joao Naro
Judgement of: 07 December 2002

THE PROSECUTOR
V.
Sabino Gouveia Leite

JUDGEMENT

The Office of the Public Prosecutor:
Mr. Essa Faal
Mrs Shamla Alagendra

Counsel of the accused
Mr. Ramavarma Thamburan
Ms. Shamla Reusch

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INTRODUCTION

- 1 The trial of Sabino Gouveia Leite (aged 42, married, born on the 15th September 1960 in Lolotoe, District of Bobonaro, East Timor, former village chief of Guda Village, in Lolotoe Su-District) before the Special Panel for the trial of Serious Crimes in the District Court of Dili (hereafter: the “Special Panel”), responsible for the handling of serious criminal offences, commenced on the 4th March 2002, was suspended many times including a suspension of 5 months for unavailability of judges, and concluded today, the 7th December 2002 with the rendering of the decision.
- 2 After considering the plea of guilty made by the accused, 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 PANELS

- 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 as amended by U.R. 2001/25, 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 6 February 2001, the Public Prosecutor filed before the Dili District Court a written indictment (in English version) against the accused 2nd Lt. Bambang Indra, Joao Franca Da Silva aka Jhoni Franca, Jose Cardoso Mouzinho, Fransisco Noronha and Sabino Gouveia Leite. The accused Sabino Gouveia Leite was charged in five counts with Unlawful deprivation of physical liberty as crime against humanity (count 1) or in alternative unlawful deprivation of physical liberty (count 2), torture as crime against humanity (count 3) or in



alternative serious maltreatment (Count 4), persecution for political reasons as crime against humanity (count 16).

- 5 Attached to the indictment were copies of the following documents: the statements of the witnesses Orlando Leao Ati, Domingos Augusto, Cyrus Banque, Norberto Belo, Joao Belo, Hermino Belo, Amelia Belo, Aurea Cardoso, Jose Cardoso Ferreira aka Mouzinho, Mariana da Cunha, Tomas Da Costa, Olivia Juvita Dos Reis, Agrefina Dos Santos, Anibal Ferreira, Mario Gonsalves, Rosa De Jesus, Jose Gouveia Leite, Fernanda De Deus Martins, Adao Manuel, Jose Moniz, Isabel Da Costa Maia, Angela Tereza Monis, Lius Monis, Jose Monis, Eugenio Noronha, Jose Perreira, Judith de Deis Sarmento, Anapaula Soares Ximenes. The list of the victims that forms an integral part of the indictment was attached as annex A and contained Victim A, Victim B, Victim C, Amelia Belo, Mariana Da Cunha Herminio Da Graca, Jose Leite, Aurea Cardoso and her two children, Rosa De Jesus, Bendito Da Costa, Adau Manuel, Mario Gnsalves, Carlito Freita, Mariana Da Costa, Antonio Franca, Augusto Noronha, Villagers of Guda, Gudatas, Raimea, Sibi and other villages in Lolotoe. The full names of victim A, B and C were contained in Annex B filed together with the indictment, which precise that the list of victims shall not be disclosed, that the victim has to be referred to only by the pseudonyms given to them. All annexes were an integral part of the indictment.
- 6 The Court clerk provided notification of the receipt of the indictment to the accused and to his legal representative of Sabino Gouveia Leite, as well as to the co-accused persons Joao Franca Da Silva alia Jhoni Franca and Jose Cardoso Ferreira aka Mouzinho, and their legal representatives, on 8 February 2001, pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.
- 7 Sabino Gouveia Leite was arrested and detained on 4 December 2000. His arrest was then confirmed and ordered by the Investigating Judge.
- 8 On 16 February 2001 the Prosecution submitted an application for protective measures for victims of sexual offenses pursuant to Section 28.2 (b) of Regulation 2000/30 on the Transitional rules of Criminal Procedure with an affidavit in support of protective measures for victims of sexual offenses.
- 9 On 3 April 2001, the Public Prosecutor made a request for issue of arrest warrant of the accused persons Fransisco Noronha and Bambang Indra believed to be residing in Indonesia.

- 10 On 5 April 2001, the Public Prosecutor transmitted to the Court the following original documents pertaining to detention of Sabino Gouveia Leite : warrant of arrest of Sabino Gouveia Leite dated 1st December 2000, detention Order of sabino Gouveia Leite dated 6 December 2000, detention order for Sabino Gouveia Leite dated 5 January 2001 and detention order for Sabino Gouveia Leite dated 5 February 2001. She submitted also the witnesses statements of Anibal Pereira (27/9/00), Mario Gonsalves (4/8/00), Rosa de Jesus (4/8/00), Jose Gouveia Leite (18/8/00), Fernanda de Deus Martins (2/10/00), Adau Manuel (4/8/00), Isabel da Costa Maya (7 /9/00), Angela Teresa Monis (6/7/00), Luisa Monis (27/09/00), Jose Moniz (18/8/00), Eugenio Noronha (3/8/00), Jose Pereira (26/9/00), Judith Dos Reis (5/6/00), and Anapaula Soares Ximenes.
- 11 At the same date, the original following witnesses statements were produced before the Special Panel: Witnesses statements of Orlando Leao Ati (25/9/00), Domingos Augusto (28/11/00), Cyrus Banque (14/9/00), Norberto Belo (29/9/00), Joao Belo (03/8/00), Herminio Belo (3/8/00), Amelia Belo (4/8/00), Aurea Cardoso (18/8/00), Jose Cardoso (27/7/00), Mariana Da Cunha (8/9/00), Tomas Da Costa (26/9/2000), Olivia Juvita Dos Reis (26/9/00) and Agrefina Dos Santos (17/8/00).
- 12 The preliminary hearing commenced on the 6th April 2001 and finished on the 5th July 2001.
- 13 On 6 April 2001, the Special Panel decided to extend time for the defense to prepare the case, the severance of the charges against Bambang Indra and Fransisco Noronha from the other charges in the indictment, to issue a warrant of arrest requested for Bambang Indra and Fransisco Noronha and delivered a decision for protective measures of the three women who were allegedly victims of rape, which will be referred to as “ Victim A, Victim B and Victim C”. The Court also extended the detention of the accused Sabino Gouveia Leite for the duration of the trial. The preliminary hearing was postponed to 27 April 2001.
- 14 On 27 April 2001, during the preliminary hearing, the prosecution responded orally and submitted also written response to the preliminary motion filled by the defense, relating to the defects in the indictment. The Court took the case to decide in chamber on the motion raised by the defense. The Court found that the charge in the indictment couldn't be deemed accurate pursuant to

Section 24 U.R 2000/30. The Public Prosecutor was granted leave to amend the indictment on the 28th May 2001, and was given until the 1st June 2001 to submit the amended indictment. The Defense was asked to file the response to the amended indictment before the 7th June 2001. The preliminary hearing was postponed to 7 June 2001 for the Public Prosecutor to file the amended indictment.

- 15 On 25 May 2001, the Public Prosecutor filed in English the amended indictment against the accused Sabino Gouveai Leite, Joao Franca da Silva aka Joao Franca Da Silva aka Jhoni Franca and Jose Cardoso Ferreira aka Mouzhino. The Bahasa version of the amended indictment was submitted on 4 June 2001.
- 16 In the amended indictment, Sabino Gouveia Leite is charged of 6 counts of: (Count 22) Crimes against humanity: Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law of Bendito Da Costa, Amelia Belo, Adao Manuel, Mario Goncalves, Jose Gouveia Leite, and Aurea Cardoso and her two children in Lolotoe sub-district, Bobonaro district, between May and July 1999, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, a crime stipulated under Section 5.1(e) UNTAET Regulation 2000/15; (Count 23) Crimes against humanity: Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Herminio Da Graca in Lolotoe sub-district, Bobonaro district, between May and July 1999, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, a crime stipulated under Section 5.1(e) UNTAET Regulation 2000/15; (Count 24) Crimes against humanity: Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Victim A, Victim B and Victim C in Lolotoe sub-district, Bobonaro district, sometime between May and July 1999, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, crime stipulated under Section 5.1(e) UNTAET Regulation 2000/15; (Count 25) Torture, as crimes against humanity, of Bendito Da Costa, Adao Manuel, Mario Goncalves and Jose Gouveia Leite, between May and July in Lolotoe sub-district, Bobonaro district, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, a crime stipulated under Section 5.1(f) UNTAET Regulation 2000/15; (Count 26) Crimes against humanity: other inhumane acts of similar character intentionally causing great suffering or serious injury to body or mental or physical health

of the civilians detained at various places in Lolotoe sub-district, between May 1999 and July 1999, in Lolotoe Sub-district, Bobonaro district, as part of a widespread or systematic attack against a civilian population with knowledge of the attack a crime stipulated under Section 5 (k) of UNTAET Regulation 2000/15; (Count 27) Crimes against humanity: Persecution of supporters of independence of East Timor in Lolotoe Sub-District, Bobonaro District, between May and September 1999, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, a crime stipulated under Section 5.1(h) of UNTAET Regulation 2000/15.

- 17 On 7 June 2001, the Court decided to grant the defense additional time to prepare the defense to the indictment, and set the date of the next hearing to 4th July 2001.
- 18 On 4 July 2001, the accused Sabino Gouveia Leite, Joao Franca da Silva and Jose Cardoso did not show up. The hearing was postponed to 5 July 2001 for the prison manager to provide the presentation of the accused before the Court.
- 19 On 5 July 2001, the Preliminary hearing was held, the Court checked if the defendant Sabino Gouveia Leite had read the indictment or if the indictment had been read to him, and 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 charges, as provided for in Sect. 30.4 U.R. 30/2000. The Defendant made a statement that he had read the indictment and understood the charges against him. The same procedure was followed for his co-accused Jose Cardoso and Jhoni Franca. The Court then accepted the list of evidence submitted by the Public Prosecutor and the list of witnesses submitted by the defence. The Court dismissed the motion filled by the defence of Jhoni Franca requesting not to submit the statements of the accused and the witnesses to the Court before the trial. The Court also overruled the request for release of the accused Sabino Gouveia Leite. The date of the trial was fixed on the 23rd August 2001.
- 20 On 10th July 2001, considering that the Special Panel for Serious Crimes was dealing for three weeks with the trial hearing of another case (Los Palos case), decided to adjourn the trial hearing of Sabino Gouveia Leite case to 18 September 2001. One month later, on 13 August 2001, the preliminary



hearing of the case was adjourned sine die, because of the continuation of the trial of Los Palos case.

- 21 On 22 October 2001, the Public Prosecutor submitted the following statement in Bahasa Indonesia: statements of Orlando Leao Ati (25/9/00), Domingos Augusto (28/11/00), Cyrus Banque (14/9/00), Norberto Belo (29/9/00), Joao Belo (3/8/00), Herminio Belo (03/8/00), Amelia Belo (04/8/00), Aurea Cardoso (18/8/00), Jose Cardoso (27/7/00), Mariana Da Cunha (08/9/00), Tomas Da Costa (26/9/00), Olivia Juvita Dos Reis (26/9/00), Agrefina Dos Santos (22/10/00), Anibal Perreira (27/9/00), Mario Gonsalves (04/8/00), Rosa De Jesus (04/8/00), Jose Gouveia Leite (18/8/00), Fernanda DE Deus Martins (2/10/00), Adao Manuel (04/8/00), Isabel da Costa (07/9/00), Victim A (06/7/00), Luisa Monis (27/9/00), Jose Monis (18/8/00), Eugenio Noronha (03/8/00), Jose Perreira (26/9/00), Judith Dos Reis Sarmiento (5/6/00) and Anapaula Soares Ximenes (03/8/00).
- 22 On 11 November 2001, date of the conclusion of the trial of Los Palos case, the date of the trial of the present case was scheduled on 27 November 2001.
- 23 On 16 November 2001, the Public Prosecutor submitted to the Court the following documents: Statement of Victim B (25/5/00) in Tetum and English, and the statement of Victim C (06/7/00) also in Tetum and English.
- 24 On 20 November 2001, the Public Prosecutor filled the following documents: statements of Bendito Da Costa dated 4 August 2000 in English and Tetum, statement of Herminio da Costa dated 7 September 2000 in English and Bahasa Indonesian, "Situation of Human Rights in East Timor, Note by the Secretary General" in English and Bahasa Indonesian, "Report of the Indonesian Commission on Human Rights violation in East Timor", January 2000 in English, Agenda Item 96 Question of East Timor, in English and Bahasa Indonesian, Agenda Items 9 and 14 Commission on Human rights fifty-sixth session in English.
- 25 On 27 November 2001, during the hearing, the defense for Sabino Gouveia Leite and his co-accused filed a request for release of the accused Sabino Gouveia Leite pending the trial. The Court rejected the request from the defense and decided the extension of detention of the accused for the duration of the trial. The trial hearing was scheduled on the 8th February 2002.

- 26 On 13 December 2001, the Public Prosecutor transferred to the Court a summary autopsy report on bodies exhumed in East Timor from February 16 to August 26, 2000.
- 27 On 8 February 2002, the Public Prosecutor, the accused and their legal representatives, upon being called, attended at the hearing. After opening the session, the court asked the parties whether they were ready for the trial, in which case the Court will go ahead with the opening statement of the Public Prosecutor. All the parties told the Court that they were ready, however, the Public Prosecutor raised the issue of submission of what kind of evidence the defense intends to present for the trial. The defense replied that they were still trying to meet the witnesses and looking for the evidence to submit to the Court. The Court ordered the defense to submit what kind of evidence and witnesses to present for the trial by the 15th February 2002. The Court postponed the trial hearing of the case to 22 February 2002. As 22nd February 2002 was a UN holiday, the hearing of the case was postponed on 4 March 2002.
- 28 On 15 February 2002, the defense of the 3 accused persons submitted the list of their witnesses. The Defense of Sabino Gouveia Leite submitted a list of 3 witnesses composed of Manuel Ana Rosario Da Costa, Joaquim Moniz, and Pedro Noronha.
- 29 On 25 January 2002, the Public Prosecutor submitted the original letter from Sabino Gouveia Leite to Jose Gouveia Leite dated 6 May 1999.
- 30 On 20 February 2002, the Public Prosecutor filled an application for leave to further amend the indictment against the accused persons, pursuant to Section 32 of UNTAET Regulation 2001/25. The application was reiterated during the trial hearing on the 4th March 2002, where the prosecutor explained the content of the motion to further amend the indictment. The Court decided to grant leave to the Public Prosecutor to amend the indictment on the 27th March 2002 and decided that the proposed amendment be part of the indictment.
- 31 The ordinary trial was scheduled on the 5th March 2002. It was conducted over 15 Sessions (From 5 March 2002 until 20 November 2002).
- 32 On the 5th March 2002, the Public Prosecutor delivered his opening statement and read out the indictment in an open hearing. The Defendant Sabino



Gouveia Leite as well as his co-accused persons did not want to make any statement concerning the charges against them. The defense Counsel for Jose Cardoso, co-accused of Sabino Gouveia Leite objected to the use of the terms “victims” when referring to the three women alleged victims of rape and proposed the Court that the term of “witnesses” be used instead. The Special Panel, after hearing both parties, ruled against the objection made by the defense Counsel for Jose Cardoso. The latter being dissatisfied with the decision of the Special Panel filed an application to excuse the judges of the special Panel from their functions as Court of trial pursuant to Section 20.1 UNTAET Regulation 2000/11. At the request of the defense, the proceedings were suspended pending the decision of the Judge Administrator of Dili District Court on the defense application. The prosecution reacted to the request from the Defense and prayed the judge administrator to dismiss the application by the defense Counsel and find that there is no basis for the application. The Judge Administrator dismissed the application from the defense on 11 March 2002. Instead he ordered the same judges of the Special Panel to continue handling the trial of the case until its completion.

- 33 On 11 March 2002, the Court decided to continue the trial of the case on the 27 March 2002, and thereafter the hearing was postponed to 8 April 2002.
- 34 From 8 to 12 April 2002, the Court heard the testimony of the witness Bendito Da Costa who was questioned by the Court, the Public Prosecutor and the defense of the 3 accused persons. The hearing was postponed to 24 April 2002 to hear other prosecution witnesses.
- 35 On the 24th April 2002, considering that one of the judges involved in the case was sick, decided to postpone the hearing of the case on the 29 April 2002. However, on that last date, the hearing was postponed to 3 May 2002 in order to wait for the legal representative of the accused Jose Cardoso who was not available.
- 36 On 3, 7, 8, 9, 14 and 15 May 2002, the Court heard the testimonies of the witnesses Jose Gouveia Leite and Mario Gonsalves who were questioned by the Court, the Public Prosecutor and the defense. The hearing was postponed to 27 May 2002 in order to give time to East Timorese people to prepare the celebration of the Independence Day on 20 May 2002.
- 37 On 27 May 2002, considering that one of the judges was not available; the Court decided to postpone the trial of the case on the 8th July 2002. The case

was later postponed to 16 September 2002, 15 October 2002 and 21 October 2002 because some judges of the panel were not available.

- 38 On 21 October 2002, Sabino's co-accused Jhoni Franca made a confession of guilty. The hearing was postponed on the 22nd October 2002 for the Court to verify the validity of the guilty plea. On that last date, The Special Panel entered a plea of guilty against the accused Jhoni Franca, and convicted him. His case was then separated from the case of his former co-accused persons Sabino Gouveia Leite and Jose Cardoso.
- 39 The Court then continued with the case of Sabino Gouveia Leite and his co – accused Jose Cardoso, and heard the testimonies of the witnesses Amelia Belo (22&31.10.2002), Aurea Cardoso (25&28.10.2002), Adau Manuel (30.10.2002), Mario Gonsalves (31.10.2002) and Herminio Da Graca (5.11.2002).
- 40 On 11 November 2002, the accused Sabino Gouveia Leite made a confession of guilty. He made a statement and pleaded guilty to the 3 charges of Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Bendito Da Costa and Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, and Aurea Cardoso and her two children, Herminio da Graca, Victim A, Victim B and Victim C, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15. The accused also pleaded guilty to the charge of torture of Bendito Da Costa, Adao Manuel, Mario Gonsalves, and Jose Gouveia Leite, as crimes against humanity, contrary to Section 5.1(f) UNTAET Regulation 2000/15. He also pleaded guilty to the Charge of other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health of civilians detained in various places in Lolotoe Sub-District, as crimes against humanity, contrary to Section 5 (k) of UNTAET Regulation 2000/15. The hearing was postponed on the 12th November 2002 for the Court to verify the validity of the guilty plea.
- 41 After verifying the validity of his guilty plea, particularly in light of Section 29A of UNTAET regulation 25/2001, the Special Panel entered a plea of guilty against the accused on 12 November 2002, and convicted him on 5 charges of the indictment. The Public Prosecutor withdrew the remaining 1 charge of persecution. The Court agreed with the withdrawal of the remaining count and decided severance of the case of Sabino Gouveia Leite from the case of his former co-accused person Jose Cardoso. The hearing was postponed to 13 November 2002 for the pre-sentencing hearing.



- 42 On 13 November 2002, the Court heard the testimonies of the witnesses, with respect to the personality of the accused person. The hearing was then postponed to 20 November 2002 for the final written decision.
- 43 On 20 November 2002, the Court read out to the public the disposition of the decision and decided to issue later the final written decision, what is done now with the release of the present judgment.
- 44 Interpreters into English, Bahasa Indonesian, Tetum and Bunak languages assisted every act before the Court.

C. THE GUILTY PLEA

- 45 As stated earlier, the accused pleaded guilty to the charge set forth in the indictment against him. In accordance with section 29A.1 U.R 2001/25, the Special Panel sought to verify the validity of guilty plea. To this end, the Panel asked the accused:
- a) If he understood the nature and the consequences of the admission of guilt;
 - b) If his guilty plea was voluntarily made, if he did it freely and knowingly without pressure, or promises;
 - c) If his guilty plea was unequivocal, i.e. if he was aware that the said plea could not be refuted by any line of defense.
 - d) If he had consulted with his legal representative regarding his guilty plea.
- 46 The accused replied in the affirmative to all these questions. The Special panel accepted the plea of guilty of the accused. He further admitted in order to support his guilty plea all the facts of the case as contained in the indictment and in the materials that were submitted to the Court. Furthermore, it was found that all the essential facts required to prove the crime to which the admission of guilty relates have been established as required by Section 29A.2 of regulation 2000/30. The accused Sabino Gouveia Leite was convicted of Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Bendito Da Costa and Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, and Aurea Cardoso and her two children, as crimes against



humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Herminio da Graca, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Victim A, Victim B and Victim C, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15; Torture of Bendito Da Costa, Adao Manuel, Mario Gonsalves, and Jose Gouveia Lete, as crimes against humanity, contrary to Section 5.1(f) UNTAET Regulation 2000/15, and inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, as crimes against humanity, contrary to Section 5(k) of UNTAET Regulation 2000/15.

D. APPLICABLE LAW

47 As specified in UNTAET Regulation No.1/1999, U.R.No.11/2000 as amended by U.R.2001/25, and U.R.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 to 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.



F. FACTS OF THE CASE

- 48 The prosecutor described how the accused Sabino Gouveia Leite, as Chief of the village of Guda, he among others, was responsible of:
- 49 The imprisonment or other severe deprivation of Physical Liberty in violation of fundamental rules of international law, of Bendito Da Costa and Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, and Aurea Cardoso and her two children in Lolotoe Sub-district Bobonaro District, between May and July 1999¹.
- 50 The imprisonment or other severe deprivation of Physical Liberty in violation of fundamental rules of international law, of Herminio Da Graca, in Lolotoe Sub-district Bobonaro District, between May and July 1999².
- 51 The Imprisonment or other severe deprivation of Physical Liberty in violation of fundamental rules of international law, of Victim A, Victim B and Victim C in Lolotoe Sub-district, Bobonaro District, between May and July 1999³.
- 52 The torture of Bendito Da Costa, Adao Manuel, Mario Gonsalves and Jose Gouveia Leite, between May and July 1999, in Lolotoe Sub-district, Bobonaro District⁴.
- 53 Other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, between May and July 1999 in Lolotoe Sub-district, Bobonaro District⁵.
- 54 The Prosecutor underlined that those acts or omissions by the accused were undertaken as part of a widespread or systematic attack directed against the civilian population, and especially targeting those who were considered to be pro-independence, linked to or sympathetic to the independence cause for East Timor, with knowledge of the attack.
- 55 The accused is individually criminally responsible for the crimes alleged against them in this indictment in violation of Section 14 of UNTAET Regulation 2000/15. Under section 14.2 and 14.3(a) to (c) individual criminal responsibility results if the individual committed, planned, instigated, ordered,

¹ Amended indictment, paragraphs 28 to 48.

² Amended indictment, paragraphs 50 to 52.

³ Amended indictment, paragraphs 60 to 68

⁴ Amended indictment, paragraphs 28 to 48

⁵ Amended indictment, paragraphs 28 to 48

solicited, induced, aided, abetted or otherwise assisted in the commission of the crimes, or attempted commission. Individual criminal responsibility also results if an individual in any other way contributes to the commission or attempted commission of the crime, if such contribution is intentional and is either (i) made with the aim of furthering the criminal activity or purpose of a group; or (ii) is made with the knowledge of the intention of the group to commit the crime.

- 56 In his final statement, the Public Prosecutor requested the Court to sentence Sabino Gouveia Leite 5 years of imprisonment to Count 22, 1-year imprisonment to count 23, 5 year of imprisonment to count 24, 5 years imprisonment to count 25, and 4 years imprisonment to count 26.
- 57 The defence admitted to all the allegations contained in the indictment with respect to each of the charges to which he is pleading guilty. He admits all the allegations contained in the paragraphs 28 to 48, 50 to 52, 60 to 68 and in paragraph 49 of the indictment. He further admits that as Village chief of Guda in Lolotoe, he together with members of Kaer Metin Merah putih militia in Lolotoe, in a joint enterprise, was responsible: (1) for the imprisonment or severe deprivation of physical liberty of Bendedito Da Costa, Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, Aurea Cardoso and her two children in Lolotoe Sub-District, between May and July 1999, in violation of fundamental rules of international law, (2) for the imprisonment or severe deprivation of physical liberty of Herminio Da Graca, in Lolotoe Sub-District, between May and July 1999, in violation of fundamental rules of international law, (3) for the imprisonment or severe deprivation of physical liberty of Victim A, Victim B and Victim C in Lolotoe Sub-District, between May and July 1999, in violation of fundamental rules of international law, (4) for the torture of Bendicto da Costa, Adao Manuel, Mario Gonsalves, and Jose Gouveia Leite, in Lolotoe Sub-District, in May 1999, in violation of fundamental rules of international law, and (5) for Other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, of civilian detained in Lolotoe Sub-District between May and July 1999.
- 58 The accused admits also that the crimes listed above to which he is unequivocal and unconditionally admitting were committed as part of widespread and systematic attack against a civilian population with knowledge of the attack.
- 59 From the submissions of the Public Prosecutor and the admissions made by the accused person, it is clear that the offences alleged have been committed



in 1999 before the promulgation of U.R.2000/15, U.R.2000/11 and U.R.2000/30 on Transitional Rules of Criminal Procedure as amended by U.R.2001/25, which apply in the matter as underlined above⁶. According to the principle *nullum crimen sine lege*, the law applicable has to be the law which was in force when the offences were committed. Therefore, the first issue to be analyzed by this Court will be the applicability of UNTAET regulations with respect to the crimes the accused is charged.

E. APPLICABILITY OF UNTAET REGULATIONS WITH RESPECT TO THE CRIMES THE ACCUSED BENJAMIN SARMENTO IS CHARGED.

- 60 The principle *nullum crimen sine lege*, no crime without law, has developed as a general principle of criminal law and as a rule prohibiting retroactive application of criminal laws. It is counted among the so-called “principles of legality,”⁷ and it may be found in various international legal instruments including international human rights and humanitarian law treaties.⁸
- 61 The principle *nullum crimen sine lege* is found in Section 12 of UNTAET Regulation No. 2000/15, which reads as follows:

12.1 A person shall not be criminally responsible under the present regulation unless the conduct in question constitutes, at the time it takes place, a crime under international law or the laws of East Timor.

12.2 The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be

⁶ Op.cit. Page 12

⁷ M. Cherif Bassiouni, *The Sources and Content of International Criminal Law: A Theoretical Framework*, in *International Criminal Law, Second Edition, Volume I, Crimes*, (M. Cherif Bassiouni ed. 1999) at 32.

⁸ See, for example, Article 11(2) of the Universal Declaration of Human Rights; Article 15(1) of the ICCPR; Article 7(1) of the European Convention on Human Rights; Article 9 of the American Convention on Human Rights; Article 7(2) of the African Charter on Human and Peoples' Rights; Article 67 of the Fourth Geneva Convention; and Article 13 of the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind.

interpreted in favor of the person being investigated, prosecuted or convicted.

12.3 The present Section shall not affect the characterization of any conduct as criminal under principles and rules of international law independently of the present regulation.

62 It has been shown in the case the Prosecutor versus Jhoni Franca⁹ that, in order to satisfy the principle of *nullum crimen sine lege*, the act must have been a crime under international law giving rise to individual criminal responsibility at the time the conduct occurred.¹⁰ Next, the question arises as to how strict the principle is: is it sufficient for the act to be criminal or must the conduct be proscribed as a crime in the specific terms in which it is being prosecuted?

63 Section 12.2 of UNTAET Regulation No. 2000/15 addresses the issue of construction and the possibility of analogy by providing: *"The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted."* This provision is verbatim the text of Article 22.2 of the ICC Statute.

64 However, it may be that under Sections 12.1 and 12.3 of Regulation 2000/15, the rule against analogy applies only to interpreting the text of the Regulation alone:

A person shall not be criminally responsible . . . unless the conduct in question constitutes . . . a crime under international law or the laws of East Timor

...

The present Section shall not affect the characterization of any conduct as criminal under principles and rules of international law independently of the present regulation.

⁹ *The Prosecutor Versus Jhoni Franca, Judgment of the 5th December 2002.*

¹⁰ *This requirement, of course, is limited to acts occurring before the Regulation 2000/15 entered into force.*



- 65 These two provisions leave open the possibility that analogy may be used with respect to applying definitions of crimes at international law. In this regard, it should be remembered that Article 22 of the ICC Statute, from which drafters of UNTAET Regulation 2000/15 drew Section 12, was concluded during a Diplomatic Conference that negotiated the text of a treaty. Prohibiting analogy has a different meaning in the context of a treaty than it might have otherwise. Specifically, ICC Statute definitions will only apply for future acts, given the court's prospective jurisdiction. Thus, the rule may be limited to just the Rome Statute text. In other for a besides the Court, such as the East Timor Special Panels, the rule might not apply in every problem of interpretation.
- 66 As already stressed in Jhoni Franca case, a problem may arise if the process of judicial interpretation reaches behind the text of Regulation 2000/15 to find definitions of crimes in international law.¹¹ The potential problem centers on the possibility that definitions may be more limited in customary law than they are in the Regulation. Thus, the rule against analogy may prevent applying the Regulation's definition where a) an act is prosecuted under a definition in the Regulation, b) international law is looked to in support of that definition, and c) the definition in customary law is more limited than the Regulation's definition. As stated before, the Regulation's definitions derive nearly word for word from the Rome Statute of the International Criminal Court. But unless that Statute is declaratory of customary law, the rule against analogies may limit applicability of parts of the Regulations's definitions with respect to conduct occurring before the Regulation's entry into force.
- 67 As stressed In Jhoni Franca's case, the use of analogy in applying customary definitions is necessary because traditionally, international criminal law has lacked the specificity of national criminal law in defining crimes.¹² As conclusion, it was found that it is probably not necessary that the crime be proscribed in exact

¹¹ Recall that Section 12.1 provides that "[a] person shall not be criminally responsible unless the conduct in question constitutes, and the time it takes place, a crime under international law. . . ."

¹² Case No.4a/2002 the PP v. Jhoni Franca, judgment of 5 December 2002.

and precise terms, as long as the conduct is a crime under international law giving rise to individual criminal responsibility.

68 It is also necessary to address the issue of whether the principle of *nullum crimen sine lege* requires that the penalty be prescribed. Known as the principle of *nulla poena sine lege*, this principle is dealt with in Section 13 of UNTAET Regulation No. 2000/15, which reads: “*A person convicted by a panel may be punished only in accordance with the present regulation.*”

69 Here, the issue of analogy is not as difficult as it is with respect to the definitions of crimes. There is much support for the proposition that where a) a country’s laws prescribe particular penalty for a particular crime, b) an international or internationalized court is established for that country, and c) the new court must decide how to punish a similar crime, the new court may look to country’s penalty provisions for guidance. Article 24 of the Statute of the International Criminal Court for the former Yugoslavia provides that “[i]n determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.” Article 23 of the Statute of the International Criminal Tribunal for Rwanda has the same provision, *mutatis mutandis*. However, there is no similar provision in the ICC Statute.¹³

70 On the issue of applying penalties by analogy, Bassiouni concludes:

*International criminal law as it is now, and certainly as it was in 1945, requires the existence of a legal prohibition arising under conventional or customary international law, which is deemed to have primacy over national law, and which defines a certain conduct as criminal, punishable or prosecutable, or violative of international law. This minimum standard of legality permits the application of penalties by analogy to similar crimes and penalties in the national criminal laws of the prosecuting state having proper jurisdiction*¹⁴

¹³See Articles 77 and 78.

¹⁴ M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, Second revised edition (1999) at 144.



- 71 With respect to the application of *nullum crimen sine lege* to crimes within the subject matter jurisdiction of the Special Panels, the Court has to examine the application of the principle of *nullum crimen sine lege* to the subject matter jurisdiction of the Special Panels under UNTAET Regulation No. 2000/15. In particular, this part investigates whether the “serious criminal offences” enumerated in Section 1.3 of UNTAET Regulation 2000/15 were already crimes under international law either as customary international law binding on all states;¹⁵ or, in the absence of customary law and at least to the extent defendants were Indonesian citizens,¹⁶ as treaty law binding on Indonesia.
- 72 Section 1.3 of UNTAET Regulation No. 2000/15 states that the Special Panels have jurisdiction over the following serious criminal offences: genocide, crimes against humanity, war crimes, torture, murder and sexual offenses. If it is clear that some acts like murder and sexual offences were presumably criminalized under domestic law during the relevant period (Sections 8 and 9 of UNTAET Regulation 2000/15), it is not the same other acts like genocide, war crimes and crimes against humanity.
- 73 Section 5 enumerates the crimes against humanity that fall within the Special Panels’ jurisdiction and reads, in relevant part:
- 5.1 For the purposes of the present regulation, “crimes against humanity” means any of the following acts when committed

¹⁵ See also Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc, S/25704, 3 May 1993 [hereinafter Report of the Secretary-General regarding the ICTY Statute], accompanying the proposed statute for the International Criminal Tribunal for the Former Yugoslavia. Paragraph 34 of this report addresses the principle of *nullum crimen sine lege* and reads, in relevant part:

34. In the view of the Secretary-General, the application of the principle *nullum crimen sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law.

¹⁶ There may be a question about to what extent East Timor fell within the scope of Indonesia’s treaty obligations. This question arises from uncertainty as to whether East Timor was legally part of Indonesia.

as part of a widespread or systematic attack and directed against any civilian population, with knowledge of the attack:

(...)

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(...)

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

- 74 Of these different crimes against humanity, the following were included in the jurisdiction of the International Military Tribunal (Article 6(c) of the Charter of the International Military Tribunal (IMT)): murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated. In addition, the ICTY and ICTR Statutes enumerate the following crimes against humanity within each tribunal's jurisdiction (Article 5 ICTY Statute and Article 3 ICTR Statute, respectively): murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial and religious grounds; and other inhumane acts. According to the Report of the Secretary General that accompanied the draft Statute of the ICTY, these acts are considered crimes under customary international law.¹⁷
- 75 In the present case, the accused sabino gouveia leite is charged with Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law contrary to Section 5.1(e) UNTAET Regulation 2000/15, with torture as crimes against humanity, contrary to Section 5.1(f) UNTAET Regulation 2000/15, and with other inhumane acts of similar character intentionally causing great suffering or serious injury to body or mental or physical health, as crime against humanity and contrary to Section 5 (k) of UNTAET Regulation 2000/15.

¹⁷ See Report of the Secretary-General regarding the ICTY Statute, *supra* note X, para. 34.

- 76 The Special Panel will therefore analyze whether or not those specific crimes against humanity enumerated in the paragraph above and with which the accused is charged are considered to be customary international.
- 77 It has been shown in Jhoni Franca decision that torture as crimes against humanity and imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law are international customary law. The only new crime for this panel to check is inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health.
- 78 Other Inhumane Acts Of Similar Character Intentionally Causing Great Suffering Or Serious Injury To Body Or Mental Or Physical Health. Article 5 of the ICTY Statute includes the terms of “other inhumane acts” as does the Article 3 of the ICTR Statute. As underlined by Bassouini, these terms may appear ambiguous¹⁸. They gain clarity if their interpretation is limited by the theory of *esjudem generis*, whereby the term is interpreted by close analogy to the specific terms used in article 6(c) of the Charter. The new formulation by the ICC has the merit to give this term more specificity in order not to violate the principles of legality. Article 7 of the ICC Statute refers to it as “Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

F. FACTUAL FINDINGS.

- 79 In light of the admissions of all the evidence, especially the testimonies of the witnesses Benedito Da Costa, Mario Gonsalves, Jose Gouveia Leite, Amelia Belo, Aurea Cardoso, Adao Manuel, Mario Gonsalves and Herminio Da Graca, and the statements made before the investigator by the witnesses in the case, especially the witnesses Rosa De Jesus, Mariana Da Cunha, Victim A, Victim B, Victim C, the reports on the situation of Human rights in East Timor, note by the Secretary General, Report of the Indonesian Commission on human rights violations in East Timor, January 2000, the Court is convinced that the following facts occurred:
- 80 The widespread or systematic attacks were directed against the civilian population in East Timor in 1999. The attacks occurred during two

¹⁸ Bassouini, Crimes Against Humanity in International Criminal Law, *supra*, page 331

interconnected periods of intensified violence. The first period followed the announcement on 27 January 1999 by the Government of Indonesia that the people of East Timor would be allowed to choose between autonomy with the Republic of Indonesia or independence. This period ended on 4 September 1999, the date of the announcement of the result of the popular consultation in which 78.5 per cent voted against the autonomy proposal. The second period followed the announcement of the result of the popular consultation on 4 September through 25 October 1999.

- 81 The widespread or systematic attacks were part of an orchestrated campaign of violence, that included among other things incitement, threats to life, intimidation, unlawful confinement, assaults, forced displacement, arson, murders, rapes, and other forms of violence carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces, ABRI (*Angkatan Bersenjata Republik Indonesia*) renamed TNI (*Tentara Nasional Indonesia*) in 1999, and members of the Indonesian Police Forces (*POLRI*) with the acquiescence and active participation of Civilian and Military authorities.
- 82 In 1999, more than twenty-five militia groups operated throughout East Timor. Their goal was to support autonomy with Indonesia. The Integration Fighting Forces (PPI), (*Pasukan Pejuang Integrasi*) under the command of Joao Tavares was the umbrella organization under which these militia groups were organized. It had the backing of the TNI and the Civil Administration. PPI Commanders issued, called upon and incited militia groups and their members to intimidate independence supporters and those perceived to support them. The militia groups participated in the widespread or systematic attack and acted and operated with impunity.
- 83 The Indonesian Military in East Timor consisted of both regular territorial forces (BTT) and Special Combat Forces, i.e. the Strategic Reserve Command (KOSTRAD), (*Komando Strategis Angkatan Darat*) and Special Forces Command (KOPASUS), (*Komando Pasukan Khusus*), all of which had units, staff officers and soldiers stationed in East Timor.
- 84 These large-scale attacks were directed against civilians of all age groups, predominantly against individuals who supported or were perceived to support independence and resulted in lethal injury including death by sharp force injury, gun shot injury, blunt force trauma or a combination of the three.

- 85 Widespread or systematic attacks were also carried out against property and livestock, including mass destruction of houses by fire, stealing of property, killing and stealing of livestock.
- 86 The widespread or systematic attack resulted in the internal displacement of thousands of persons. Additionally, the forcible transfer and deportation of the civilian population within East Timor and to West Timor, Indonesia was an essential feature of that orchestrated campaign of violence.
- 87 Under terms of the 5 May 1999 Agreements, between Indonesia, Portugal and the United Nations on the popular consultation, the Indonesian security authorities had the responsibility to ensure a safe environment devoid of violence or other forms of intimidation as well as the general maintenance of law and order before and during the popular consultation. The TNI and POLRI (which were the Indonesian Security Authorities) failed to meet these obligations and made no attempt to disarm or neutralize the militia groups. They were allowed to act with impunity.
- 88 Between April and October 1999, the TNI forces present in Bobonaro District were KODIM 1636 with its headquarters in Maliana. There were six sub-district Military Commands (KORAMIL) each headed by a DANRAMIL. In 1999, the KORAMIL in Lolotoe sub-district was initially under the command of Sergeant Elias. After his deputy Sergeant Caetano was killed, 2nd Lt. Bambang Indra replaced him.
- 89 From February to October 1999, the Indonesian Police Force (POLRI), the state agency for upholding the law and public order were also present in East Timor. It also included a Mobile Police Brigade (BRIMOB), whose Units and members were stationed in East Timor, including in Bobonaro District.
- 90 Between February and September 1999, the Civil Administration in Bobonaro District was headed by the *Bupati* (District or Regency Administrator), who was appointed by the local parliament and Governor of East Timor with the approval of the Minister of Interior of the Republic of Indonesia. The villages were headed by village Chiefs (*Kepala Desa*).
- 91 In Lolotoe sub-district, the Indonesian Armed Forces in particular the TNI under the command and control of 2nd Lt. Bambang Indra, worked in close cooperation with two of the principal armed militia groups, namely Kaer Metin Merah Putih and the Dadurus Merah Putih (Red and White Typhoon).



- 92 On or about 5th May 1999, Joao Tavares as Supreme Commander of the PPI presided over the inauguration ceremony of the KMP militia. No attempt was made by the TNI and POLRI to disarm or neutralize the KMP militia or the DMP militia. They were allowed to act with impunity.
- 93 2nd Lt. Bambang Indra as commander (DANRAMIL) of the sub-district military had authority and control over the TNI in Lolotoe sub-district. The TNI in Lolotoe Sub-District under the command of 2nd Lt. Bambang Indra provided KMP militia with logistic support. Many members of the KMP militia received some form of compensation from the Indonesian Government for their actions against the civilian population of Lolotoe Sub-District in support of autonomy for East Timor.
- 94 Between April and October 1999, both the TNI in Lolotoe sub-district and the KMP militia conducted acts of violence against those members of the civilian population in Lolotoe sub-district who were considered to be pro-independence, linked to or sympathetic to the independence cause. The concerted attacks included intimidation, threats, unlawful arrests and detention, interrogations, arsons, murders, torture, inhumane and degrading acts, and other acts of persecution. Many acts were directed in particular against women whose husbands were presumed to be FALINTIL (Forças Armadas De Libertacao Nacional De Timor Leste: Armed Forces for the Liberation of East Timor) or supporters of independence.
- 95 At all material time, Sabino Gouveia Leite was the chief (Kepala Desa) of Guda Village in Lolotoe Sub-District.
- 96 Sabino Gouveia Leite provided information to the KMP militia regarding the identities of civilians who supported independence for East Timor or Falintil or have relations with members of Falintil, so that they will be arrested, interrogated and detained by the KMP militia.¹⁹
- 97 On or about 22 May 1999 militia members of the KMP militia members went to the house of Bendito Da Costa and Amelia Belo. Militia members were armed with a rifle, machetes, swords and knives. They asked Bendito Da Costa and Amelia Belo where their son Mario was. At the material time Mario was a FALINTIL member. Bendito Da Costa informed militia members that he did not know where Mario was. Militia members started to beat Bendito Da Costa. Militia members started to tie Bendito Da Costa to a pole in his house. He remained tied up there until the next day. On the

¹⁹ Amended indictment on 27 March 20002

next day members of the KMP militia returned. They tied Bendito Da Costa and Amelia Belo's hands behind their backs. Bendito Da Costa and Amelia Belo were forced to walk to Lolotoe. It was approximately a 2-hour walk. When they arrived at Lolotoe, Bendito Da Costa and Amelia Belo were taken to the KORAMIL, where they were placed in a small room and locked up. Bendito Da Costa and Amelia Belo remained in detention until sometime in July 1999.

- 98 Adao Manuel was a supporter of independence for East Timor. On or about 22nd May 1999, due to the threats against the supporters of independence, Adao Manuel was hiding at the church in Villa with Mario Goncalves, Jose Afonso and Afonso Noronha. The KMP militia knew about his presence at the church. Members of the KMP militia went to the church and forcibly brought out Adao Manuel from the church. His hands were tied and he was taken to the KORAMIL in Lolotoe sub-district. At the KORAMIL in Lolotoe sub-district militia members subjected Adao Manuel to severe physical violence. Adao Manuel's right ear was cut with a knife. Militia members continuously beat Adao Manuel for two hours, after which he was dragged out to the playground, where he was still being beaten while being interrogated about his involvement with FALINTIL. Adao Manuel was detained in the KORAMIL in Lolotoe sub-district until July 1999, during which time militia members, while being interrogated, subjected him to further severe beatings.
- 99 Mario Goncalves was a supporter of independence and a member of CNRT. Mario Goncalves gave public speeches in Guda Village encouraging the people to support and vote for the independence of East Timor. Mario Goncalves was afraid that he would be killed by the TNI/KMP militia and went to hide in the jungle for one month. Mario Goncalves then came out of hiding and sought refuge in the church in Villa. On or about 24th May 1999 about one hundred members of the KMP militia went to the church. Mario Goncalves was ordered to come out of the church. When Mario Goncalves came out of the church he was beaten by the KMP militia members whilst being dragged to the field outside the CNRT office. At the field, Sabino Gouveia Leite and some militia ordered members of the KMP Militia to beat Mario Goncalves in turns. Approximately thirty-seven KMP militia members beat Mario Goncalves. Sabino Gouveia Leite incited militia members to cut off Mario Goncalves' ear. His right ear was cut off and thrown on the ground and Sabino Gouveia Leite with some militia forced Mario Goncalves to eat it. Mario Goncalves feared for his life and did as he was ordered by eating his right ear. Militia ordered that Mario Goncalves to be held with the other

detainees in the KORAMIL building in Lolotoe. Mario Goncalves was detained there until sometime in July 1999.

- 100 Jose Gouveia Leite was the vice-secretary for CNRT in Lolotoe. At the material time he was a supporter of the independence movement. On or about 24 April 1999 Jose Gouveia Leite feared for his life and ran into the jungle as he had heard that the members of Dadurus Merah Putih militia had come to his village of Guda and were looking for him. On or about 7 May 1999 he received a letter through his brother in law Anebel purporting to be from his godson Sabino Gouveia Leite. In the letter, Sabino Gouveia Leite requested that Jose Gouveia Leite come down to Lolotoe and report to the leaders so that he can be freed. On or about 21 May 1999 Jose Gouveia Leite left the forest and went to Lolotoe. Shortly after his arrival, Sabino Gouveia Leite left his house and returned with some militia members. Militia members went to see and took Jose Gouveia Leite to the elementary school, where they ordered other militia members present to beat him up. Jose Gouveia Leite was thereafter taken to the CNRT office in Lolotoe sub-district and again beaten continuously along the way. At the playground outside the CNRT office, militia members told Jose Gouveia Leite to confess his involvement with FALINTIL. He confessed. It was ordered 6 KMP militia members to beat Jose Gouveia Leite again. Jose Gouveia Leite was cut above his eye and bled. Jose Gouveia Leite was thereafter taken to the Sub District Police Office where they met an Indonesian officer, Martin. Jose Gouveia Leite was then taken to the KORAMIL in Lolotoe sub-district and interrogated and beaten. Jose Gouveia Leite was detained in the KORAMIL Lolotoe sub-district with the other detainees. He was released sometime in July 1999.
- 101 On or about 20th May 1999, Aurea Cardoso and her two children were hiding at the house of Euzebio Da Costa because they feared for their lives as she and her husband were supporters of independence. Approximately 60 members of the KMP militia surrounded the house. Among the KMP militia present, Aurea Cardoso recognized one Antonio Bere whom she knew to be from Guda sub-village. Antonio Bere knocked on the door and called for Aurea Cardoso to come out. She could not find the keys to the front door and when she delayed in coming out, the KMP militia present started throwing stones. Aurea Cardoso then exited the house with her two children through the window. Aurea Cardoso was informed that she and her two children were to be arrested by the militia because they could not locate her husband Sebastiano Amaral. Militia members took her and her children first to Zoilpo Village where they stayed overnight and thereafter

to Lolotoe. They were detained at the Koramil. On the next day, Aurea Cardoso was interrogated on the whereabouts of her husband and whether she supplied food to FALINTIL, while threatening her that if she did not speak the truth, one of her children's ear will be cut off, and that she will be forced to eat it. Aurea Cardoso and her two children were detained at the KORAMIL in Lolotoe sub-district. Aurea Cardoso and her two children were released sometime in July 1999.

- 102 Sometime in July 1999, Benedito da Costa and other detainees in the Koramil were released. Sabino Gouveia Leite typed the letter of release.
- 103 During their detention at the various places in Lolotoe sub-district, Bendito Da Costa, Amelio Belo, Adao Manuel, Mario Goncalves, Jose Gouveia Leite, Aurea Cardoso and their two children, and other detainees were locked in a small room without proper sanitation facilities. The detainees were subjected to extremely unhygienic conditions and were not given food or water regularly.
- 104 Herminio De Graca was a member of the CNRT and was its chief representative in Zoilpo sub-village in Guda Village. In discharging his duties as Chief Representative of CNRT in the sub-village, Herminio Da Graca spoke to the local population about democracy, self-determination, and freedom from colonization and freedom of choice. He addressed approximately six thousand people in seven villages. Sometime in May 1999, as Herminio Da Graca was on his way to Maliana on his motorbike, two KMP members, one of who was Jose Mauputa, stopped him. They informed Herminio Da Graca that Sabino Gouveia Leite wanted to see him. The 2 members escorted Herminio Da Graca back to Lolotoe to the house of Sabino Gouveia Leite. There, Sabino Gouveia Leite questioned Herminio Da Graca about FALINTIL. After 2 hours Herminio Da Graca was ordered to report to the KORAMIL on the next day, which he did. On the next day, a TNI sergeant interrogated Herminio Da Graca at the KORAMIL about his links to FALINTIL. While questioning him, the sergeant sat on a chair and placed the chair leg on Herminio Da Graca's foot. Herminio Da Graca was then sent to the house of Manuel Da Costa, a low-ranking TNI official, where he was detained until sometime in July 1999.
- 105 Sabino Gouveia Leite provided information to members of KMP militia that Victim A, victim B, and Victim C provided food for Falantil. Sometime in May 1999, members of the KMP Militia and TNI, went to the residences of Victim A, Victim B and Victim C in Guda Village. Members of the KMP militia and TNI were armed with automatic

weapons, grenades, machetes and knives. Some of them were wearing with TNI uniform. Victim A, Victim B and Victim C were taken to the house of the chief village Sabino Gouveia Leite. Sabino Gouveia Leite was at the house. Victim A, Victim B and Victim C were held against their will at Sabino Gouveia Leite's house for approximately one week, during which time they were forced to cook for the Sabino Gouveia Leite's family and members of the militia. Sometime in May 1999, KMP militia members took Victim A, Victim B and Victim C to the PKK building in Lolotoe. Victim A, Victim B and Victim C were held against their will at the PKK building for 3 days. A few days later, Victim A, Victim B and Victim C were later moved to the house of Sabino Gouveia Leite and were forced to stay there for approximately one month. During this time, Victim A, Victim B and Victim C were forced to cook for Sabino Gouveia Leite. On or about 8 July 1999 Victim A, Victim B and Victim C were taken back to Guda Village and were then returned to their respective homes. Throughout the period of their detention, Victim A, Victim B and Victim C were guarded and their movements controlled. They lived on the threat of death and believed that they had no option other than to obey their captors.

H. INDIVIDUAL CRIMINAL RESPONSIBILITY.

- 106 The accused is individually criminally responsible for the crimes alleged against him in this indictment in violation of Section 14 of UNTAET Regulation 2000/15.
- 107 By providing information to members of KMP militia that Victim A, victim B, and Victim C provided food for Falantil, by providing information to the KMP militia regarding the identities of civilians who supported independence for East Timor or Falintil or have relations with members of Falintil, so that they will be arrested, interrogated and detained by the KMP militia, Sabino Gouveia Leite aided in the imprisonment of Bendito Da Costa, Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, and Aurea Cardoso and her two children, herminio Da Graca, Victim A, Victim B and Victim C to imprisonment or other severe deprivation of Physical Liberty in violation of fundamental rules of international law, and the torture of Bendito Da Costa, Adao Manuel, Mario Gonsalves and Jose Gouveia Leite and to inhumane acts against all those persons. By participating directly in the imprisonment of Jose Gouveia Leite, victim A, Victim B, and Victim C and the torture of Mario Gonsalves, and submitting them to inhumane acts, the accused

Sabino Gouveia Leite was engaging his direct responsibility in the commission of these offences.

- 108 Under section 14.2 and 14.3(a) to (c) individual criminal responsibility results if the individual committed, planned, instigated, ordered, solicited, induced, aided, abetted or otherwise assisted in the commission of the crimes, or attempted commission. Individual criminal responsibility also results if an individual in any other way contributes to the commission or attempted commission of the crime, if such contribution is intentional and is either (i) made with the aim of furthering the criminal activity or purpose of a group; or (ii) is made with the knowledge of the intention of the group to commit the crime.

I. LEGAL FINDINGS

- 109 Article 5 of UNTAET Regulation 2000/15 sets out various acts that constitute crimes against humanity, when those acts are committed as part of a widespread and systematic attack and directed against any civilian population, with knowledge of the attack. Among those acts we find Torture, Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, and other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health.
- 110 The accused Sabino Gouveia Leite is accused of Torture, Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law and other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health.

Torture

- 111 The Special Panel considers that torture is a crime against humanity pursuant to Article 5(f) of UNTAET Regulation 2000/15. The same section in (d) defines torture as “ the intentional infliction of severe pain or suffering, whether physical or mental upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanction. UNTAET Regulation 2000/15 provides the same definition of torture as in Rome Statute.
- 136 The most instructive definition of the elements of torture as a crime against Humanity can be found in the PCNICC’s Draft Elements of Crimes²⁰ falling within the jurisdiction of the ICC. Indeed according to Article 9 of the ICC, the Draft Elements of Crimes shall assist the Court in interpreting the crimes. Although, the Draft Elements of Crimes has to date not been relied on by the ICC, in light of the fact that they present an articulation of the elements of offences in contemporary international criminal law and assist in the interpretation of Article 7(1)(f) of the ICC Statute, which is similar to Section 5 of UNTAET Regulation 2000/15, the Special Panel considers the PCNICC’s Draft Elements as containing the most instructive definition of the offence of torture for purposes of the law of East Timor. In the PCNICC’s Draft Elements, the elements are as follows:

- “1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.*
- 2. Such person or persons were in the custody or under the control of the perpetrator.*
- 3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.*
- 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.*
- 5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”*

²⁰ Report of the Preparatory Commission for the International Criminal Court, Finalized draft text of the Elements of Crimes

²¹ It is understood that no specific purpose need be proved for this crime.

137 Torture is also defined in Articles 3 ICTY and 5 of the ICTR Statutes respectively as:

*"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."*²²

138 This latter definition of torture is also the war crimes definition of torture and because it includes the requirement for the torture as a crime against humanity to have a purpose, it is not instructive in this case. The absence of the requirement for the element of purpose is an important change in the substantive law relating to torture as it allows for an expansive application of the crime unlike the previous restrictive application.

139 It is important to point out that the law of East Timor contains a similar definition of torture as that of the Statutes of the Tribunals in Section 7 of UNTAET Regulation 2000/15. As the Accused Sabino Gouveia Leite was charged under Section 5, which has a different definition from Section 7, the Special Panel does not find it necessary to discuss the Section 7 definition of torture and will restrict itself to Section 5 of UNTAET Regulation 2000/15.

140 The Special Panel therefore following the PCNICC's Elements of Crimes, defines the essential elements of torture as:

- "1. The perpetrator inflicted severe physical²³ or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.

²² ICTY rules at article 3

²³ It is understood that no specific purpose need be proved for this crime.

3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”

141 It has been shown that Sabino Gouveia Leite was acting as village chief and that through his actions he inflicted severe physical or mental pain or suffering on several victims as charged. Even though it appears that there may have been a purpose to his actions it being either to punish those perceived to support the pro-independence movement or to obtain information from them, evidence of purpose was not conclusively led. In any case, the Special Panel has already stated that there is no requirement for purpose.

142 In the present case, the Special Panel finds that the following elements of torture as a crime against humanity have been satisfied:

143 *The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.* Evidence led on behalf of the prosecution, admitted by the Accused and accepted by the Special Panel established that numerous victims were subjected to severe physical pain at the hands of the accused or on his orders. The gravest instance was the accused inciting militia members to cut off the ear of Mario Goncalves and ordering him to eat it. The Special Panel finds that this must have caused the victim severe physical pain as well as serious mental pain arising out of being asked to eat his own flesh.

144 *Such person or persons were in the custody or under the control of the perpetrator.* It has been shown that the accused person was exercising a certain control on the victims of torture who were sometimes in his custody. Indeed, the victims of the torture are also the victims of unlawful imprisonment. The

Special Panel finds that the element of custody and control of the victim has been sufficiently established by the evidence led.

- 145 *Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.* The Special Panel finds that there was no legal justification for the infliction of pain or suffering on the victims and none has been suggested by the Accused. It is clear from the evidence that the infliction of torture on the victims was not undertaken pursuant to any legal process.
- 146 *The conduct was committed as part of a widespread or systematic attack directed against a civilian population.* It has been shown that the torture was perpetrated as part of a widespread or systematic attack, and that acts of violence and threats directed against the civilian population in Lolotoe Sub-District targeted those who supported or were perceived to support independence, principally for political reasons. Members of the civilian population were subjected to orchestrated violence because of their opinion on the future political status of East Timor, because they supported FALANTIL or were sympathetic to it or its members.
- 147 *The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.* The Accused admitted to the Special Panel that he was aware of the context in which his unlawful actions were committed.

Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.

- 148 The Special Panel considers also that Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law is a crime against humanity pursuant to Article 5(e) of UNTAET Regulation 2000/15, which however mentions it without adding any specific definition.
- 149 However, since Section 5 of UNTAET regulation says that “crimes against humanity means any of the following acts when committed as part of widespread or systematic attack and directed against any civilian population with knowledge of the attack, we can say that the imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law must be perpetrated as part of a widespread or systematic attack, and with knowledge of the attack.
- 150 It has been shown that the Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law was perpetrated as part of a widespread or systematic attack, and was directed against the civilian population, with the knowledge of the attack.
- 151 Article 7 (1) (e) of the Rome Statute contains a similar definition of the Crime against humanity of imprisonment or other severe deprivation of physical liberty as that contained in Section 5(e) of UNTAET Regulation 2000/15
- 152 At the same time the PCNICC’s Elements of Crimes provides the following elements for the Crime Against Humanity of Crime against humanity of imprisonment or other severe deprivation of physical liberty:

- 1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.*
- 2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.*
- 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.*
- 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.*

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

- 153 The Accused person admitted to imprisoning the persons alleged by the prosecution in the indictment. The Special Panel considers that this conduct was in serious violation of fundamental rules of international law and that the Accused was aware of the factual circumstances that established the gravity or seriousness of his conduct taking into account the length of the detention, the numbers of people detained and other factors accompanying the detention such as torture or beatings of some of the detainees.
- 154 The Special Panel considers that the imprisonment was committed as part of a widespread and systematic attack directed against the civilian population. The Accused himself admitted to this.
- 155 Finally, the Special Panel considers that the Accused was aware that conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health

- 156 Section 5.1 UNTAET Regulation 2000/15 provides that crimes against humanity means “any of the following acts when committed as part of a widespread and systematic attack against any civilian population, with knowledge of the attack: ...(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”. Article 7 of the ICC Statute refers to it also as “Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”, while Article 5 of the ICTY Statute includes the terms of “other inhumane acts” as does the Article 3 of the ICTR Statute.
- 157 It is clear that the sub-characterisation “other inhumane acts” laid down in Section 5 UNTAET Regulation 2000/15 as well as in other legislations mentioned above “is a generic charge which encompasses

a series of criminal activities not explicitly enumerated”²⁴. Indeed, Jean Pictet commenting on Article 3 common to the Geneva Conventions states regarding the notion of “humane treatment: “(...) it always dangerous to try to go into much details- especially in this domain. However much care were taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wishes to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes”²⁵

- 158 Section 5 UNTAET Regulation 2000/15 specify that “serious injury to body or to mental or physical health” are inhumane acts, and can be characterized as crimes against humanity, if it fits into a widespread and systematic context.
- 159 The IDL Draft Code of Crimes Against the Peace and the Security of Mankind in its Article 18(k) says about “other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation or severe bodily harm”. It says in its comments: “(...) the notion of other inhumane acts is circumscribed by two requirements. First this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity”²⁶
- 160 In line of the content of Section 5 UNTAET regulation 2000/15 and the interpretation given to inhuman act in Article 7 (similar to Section 5) of ICC and article 18(k) of ILC, the Special Panel deems that the following elements of inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health have been satisfied:
- The victim have suffered serious bodily or mental harm (the degree of severity must assessed on a case by case basis with due regard for the individual circumstances);
 - The suffering was the result of an act of the accused or his subordinate;

²⁴ Andre Klip and Goran Sluiter, Annotated leading cases of international criminal tribunal, Volume 4, Intersentia, Oxford, 2002, p536.

²⁵ Jean Pictet, commentary on the 1st Geneva Convention of 1949, Geneva, 1952, p.54.

²⁶ ILC 1996 Report, in Andre Klip and Goran Sluiter, Annotated leading cases of international criminal tribunal, Volume 4, Intersentia, Oxford, 2002, p537.

- *When the offences was committed , the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim.*
- *The conduct was committed as part of a widespread or systematic attack directed against a civilian population*
- *The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.*



- 161 The accused Sabino Gouveia Leite agreed that, during their detention at the various places in Lolotoe sub-district, Bendito Da Costa, Amelio Belo, Adao Manuel, Mario Goncalves, Jose Gouveia Leite, Aurea Cardoso and her two children, and other detainees were locked in a small room without proper sanitation facilities. The detainees were subjected to extremely unhygienic conditions and were not given food or water regularly.
- 162 This submission to inhumane conditions made the victims to suffer serious bodily or mental harm. The suffering was the result of the act of the accused himself or some militia members who have been following his orders. It has been shown the acts of inhumane conditions were perpetrated as part of a widespread or systematic attack, and that confinement in inhumane conditions was directed against the civilian population in Lolotoe Sub-District targeted those who supported or were perceived to support independence, principally for political reasons. Members of the civilian population were subjected to orchestrated inhumane conditions because of their opinion on the future political status of East Timor, because they supported FALANTIL or were sympathetic to it or its members. The Accused admitted to the Special Panel that he was aware of the context in which his actions of submitting people to inhumane conditions were committed. He knew that he was participating in a widespread and systematic attack against a civilian population.
- 163 Pursuant to the consideration of the aforementioned elements, it is found legitimately and in accordance with the law that the Defendant has committed in May 1999 the crimes of torture, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, and other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, as crimes against humanity, as specified in Sect. 5.1 (e), (d) and (k) of U.R. n° 2000/15.

F. VERDICT

- 164 For the aforementioned reasons, and in light of the admissions of all the evidence made by the accused in addition of his plea of guilty, pursuant to Sections 29A and 39 of UNTAET Regulation 2000/30 as

amended by Regulation 2001/25, the Special Panel accepted on 12 November 2002 the plea of guilty of the accused Sabino Gouveia Leite made on the 21st October 2002, finds that all the essential facts required to prove the crimes to which the admission of guilty relates have been established as required by Section 29A.2 of Regulation 2001/25.

- 165 The accused Sabino Gouveia Leite was Convicted of: Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Bendito Da Costa and Amelia Belo, Adao Manuel, Mario Gonsalves, Jose Gouveia Leite, and Aurea Cardoso and her two children, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Herminio da Graca, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, of Victim A, Victim B and Victim C, as crimes against humanity, contrary to Section 5.1(e) UNTAET Regulation 2000/15. Torture of Bendito Da Costa, Adao Manuel, Mario Gonsalves, and Jose Gouveia Leite, as crimes against humanity, contrary to Section 5.1(f) UNTAET Regulation 2000/15; other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, as crime against humanity, contrary to Section 5(k) of UNTAET Regulation 2000/15.
- 166 Pursuant to these findings of guilty, the Court will proceed to sentence Sabino Gouveia Leite, in order to determine an appropriate penalty.

G. SENTENCING

1) Facts related to the sentence.

167 The Public Prosecutor and the defense suggested in their agreement that the accused be given a penalty of 5 years.

168 The accused advanced the circumstances prevailing in 1999, which brought him to commit the offences. He told the Court: *" Before I read out my statement first of all I'll inform some important points before the Honorable Judge, that at that time I worked as a Public Servant as well as a temporary Village Chief of Guda within Sub District of Lolotoe under supervision of Indonesian Government. Even though at that time all the rights and civil authority were taking over by TNI and Militia under their regime, finally I as the lowest Public Officer, what can I say, if I didn't obey the orders of TNI and Militia, I'll be eliminated together with my family and relatives. I'm a normal civilian who has a limited right and authority, and also at that moment TNI and Militia were brutal without passed through the Village Officer. Actually at that moment I tried to consult with the leaders of TNI and SGI to release some people were detained at PKK building, however TNI and SGI replied that, you don't have the right, TNI has the right. Finally I was afraid and furthermore I was discouraged to consult the TNI and SGI. I need to explain to the Honorable Judge that at that moment the Village Chief was just a symbol, because all authority were under TNI and Militia and they didn't recognize anyone, just sweet in the mouth but bitter in their heart/inside, these are the words of TNI and Militia at that time. So I considered TNI, SGI and the Militia as the Second God. I'm speaking now based on the reality, but the situation, which I experienced in the past, was very dangerous within brutal acts of TNI and Militia against the civilians and me. So in fact I'm suffering the consequences of the inhuman acts of TNI and Militia against the civilians and me; and at that time if I replied no, I was killed; then I replied yes apparently I'm in prison. Actually I myself never hit those victims. At this opportunity I would like to inform the Honorable Judge, that at the moment my wife and children as well my relatives are suffering while I'm still in prison. I'm very concern about my 4 children, the first one is 13 years old, female studying at Junior High School, but miserable at the moment; the first child is living with other people. The others three children are staying with their mother, I'm*

concerning about it. As a citizen of this new nation, before the Judges, I request to Honorable Judge to forgive my mistakes, which I have committed in the past against my people”.

169 The Special Panel has taken into account the following:

Mitigating circumstances:

- 170 It is important to recall that the accused pleaded guilty to the charge against him. As the Court established, his guilty plea was made voluntarily and was unequivocal. Sabino Gouveia Leite clearly understood the nature of the charge against him and its consequences. As already decided by this Court in the case of Augusto Dos Santos²⁷ a person, who is honest to admit guilt, coming with an open heart and an open mind, has to be treated consequently. There are not many cases, in which the accused persons admit guilt.
- 171 Sabino Gouveia Leite cooperation with the Court was substantial. He freely admitted the participation in charges of imprisonment and torture. The accused has aided in the administration of justice by cooperating and providing full disclosure of the crimes that occurred.
- 172 Sabino Gouveia Leite prior to the commission of the crime, for which he has been convicted, was living in a very coercive environment. He told the Court: *(...) at that time all the rights and civil authority were taking over by TNI and Militia under their regime, finally I as the lowest Public Officer, (...), if I didn't obey the orders of TNI and Militia, I'll be eliminated together with my family and relatives. I'm a normal civilian who has a limited right and authority, and also at that moment TNI and Militia were brutal (...) at that moment the Village Chief was just a symbol, because all authority were under TNI and Militia and they didn't recognize anyone (...) So I considered TNI, SGI and the Militia as the Second God. (...) The situation, which I experienced in the past, was very dangerous within brutal acts of TNI and Militia against the civilians and me. So the inhuman acts of TNI and Militia against me and the civilians, in fact I'm suffering the consequences and at that time if I replied no, I was killed, then I replied yes (...) I'm in prison”* There was pressure from militia to join criminal activities. As the accused stated, the coercive environment has been a factor for the accused in committing the crime along with

²⁷ Case No.06/2001, The Public Prosecutor v. Augusto Do Santos, judgment of 14 May 2002.

some militia members, although there are some who refused to join criminal activities. The fact that some joined while others were able to resist, does not mean that there was no coercive environment. The coercive environment, in which the crimes were committed, has been a crucial factor for the Accused in committing the offences. He was not able to resist the solicitations of the regime that was on power and influent at that time.

- 173 Sabino Gouveia Leite expressed remorse for the crime that occurred. He asked for forgiveness. The accused said in the Court that he is apologizing for harming his people: *"As a citizen of this new nation, before the Judges, I request to Honorable Judge to forgive my mistakes, which I have committed in the past against my people"*
- 174 The Special Panel bears also in mind the family background of the accused and the fact that he is married and has four 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 underlined: *"(...) at the moment my wife and children as well my relatives are suffering while I'm still in prison. I'm very concern about my 4 children, the first one is 13 years old, female studying at Junior High School, but miserable at the moment, the first child is living with other people. The others three children are staying with their mother, I'm concerning about it"*. Some close relatives of the accused came to testify before the Court and obviously would like him to go back to his family. There is a need to restore him to his normal life as soon as possible for his rehabilitation.
- 175 The Special Panel has also taken into consideration the fact that the accused has no previous conviction.
- 176 Having reviewed all the circumstances of the case, the Special Panel is of the opinion that exceptional circumstances in mitigation surrounding the crime committed by the accused afford him some clemency.

Aggravating circumstances:

- 177 The victims were defenseless persons whose inability to respond to the threats and harm was unconditional;

2) Sentencing policy

- 178 According to Sect. 10.1 (a) of UR-2000/15, for the crimes referred to in Sect. 5 of the aforementioned Regulation, in determining the terms of imprisonment for those crimes, the Panel shall have recourse to the general practice regarding prison sentences in the courts of East Timor and under international tribunals. "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" (Sect. 10.2).
- 179 The penalties imposed on accused persons found guilty by the Panel are intended, on the one hand, as retribution against the said accused, whose crimes must be seen to be punished (*punitur quia peccatur*). They are also intended to act as deterrence; namely, to dissuade forever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate such serious violations of law and human rights (*punitur ne peccetur*).
- 180 Finally, the objective of prosecuting and punishing 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.
- 181 The Panel considered all the aggravating and mitigating circumstances upheld both by the practices of East Timorese courts in applying the Penal Code of Indonesia (KUHP) and the standards derived from the ICTY and the International Tribunal for Rwanda, apart from those provided for under UR-2000/15 as well as under general principles of law.

Conjunction of punishable acts

- 182 The crimes of imprisonment, torture and inhumane acts as crimes against humanity for which the accused Sabino Gouveia Leite was convicted are a conjunction of punishable acts. It was proved that the victims were first arrested, imprisoned, tortured and submitted to inhumane acts while in prison. Therefore, the Panel deems that the accused performed several acts (imprisonment, torture and inhumane acts) which forms in itself more than one crime with such a relationship that they must be considered as one continued act.
- 183 The Sect. 10.1 of UR-2000/15 recommends the Panel to apply Indonesian law in determining the terms of imprisonment for the crimes against humanity committed in East Timor²⁸. Accordingly, Art. 64(1) of Penal Code of Indonesia (KUHP) provides that only one of the most severe penal provisions shall be imposed²⁹. In this case, since the punishment for the crimes of imprisonment, torture and inhumane acts are the same; only one of them shall be served. The accused shall therefore serve only the punishment for one of the convictions.
- 184 Taking into account the aggravating and mitigating circumstances, the conjunction of acts and the gravity of the crime and the abovementioned considerations, the Special Panel deems appropriate the punishment of 3 (three) years imprisonment.

²⁸ Sect. 10.1 of UR-2000/15: "A panel may impose one of the following penalties on a person convicted of a crime specified under Sections 4 to 7 of the present Regulation: (a) imprisonment for a specified number of years, which may not exceed a maximum of 25 years. In determining the terms of imprisonment for the crimes referred to in Sections 4 to 7 of the present regulation, the Panel shall have recourse to the general practice regarding prison sentences in the courts of East Timor and under international tribunals (...)".

²⁹ Art. 64(1) of KUHP: "If among several acts, even though each in itself forms a crime or misdemeanor, there is such a relationship that they must be considered as one continued act, only one penal provision shall apply whereby, in case of difference, the most severe penal provision shall be imposed."

H. DISPOSITION

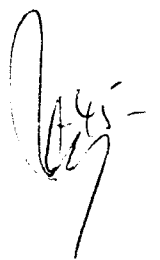
For the aforementioned reasons, having found the accused SABINO GOUVEIA LEITE guilty, considering the arguments of the parties, the evidence presented at the sentencing hearing, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the defendant SABINO GOUVEIA LEITE:

- (1) GUILTY for all the 3 charges of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, as crime against humanity, a crime stipulated under Section 5.1(e) UNTAET Regulation 2000/15;
- (2) GUILTY for the charge of torture as crime against humanity, in violation of Section 5.1(f) UNTAET Regulation 2000/15;
- (3) GUILTY for other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health, as crime against humanity, contrary to Section 5(k) of UNTAET Regulation 2000/15.
- (4) In punishment of those crimes, sentences SABINO GOUVEIA LEITE to an imprisonment of 3 (three) years.
- (5) 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 SABINO GOUVEIA LEITE, due to an order of an East Timorese Court. The defendant SABINO GOUVEIA LEITE was arrested and detained since 4 December 2000 to date. Therefore he was under detention for 1 year 11 months and 16 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, provided 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).

This Judgment was rendered and delivered on the 7th December 2002
by

Judge Sylver NTUKAMAZINA, Presiding

Judge Benfeito MOSSO RAMOS

Judge Maria NATERCIA GUSMAO PERREIRA.

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