



*arquivo*

**REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE**  
**RDTL**  
**TRIBUNAL DISTRIAL de DILI**  
**SECÇÃO CRIMES GRAVES**

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Case No. 18A/2001  
Date: 12/08/2003  
Original: English

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Before:  
Judge Maria Natércia Gusmão Pereira, Presiding  
Judge Sylver Ntukamazina  
Judge Siegfried Blunk

Registrar: João Naro  
Judgement of: 12<sup>th</sup> August 2003

**THE PROSECUTOR**  
**V.**  
**JOÃO SARMENTO**

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**JUDGEMENT**

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

**Counsel of the accused**  
Ms. Pamela Reush

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## **INTRODUCTION**

- 1 The trial of JOÃO SARMENTO (male, 35 years old, born in Holarua, Sub District of Same, Manufahi District, East Timor, married, has one child, son of Andrew Da Silva and Silveira), before the Special Panel for Serious Crimes within the District Court of Dili (hereafter: the “Special Panel”), commenced on the 30<sup>th</sup> June 2003, and was concluded on the 12<sup>th</sup> August 2003 with the rendering of the decision.
- 2 After considering the plea of guilty made by the accused João Sarmento, all the evidence presented in the indictment, 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 defendant, the Special Panel

## **HEREBY RENDERS ITS JUDGEMENT**

### **A. THE SPECIAL PANELS**

- 3 The Special Panels were established, within the District Court of 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. All U.R mentioned herein after have been upheld by Section 165 East Timorese Constitution after East Timor’s independence was internationally recognised on 20 May 2002.

### **B. PROCEDURAL BACKGROUND**

- 4 On 7 August 2001, the Public Prosecutor filed before the Dili District Court a written indictment (in English) against JOÃO SARMENTO, Benjamin Sarmento, Romeiro Tilman and Domingos Mendonça.
- 5 The accused João Sarmento was originally charged with five counts, namely: three counts of Murder as a Crime against Humanity (counts 15,16 and 17), one count of Deportation or Forcible Transfer as a Crime against Humanity (count 18) and one count of Persecution for political reasons as a Crime against Humanity (count 19).
- 6 Attached to the indictment were copies of the following documents:
  - The list of the victims, that forms an integral part of the indictment, was attached as annex A containing as victims of murder the names of Carlito



de Araujo aka Tilman (Maulito), Luis Boco Siri, Agapito de Araujo, Afonso da Costa, Armindo da Costa (Armindo Tilman), Carlito da Costa (Alberto Ximenes) and Lorenço Tilman; and as victims of Detention, Deportation or Forcible Transfer of population and Persecution, the villagers from Grotu Lau, Orema, Leubrema, Datina, Suri-Rema, Orluli, and Trilolo.

- The list of evidence was also attached to the indictment as annex B, containing the statements of the witnesses, the statement of the suspects João Sarmiento, Benjamin Sarmiento, Romeiro Tilman, and Domingos Mendonça, and also the documentary evidence. All annexes were an integral part of the indictment.
- 7 The Court clerk provided notification of the receipt of the indictment to the accused persons João Sarmiento, Benjamin Sarmiento, Romeiro Tilman, and Domingos Mendonça and to their legal representatives, on 17 August 2001, pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.
  - 8 The Accused João Sarmiento was arrested on the 31<sup>st</sup> March 2001 and kept under detention up to date.
  - 9 On the 12<sup>th</sup> September 2001 the Prosecutor submitted to the Court the indictment in Indonesian translation.
  - 10 The preliminary hearing was scheduled for 8 November 2001. However, one of the accused did not show up, and the preliminary hearing was re-scheduled for 22 January 2002. On 22 January one of the judges was not available and the hearing was postponed to 13 February 2002.
  - 11 The preliminary hearing commenced on 13 February 2002 and finished on 14 February 2002. During the preliminary hearing, the Court checked whether the defendant João Sarmiento had read the indictment or if the indictment had been read to him, and asked him if he understood the nature of the charges, informed him of the 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 João Sarmiento made a statement that he had read the indictment and understood the charges against him. The same procedure was followed for his co-accused Romeiro Tilman, Benjamin Sarmiento and Domingos Mendonça. The Court then accepted the list of evidence submitted by the Public Prosecutor.



- 12 On the same date, the prosecution responded orally, and submitted a written response to the preliminary motion by the defense counsel, relating to the nullity of the decision on the application for release by a single judge. The Court took the case to decide in chamber on the motion raised by the defense counsel and postponed the trial for 4 April 2002. On 4 April 2002, the Court was occupied with another trial (case Gaspar Leki) and therefore the hearing had to be postponed to 28-29 May 2002.
- 13 On the 28 May 2002 the defence counsels of João Sarmento, Romeiro Tilman, and João Sarmento submitted an application for the release of the accused persons. On the same date the Prosecutor objected to that application. However the Court did not hold the hearing because the East Timorese Judge on the Panel had no authority to carry out the functions of a judge, before the new Government of East Timor resolved the issue of her appointment. The Court decided in chambers to overrule the request for release of the accused João Sarmento. The date of the trial was fixed for the 12<sup>th</sup> August 2002.
- 14 On the 12<sup>th</sup> August 2002 the trial was again postponed to 7<sup>th</sup> October 2002 because one of the judges was not available. On 7<sup>th</sup> October 2002, the Special Panel held another trial and the hearing was therefore postponed to the 2<sup>nd</sup> December 2002.
- 15 Considering that on the 2<sup>nd</sup> December 2002, the Special Panel was busy with the trial of the Lolotoe case the hearing was postponed to the 17<sup>th</sup> March 2003.
- 16 On 5 February 2003 the defense counsel of João Sarmento submitted an application for release of the accused.
- 17 On 17 March 2003 two of the Judges in this case were involved in another case and it was decided to postpone the trial to 19 May 2003.
- 18 On 19 May 2003 the return of one of the judges of the Panel to his home country provoked the postponement of the trial to 30 June 2003.
- 19 On 30 June 2003, during the trial hearing João Sarmento co-accused Benjamin Sarmento and Romeiro Tilman made admissions of guilt, and the Court decided to sever their case with their former co-accused João Sarmento and Domingos Mendonça.
- 20 On 4 August 2003 during the trial hearing the Accused João Sarmento pleaded guilty to the following 3 counts in the indictment: 1) Count 15:



murder of Luis Boco Siri and Agapito de Araujo, 2) Count 17: murder of Lorenzo Tilman, 3) Count 18: Deportation and Forcible Transfer of population.

- 21 The hearing was postponed to the 5<sup>th</sup> August 2003 for the Court to verify the validity of the guilty plea. After verifying the validity of the guilty plea, particularly in light of Section 29A of U.R. 25/2001, the Special Panel entered into a plea of guilty against the accused, and convicted him.
- 22 The Public Prosecutor withdrew the remaining charges of murder, and persecution against the accused. The Court gave permission to the withdrawal of the remaining counts and decided to sever the case of João Sarmento from the case of his former co-accused Domingos Mendonça. On the same date, the parties made their final statements.
- 23 On the 12<sup>th</sup> August 2003, the Court read out to the public the disposition of the decision and decided to issue later the final written decision, which is done now with the release of the present judgment.
- 24 Interpreters for English, Bahasa Indonesian, Tetum and Mambai languages assisted at every act before the Court.

### C. THE GUILTY PLEA

- 25 As stated earlier, the accused João Sarmento pleaded guilty to certain charges 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 João Sarmento:
  - 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.
- 26 The accused João Sarmento replied in the affirmative to all these questions. He further admitted in order to support their guilty plea all the facts of the case as contained in the indictment and in the materials that were submitted to the Court. The Special panel accepted the plea of guilty of the accused.

Furthermore, it was found that all the essential facts required to prove those crimes to which the admission of guilty relates had been established as required by Section 29A.2 of regulation 2000/30.

- 27 The accused João Sarmento was convicted for the murders of Luis Boco Siri and Agapito de Araujo, the murder of Lorenzo Tilman as Crimes Against Humanity, according to Section 5.1(a) U.R. 2000/15; and for the Deportation and Forcible Transfer of the population from Same Sub District, in particular from Grotu Lau Village, Orema, Datina, Leubrema, Trilolo and other neighbouring villages as Crimes Against Humanity, according to Section 5.1(d) UNTAET Regulation 2000/15.

#### **D. APPLICABLE LAW**

- 28 As specified in U.R. 1/1999, 11/2000 as amended by U.R. 2001/25, and U.R. 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 U.R.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 fulfilment of the mandate given to UNTAET under the United Nations Security Council Resolution 1272 (1999) or UNTAET regulations or directives.
- The Special Panel has held that “the laws applied in East Timor prior to 25 October 1999” are Indonesian laws (Prosecutor v. João Sarmento and Domingos Mendonça, Decision, 24<sup>th</sup> July 2003)

#### **E. FACTS OF THE CASE**

- 29 The Prosecutor, had described João Sarmento as a member of the Tim Sasurut ABLAI militia in Holarua, Same.
- 30 The Prosecutor, had stated that the accused João Sarmento among others, was responsible for:
- Murder of Luis Boco Siri and Agapito de Araujo, on or about 17 April 1999 in Grotu Lau Village, Same Sub-District, Manufahi District.

- Murders of Armindo Da Costa (Armindo Tilman) and Carlito Da Costa (Alberto Ximenes) on or about 30 August 1999 in Datina village, Same sub-district, Manuhafi District.
- Murder of Lorenço Tilman, on or about 9 September 1999 in Datina Village, Same Sub-District, Manufahi District.

- 31 The Prosecutor described also how João Sarmento was responsible for: The Deportation and Forcible Transfer of population from Same Sub-District, in particular from Grotu Lau Village, Orema, Datina, Leubrema, Trilolo and other neighbouring villages, to West Timor during September 1999.
- 32 The Prosecutor described also how the Accused João Sarmento was responsible also for the persecution of supporters of independence of East Timor in Same sub-district, Manufahi district, in particular the villagers of Orema, Datina, Grotu Lau, Orluli, Leubrema and Suri-Rema between April 1999 and September 1999.
- 33 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, 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.
- 34 According to the Prosecutor the accused was individually criminally responsible for the crimes alleged 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, 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.
- 35 In their agreement, the Public Prosecutor and the Defense requested the Court to sentence João Sarmento to 8 (eight) years of imprisonment for Count 15, to 8 (eight) years imprisonment for count 17, and to 5 (five) years imprisonment for count 18.

- 36 The accused João Sarmiento admitted the allegations in the indictment with respect to the charges to which he pleaded guilty. He admitted the allegations contained in the paragraphs 10 to 11, 13 to 21, 22 to 23, 30 to 36, 45 to 48, and 52 to 56 of the indictment. The accused admitted also that the crimes listed above (to which he was unequivocally and unconditionally admitting) was committed as part of a widespread and systematic attack against a civilian population with knowledge of the attack.
- 37 From the submissions of the Public Prosecutor and the admissions made by the accused, it is clear that the offences alleged have been committed in 1999 before the promulgation of U.R. 2000/15, 2000/11 and 2000/30 on Transitional Rules of Criminal Procedure as amended by U. R 2001/25, which apply in the matter as underlined above. 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.

## F. FINDINGS OF THE COURT

### I. The applicability of UNTAET Regulations with respects to the crimes the accused João Sarmiento was charged.

- 38 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,”<sup>1</sup> and it may be found in various international legal instruments, including international human rights and humanitarian law treaties.<sup>2</sup>

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<sup>1</sup>M. Cherif Bassiouni, *The Sources and Content of International Criminal Law: A Theoretical Framework*, in *International Criminal Law*, Second Editin, Volume I, Crimes, (M. Cherif Bassiouni ed. 1999) at 32.

<sup>2</sup>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 America 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.



39 Section 31 of the Constitution provides as follows:

*“No one shall be tried and convicted for an act that does not qualify in law as a criminal offence at the moment it was committed, nor endure security measures the provisions of which are not clearly established in the previous law”.*

40 The principle *nullum crimen sine lege* is found in Section 12 of U.R. 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 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.*

12.4 *It has been shown in the case The Prosecutor versus Jhoni Franca<sup>3</sup> 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.<sup>4</sup>*

41 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 U. R. No. 2000/15. In particular, this part investigates whether the “serious criminal offences” enumerated in Section 1.3 of U.R. 2000/15 were already crimes under international law either as customary international law binding on all states;<sup>5</sup> or, in the absence of

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<sup>3</sup> *The Prosecutor Versus Jhoni Franca, Judgment of 5<sup>th</sup> December 2002.*

<sup>4</sup> This requirement, of course, is limited to acts occurring before the U. R. 2000/15 entered into force.

<sup>5</sup> 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

customary law and at least to the extent the defendants were Indonesian citizens,<sup>6</sup> as treaty law binding on Indonesia.

42 Section 1.3 of U.R. 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 offences. 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 for other acts like genocide, war crimes and Crimes Against Humanity.

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

*a) Murder*

*b)(...)*

*d) Deportation or Forcible Transfer of population.*

44 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

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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.

<sup>6</sup> 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.

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.<sup>7</sup> In the present case, the accused João Sarmento was charged with Murder as a Crime against Humanity in violation of Section 5.1(a) U.R. Regulation 2000/15, and Deportation or Forcible Transfer as Crimes Against Humanity, in violation to Section 5.1(d) U.R. 2000/15.

- 45 The Special Panel therefore has to decide whether the specific Crimes Against Humanity enumerated in the paragraph above (and with which the accused are charged) are considered to be customary international law. Both offences are included in the IMT Charter, in the Statutes of the ICTR and the ICTY and in the Statute of the ICC. It is therefore clear that Murder as a Crime against Humanity and Deportation or Forcible Transfer of population as a Crime against Humanity are part of customary international law.

## **II. The attack against the civilian population and related requirements**

- 46 In light of the guilty plea of the accused, of the written statements by the witnesses and the accused, of the reports on the situation of Human rights in East Timor, of the note by the Secretary General, and of the Report of the Indonesian Commission on human rights violations in East Timor, January 2000, the Court is convinced that the following facts occurred:
- 47 Widespread or systematic attacks were directed against the civilian population in East Timor in 1999. The attacks occurred during two 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 within the Republic of Indonesia or independence. This

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<sup>7</sup> See Report of the Secretary-General regarding the ICTY Statute, *supra* note 6, para. 41.

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.

- 48 The widespread or systematic attacks were part of an orchestrated campaign of violence, that included among other things incitement to violence, 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.
- 49 In 1999, more than twenty-five militia groups operated throughout East Timor. Their goal was to support autonomy within Indonesia. The Integration Fighting Forces (PPI), (*Pasukan Pejuang Integrasi*) under the command of João 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.
- 50 The Indonesian Military in East Timor consisted of both regular territorial forces (BTT), 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.
- 51 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.

- 52 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.
- 53 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.
- 54 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.
- 55 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 Manufahi District.
- 56 Same is a Sub-District of Manufahi District, which is one of the thirteen districts of East Timor.
- 57 Between April and October 1999, the ABLAI militia Group (Aku Berjuang Lestarikan Amanat Integrasi: I struggle for a perpetual integration mandate) operated throughout Manufahi District. It comprised about 2000 members under the command of Nazario Corte Real, Fransisco Capela and Guilhermino Marcal. The ABLAI Militia was divided into several teams (also called Tims), which operated in various villages and sub villages.
- 58 Tim Sasurut was one of the militia groups under the ABLAI militia. It was established sometime between March 1999 and April 1999. The inauguration ceremony was presided over by Eurico Guterres and

commanders of ABLAI including Nazario Corte Real, Fransisco Capela and Guilhermino Marcal.

- 59 The Leaders of Tim Sasurut Militia ABLAI in Same Sub-District were Bernardino da Costa (DanRim) who was the first Sub-District Commander, João Sarmento (DanDim) who was the Deputy Commander and Romeiro Tilman (DanRu) who was Third-in-charge of the Sub-District Command. Tim Sasurut Militia ABLAI comprised many sections including the Soldado Section, Leubrema Section and Carbalao Section.
- 60 Tim Sasurut operated in collaboration with others militia *tims* of the ABLAI militia group in particular Tim Hadomi ABLAI Militia.
- 61 Between April and October 1999 Tim Sasurut operated from Leubrema Village around Orema village in Same Sub-District, Manufahi District. During this period Tim Sasurut carried out acts of violence against those members of the civilian population in Same 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, forcible transfer, deportations and other acts of persecution. Many acts were directed in particular against civilians who were presumed to be members or supporters of FALINTIL (Forças Armadas De Libertacao Nacional De Timor Leste: Armed Forces for the Liberation of East Timor) or supporters of independence.
- 62 The commander of the Tim Sasurut ABLAI Militia had regular meetings; they briefed the militia about some of their plans, and gave them instructions how to carry them out.
- 63 Members of the Tim Sasurut ABLAI Militia put up guard posts in many places in Same sub-district including Anilumu, Blaro, Datina, Grotu Lau, Hailesu, Leubrema, Orema, Suri-rema, Tionai, Titikua and Tirilolo. The militia members, who were guarding these posts, were instructed to arrest any supporter of independence or Falintil who attempted to pass through the militia posts. They also patrolled all the villages and villages in the sub district in search of independence supporters.

### III. Factual findings on the charges against the accused João Sarmento

64 In light of the guilty plea of the accused, of the statements by the witnesses and the accused, of the reports on the situation of Human rights in East Timor, of the note by the Secretary General, and of the Report of the Indonesian Commission on human rights violations in East Timor, January 2000, the Court is convinced that the following facts occurred:

#### Count 15 - Murder of Luis Boco Siri and Agapito de Araujo

65 On or about 17 April 1999 members of *Tim Sasurat ABLAI* Militia led by Bernadino Da Costa, and two other militia groups attacked the village of Orluli. About 78 militia members took part and including João Sarmento. When the members of the ABLAI militia arrived in Orluli, they divided into three groups. Two of the groups (Fahiluhan and Carbalao) secured the outskirts of the village. Members of *Tim Sasurut ABLAI Militia*, (the third group) under the command of Bernadino Da Costa, and including João Sarmento attacked the village. Before the attack most of the villagers had run into the jungle to hide from the militia. The militia beat the villagers they found in the village Luis De Araujo, Maria Prego, Agapito De Araujo and Luis Boco-Siri were among those who remained in the village and did not run away.

66 Luis Boco-Siri was standing near his house. Some members of Tim Sasurut ABLAI Militia including João Sarmento attacked Luis Boco Siri. There were four other men hiding in the house of Luis Boco Siri. The men were supporters of independence. When the militia attacked Luis Boco Siri the four men ran away to the jungle. Some militia members chased them but could not catch them. The militia members including João Sarmento beat up Luis Boco Siri with sticks and also kicked him. They stabbed him and killed him.

67 Agapito De Araujo, his brother Luis De Araujo and their mother Maria Prego were in their house when members of the *Tim Sasurut ABLAI Militia* attacked the village. All of them came out of the house. Members of Tim Sasurut ABLAI Militia attacked Agapito De Araujo and severely beat him up with fists and sticks. Soon after Luis Boco



Siri was killed, João Sarmento joined the other militia members who were beating up Agapito De Araujo.

- 68 Agapito De Araujo suffered severe injuries from the beating. He was bleeding profusely from his head, ears and eyes. His mother Maria Prego ran to him and embraced him trying to shield him from further beatings.
- 69 The members of Tim Sasurut ABLAI Militia pulled Maria Prego away from her son Agapito De Araujo and stabbed him to death with spears. Some of the other members of Tim Sasurut ABLAI Militia who took part in the beating and killing of Agapito De Araujo were **João Sarmento**, Abdullah Ernesto, Ahmad, Armindo, Tiago Mautera, Alberto and Resikoli.

#### **Count 17 - Murder of Lorenzo Tilman**

- 70 After the announcement of the result of the popular consultation on 4 September 1999 the members of the *Tim Sasurut ABLAI Militia* under the command of Bernadino Da Costa, including João Sarmento forced villagers from Faliluhan area (Villages of Orema, Grotu Lau, and Leubrema) to go to Datina Village where they were all detained in "community houses". Lorenzo Tilman was one of the villagers who was taken by the ABLAI militia to Datina Village and detained at a "community house".
- 71 On 9 September 1999 Bernadino Da Costa, João Sarmento ordered all the villagers detained in the "community houses" to board trucks to be transported to West Timor. All villagers present boarded the trucks.
- 72 Lorenzo Tilman refused to board the truck claiming that he would rather die in East Timor than in West Timor. Militia members including João Sarmento then forcibly took Lorenzo Tilman to a coffee plantation near the militia guard post. Other militia members held Lorenzo Tilman and João Sarmento stabbed him in the back with his spear, thereby killing him.
- 73 João Sarmento and other militia members returned to the truck. On the truck João Sarmento told the other militia members present that he and other militia members had killed Lorenzo Tilman. They re-enacted how they killed Lorenzo Tilman, and all the militia members rejoiced over it.





### Count 18 - Deportation and Forcible Transfer of population

- 74 After the announcement of the result of the popular consultation in which the East Timorese voted overwhelmingly in favour of independence of East Timor, the commanders of *Tim Sasurut ABLAI Militia* commenced operations to forcibly transfer the population of the villages around Leubrema to West Timor. In pursuance of this operation, the militia arranged for trucks in which the villagers were transported.
- 75 The villagers who were detained in Leubrema and Datina were then forcibly transported in trucks to Betano where they waited for about one week. Then they were transported to Metamauk in West Timor. Some villagers were transported to Atambua in Indonesia in trucks while others were transported to Kupang in Indonesia by a ship belonging to the Indonesian Navy.
- 76 Bernardino Da Costa, Benjamin Sarmento, Romeiro Tilman, **João Sarmento** and other members of *Tim Sasurut ABLAI Militia* threatened the villagers that if they did not go to West Timor they would be killed by the militia.
- 77 From the following villages people were forcibly taken to Indonesia by the ABLAI Militia with Bernadino Da Costa, Benjamin Sarmento, Romeiro Tilman and including João Sarmento;
- a) From Grotu Lau village 17 families
  - b) From Orema 19 families
  - c) From Datina 40 families
  - d) From Leubrema 20 families
  - e) From Trilolo village 170 people.
- 78 People from other neighbouring villages including Suri-rema were also deported.
- 79 In all more than 15,000 villagers from Same were forcibly assembled in Betano and thereafter forcibly taken to Indonesia.

#### **IV. Individual criminal responsibility**

- 80 The accused is individually criminally responsible for the crimes alleged in violation of Section 14 of UNTAET Regulation 2000/15.
- 81 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. According to Sect. 14.3 (d) 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.
- 82 With respect to the murder of Luis Boco Siri and Agapito de Araujo it has been proved that the accused João Sarmiento together with others took part in the beating and killing. Therefore he is individually responsible according to Sect. 14.3 (a) U. R 2000/15.  
With respect to the murder of Lorencio Tilman, it has been proved that João Sarmiento stabbed him in the back with his spear, thereby killing him. Therefore he is individually responsible according to Sect. 14.3 (a) U. R 2000/15.
- 83 With respect to the Deportation and Forcible Transfer it has been proved that the accused João Sarmiento threatened the villagers that if they not go to West Timor they would be killed. He also took part in the operations of deportation and forcible transfer, and forcibly transported the population of the villages around Leubrema, Datina, Orema, Grotu Lau, Trilolo, Surirema and other neighbouring villages to Betano in East Timor and to Metamauk, in West Timor.

#### **V. Legal findings of the case**

- 84 Sect. 5 U.R. 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 are Murder and Deportation or Forcible Transfer of population.

- 85 The accused João Sarmiento is accused of Murder and Deportation or Forcible Transfer of population as Crimes Against Humanity.

### **Murder as a Crime Against Humanity**

- 86 The offence of Murder as a Crime Against Humanity is provided for in Section 5.1 (a) U.R. 2000/15. The offence is not defined in this regulation but the Special Panel had the opportunity to do so in the case The Public Prosecutor against Joni Marques<sup>8</sup>. In this case the Special Panel provided the following definition of the offence:

*643. The Panel, having assessed the shortcomings in the definition of murder as crime against the humanity in Sec. 5.1 (a) of UR-2000/15 is persuaded of the benefit of the guidance provided by the Preparatory Committee for the Rome Statute of the International Court and the precedents from the International Tribunal, with the remarks foreseen in Sect. 18 of UR-2000/15.*

*644. The Panel accepts the opinion of the parties in relation to the general mens rea provided by Sect. 18 of UR-2000/15. For this reason, an accused charged with murder, as a crime against humanity shall have his or her mens rea deemed by this Panel insofar as he or she has shown intent to cause the death of the victim or be aware that it will occur in the ordinary course of events. Accordingly, the Panel lists the four requisite elements of murder as a crime against humanity:*

*645. The victim is dead.*

*646. The death of the victim is the result of the perpetrator's act.*

*647. The act must be a substantial cause of the death of the victim.*

*648. At the time of the killing the accused must have meant to cause the death of the victim or was aware that it would occur in the ordinary course of events.*

*649. In summary, in a murder, as a crime against humanity, there is no requirement of premeditation as the mental element for murder as a crime pursuant to Sect. 340 of Penal Code Indonesia (KUHP). The*

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<sup>8</sup> 9-PID.C.G/2000 General Prosecutor vs. Joni Marques & 9 others, judgement on 11 December 2001

*mens rea is restricted to the deliberate intent to cause the death of the victim or that such result would occur in the ordinary course of events.*

- 87 This definition was followed by the Special Panel in its successive decisions, *inter alia* in the case *the Public Prosecutor against Jose Cardoso*<sup>9</sup> Therefore the Panel must analyse if the 4 elements of murder are satisfied: 1) *The death of the victim*; 2) *Death as a result of the perpetrator act*; 3) *Substantial causality*; 4) *Intention to cause the death or awareness of the possibility*.
- 88 *Death of the victim*. It has been proved and there is no dispute that during the attack on 17<sup>th</sup> April 1999 in Orluli village, Luis Boco Siri was beaten up with fists and a stick, and killed afterwards, and Agapito de Araujo also suffered many injuries from the beating, and was stabbed to death with spears. Their dead bodies were buried about 5 meters from their houses. It is also undisputed that Lorenço Tilman, was taken to the coffee plantation and was stabbed with spears in the back until he died as result.
- 89 *Death as a result of the perpetrator act*. It has been proved that all the victims were alive before the attack and taken by members of the militia, and that their deaths were the result of acts by João Sarmiento.
- 90 *Substantial causality*. It has also clearly been shown that, the victims were dead because they suffered many wounds, especially by attacks with spears. The deaths were the direct result of the wounds received during the attack.
- 91 *Intention to cause the death or awareness of the possibility*. It was described previously that at the time of the killing the accused persons meant to cause the death of the victims or were aware that it would occur in the ordinary course of events. All the deaths were the result of the accused persons' and militia members' behaviour. The nature of the attack, i.e. the indiscriminate killing against civilians during the attack showed that the actions were meant to cause the death of the victims or at least the death constituted a reasonable possibility in ordinary course of events. Whoever participated in the attack to the villagers was conscious of the possibility that the people would die as a consequence of the attack.

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<sup>9</sup> 4-PID.C.G./2001 *General Prosecutor vs. Jose Cardoso*, judgement on 5 April 2003

92 It is therefore clear that the elements of murder as a Crime against Humanity are satisfied in the present case.

### **Deportation and Forcible Transfer of population as a Crime Against Humanity**

93 U. R 2000/15 includes Deportation or Forcible Transfer of population within the list of acts that, when committed as part of a widespread or systematic attack and directed against a civilian population with knowledge of the attack, constitute a Crime against Humanity [Section 5.1, d)]. Therefore, Deportation or Forcible Transfer of population are not autonomous crimes as genocide, murder, sexual offences and torture, and in order to fall within the jurisdiction of the Special Panels always require the condition of the widespread or systematic attack.

94 Section 5.2 c) defines Deportation or Forcible Transfer of population as “*The forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law*”.

95 The Special Panels so far did not have the opportunity, to analyse “the crime of Deportation or Forcible Transfer of population. The double formulation of the criminal action refers only to the international or national character of the displacement: deportation is the forced removal of people from one country to another, while population transfer applies to compulsory movement of people from one area to another within the same state<sup>10</sup>. Under international humanitarian law the main consequence of the distinction refers to the status that the moved persons obtained: victims of deportation qualify as refugees while victims of transfer of population are called “internally displaced persons” or IDPs.

96 Individual or mass deportations are war crimes and Crimes Against Humanity as recognized by the Nuremberg charter following World War II, and war crimes under the 1949 Geneva Conventions. The Nuremberg Tribunal condemned the practice of “Germanising” occupied territories transferring German population and deporting civilians from one occupied region to another. The Fourth Geneva Convention of 1949 in its Art. 49, explicitly forbids deportations in

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<sup>10</sup> M. Cherif Bassiouni, Crimes Against Humanity in International Criminal Law, Second revised edition (1999) at 312.

conditions of war: *"Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."*

- 97 The convention permits the *"total or partial evacuation"* of any area where either *"the security of the population or imperative military reasons"* so require, but the evacuated civilians must be returned to their homes *"as soon as hostilities in the area have ceased."*
- 98 As to the internal displacement, the same Article 49 of the Fourth Geneva Convention declares that *"individual or mass forcible transfers . . . are prohibited, regardless of their motive."* Additional Protocol II of 1977, which applies in internal conflicts, provides that forced civilian displacement may be undertaken legally only when civilian safety or *"imperative military reasons"* require it.
- 99 Therefore the standard is the same for international or internal conflicts: if civilians have to be moved for either of those two reasons—safety or military imperatives—their evacuations are to be under protected, hygienic, and humane conditions, and as short-lived as possible.
- 100 The ICTY had the opportunity to define Deportation or Forcible Transfer of population as a crime against humanity in the *Kritic Judgement*<sup>11</sup> when stating that:

*478.Both Deportation and Forcible Transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.*

*479.However, this distinction has no bearing on the condemnation of such practices in international humanitarian law. Article 2(g) of the Statute, Articles 49 and 147 of the Geneva Convention concerning the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 85(4)(a) of Additional Protocol I, Article 18 of the ILC Draft Code and Article 7(1)(d) of the Statute of the*

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<sup>11</sup> Krstic IT-98-33 "Srebrenica-Drina Corps", of 2 August 2001.

*International Criminal Court all condemn Deportation or Forcible Transfer of protected persons. Article 17 of Protocol II likewise condemns the “displacement” of civilians.*

*480. In this regard, the Trial Chamber notes that any forced displacement is by definition a traumatic experience which involves abandoning one’s home, losing property and being displaced under duress to another location. As previously stated by the Trial Chamber in the Kupreskic case, forcible displacement within or between national borders is included as an inhumane act under Article 5(i) defining Crimes Against Humanity [...]*

- 101 The same ICTY judgement, when examining the facts, establishes what are the elements of the crime common to both deportation and transfer of population. The two elements are; a) the unlawfulness of the transfer, b) the compulsory nature of the transfer.
- 102 The requisite of “unlawfulness of the transfer” refers to the fact that not every transfer of population can be considered illegal. As already mentioned, Article 49 of the Fourth Geneva Convention and Article 17 of Protocol II allows total or partial evacuation of the population “*if the security of the population or imperative military reasons so demand*”. Therefore the Panel must assess if the motif of the transfer was to protect the population or there was an imperative military reason.
- 103 The element of the “compulsory nature of the transfer” implies the need for the Panel to determine whether the population was obliged to move or not. It is important to bear in mind that, as explained by the Preparatory Commission for the International Criminal Court, *the term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment*<sup>12</sup>.
- 104 It is worth noting that the definition of Deportation or Forcible Transfer of population used in U. R. 2000/15 is the same, as contained in the Statute of the International Criminal Court (the ICTY and ICTR Statutes did not contain such a definition).

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<sup>12</sup> Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of the Crimes, UN Doc. PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 11.

- 105 It has been shown in the present case that the transfer of the population was unlawful, and that the population was obliged to move, and that no reasons were given by the Defense or are apparent to the Court, why the security of the population or imperative military reasons so demanded.
- 106 The accused in his guilty plea admitted the alleged facts regarding the charges of Deportation or Forcible Transfer. Since an accused person can only plead guilty to alleged facts but not to legal evaluations (which can be done only by the Court), it was for the Court to assess whether the admitted facts constituted the crime of Deportation or Forcible Transfer. Since part of the population was transferred from their native villages to Betano, and had to stay there for a whole week, during which it was unclear whether they would be deported to Indonesia (like another part of the population deported directly by lorries), the Court is of the opinion that this constituted Forcible Transfer of population as a Crime Against Humanity.

### **G. VERDICT**

- 107 For the aforementioned reasons, in light of the evidence and the plea of guilty, pursuant to Sections 29A and 39 U.R. 2000/30 as amended by U.R. 2001/25, the Special Panel accepted on 5<sup>th</sup> August 2003 the plea of guilty of João Sarmiento made on the 4<sup>th</sup> August 2003, 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 U.R. 2001/25.
- 108 The accused João Sarmiento was convicted of:

Murder of Luis Boco Siri and Agapito de Araujo, on or about 17<sup>th</sup> April 1999 in Orluli Village, Same Sub District, Manufahi District, Murder as a Crime Against Humanity, contrary to Section 5.1(a) U.R. 2000/15. The murder of Lorenzo Tilman, on or about 9 September 1999 in Datina Village, Same Sub District, Manufahi District, as Crimes Against Humanity, contrary to Section 5.1(a) U.R. 2000/15; Deportation and Forcible Transfer of population from Same Sub District, Manufahi District, in particular from Grotu Lau village, Orema village, Datina village, Leubrema Village, Trilolo village and other





neighbouring villages in East Timor to West Timor during September 1999, Deportation or Forcible Transfer as Crimes Against Humanity , contrary to Section 5.1(d) U.R. 2000/15.

109 Pursuant to these findings of Guilty, the Court proceeded to sentence the accused João Sarmento, in order to determine an appropriate penalty.

## **H. SENTENCING**

### **Facts related to the sentence.**

110 The Public Prosecutor and the defense counsel suggested in their agreement that the accused João Sarmento be given a penalty of 8 (eight) years of imprisonment.

111 The Special Panel has taken into account the following:

### **Mitigating circumstances:**

112 It is important to recall that the accused pleaded guilty to the charges against him. As the Court established, his guilty plea was unequivocal. As already decided by this Court in the case of João Fernandes,<sup>13</sup> and Augusto Dos Santos<sup>14</sup> a person, who is honest in admitting guilt, has to be treated consequently. There are not many cases, in which accused persons admit guilt.

113 The accused cooperation with the Court was substantial. He freely admitted his participation in murders and deportation or forcible transfer of population. The accused has aided in the administration of justice by cooperating and providing full disclosure of the crimes that occurred.

114 The accused prior to the commission of the crimes was living in a very coercive environment.

115 The Special Panel bears also in mind the family background of the accused and the fact that he is married and has children. However this cannot be given significant weight in a case of this gravity.

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<sup>13</sup> Case No. 1/1999, The Public Prosecutor v. João Fernandes, judgement of 25 January 2001.

<sup>14</sup> Case No.06/2001, The Public Prosecutor v. Augusto Do Santos, judgement of 14 May 2002.

116 The Special Panel has also taken into consideration the fact that the accused had no previous conviction.

117 Having reviewed all the circumstances of the case, the Special Panel is of the opinion that exceptional circumstances of mitigation surrounding the crime committed by the accused afford him some clemency.

**Aggravating circumstances:**

116 As regards the murder of Luis Boco Siri the accused beforehand beat the victim with a stick and kicked him. The accused also beat up Agapito de Araujo making him bleed profusely, and was not even deterred from killing him by the mother of the victim who embraced him trying to shield him. The murder of Lorenzo Tilman was particularly cruel because the accused held the victim while Benjamin Sarmiento stabbed him in the back with a spear.

As regards the deportation and forcible transfer the population, aggravating is the large number of victims stemming from several villages, and the fact that their only crime had been that they were perceived to be supporters of independence for East Timor.

**Sentencing policy**

117 According to Sect. 10.1 (a) U.R. 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).

118 The penalties imposed on the accused 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*).

119 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.

- 120 The Special 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 U. R 2000/15 as well as under general principles of law.

### **Conjunction of punishable acts**

- 121 It has been proved that the accused João Sarmento committed several crimes of murder as Crimes Against Humanity and crimes of Deportation and Forcible Transfer as Crimes Against Humanity . The Panel deems that the accused performed several acts in the sense of Art. 65.1 Indonesian Penal Code (on the one hand murder, on the other hand deportation and forcible transfer), because murder on the one hand and deportation (and forcible transfer) on the other hand require a different intent and different means, and in this case were not committed at the same time.

As regards the relation between deportation and forcible transfer, this constituted one continued act in the sense of Art. 64.1 Indonesian Penal Code because the underlying intent was the same, and this intent was merely realised in several consecutive actions.

- 122 Taking into account the aggravating and mitigating circumstances, the Court deems it appropriate to sentence João Sarmento to 6 (six) years and 6 (six) months of imprisonment for the murder of Luis Boco Siri and Agapito de Araujo, 6 (six) years of imprisonment for the murder of Lorenzo Tilman, and 5 years of imprisonment for the Deportation and Forcible Transfer.

- 123 Article 65.2 Indonesian Criminal Code states that:  
The maximum of this punishment shall be the collective total of the maximum punishments imposed for the acts, but not exceeding one-third beyond the most severe maximum punishment.

Therefore the Court deems it relevant to sentence João Sarmento to a single punishment of 8 (eight) years and 8 (eight) months imprisonment for all the crimes of which he is convicted.

## DISPOSITION

For the aforementioned reasons, having found the accused JOÃO SARMENTO guilty, considering the arguments of the parties including the submissions of the parties in their joint document of agreement submitted to the Court on the 4<sup>th</sup> August 2003, the transitional rules of Criminal Procedure.

### **The Special Panel finds and imposes sentence to the accused João Sarmento as follows:**

- a) GUILTY of the murder of Luis Boco Siri and Agapito de Araujo, on or about 17<sup>th</sup> April 1999 in Orluli Village, Same Sub District, Manufahi District, as crime against humanity, contrary to Section 5.1(a) UNTAET Regulation 2000/15.
- b) In punishment for this crime sentences the Accused to 6 (six) years and 6 (six) months of imprisonment.
- c) GUILTY of the murder of Lorenzo Tilman, on or about 9 September 1999 in Datina Village, Same Sub District, Manufahi District, as crime against humanity, contrary to Section 5.1(a) UNTAET Regulation 2000/15.
- d) In punishment for this crime sentences the Accused to 6 (six) years of imprisonment.
- e) GUILTY of Deportation and Forcible Transfer of Population from Same Sub District, Manufahi District, in particular from Grotu Lau village, Orema village, Datina village, Leubrema Village, Trilolo village and other neighboring villages in East Timor to West Timor during September 1999 as crimes against humanity, contrary to Section 5.1(d) UNTAET Regulation 2000/15.
- f) In the punishment for this crime sentences the Accused to 5 (five) years of imprisonment.
- g) The maximum total punishment for these crimes is the collective total of the maximum punishments imposed on those crimes, but that in

accordance with Article 65.2 of the Indonesian Criminal Code, this total must not exceed one-third beyond the most severe maximum punishment. In this case the maximum total punishment for João Sarmento is **8 (eight) years and 8 (eight) months**.

h) Orders the Accused to pay the costs of the criminal procedure.

### **Credit for time served**

According to Section 10.3 U.R. 2000/15, section 42.5 U.R. 2000/30 and Article 33 of Indonesian Penal Code; the Special Panel deducts the time spent in detention by the Accused JOÃO SARMENTO due to an order of an East Timorese Court.

João Sarmento was arrested and detained since 31 March 2001 and up to date. Therefore he was under detention for 2 (two) years 4 (four) months and 12 (twelve) 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 person João Sarmento shall be immediately imprisoned and shall spend the duration of the penalty in East Timor.

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

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

This Judgment was rendered and delivered on the 12<sup>th</sup> August 2003 in the District Court of Dili by:

Judge Maria Natércia Gusmão Pereira, Presiding

Judge Sylver Ntukamazina

Judge Siegfried Blunk

(Done in English)