



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

**RDTL
TRIBUNAL DISTRIITAL de DILI
SECÇÃO CRIMES GRAVES**

Case No. 7/2002^a
Date: 9/12/2003
Original: English

Before:
Judge Sylver Ntukamazina, Presiding
Judge Maria Naterçia Gusmão Pereira
Judge Siegfried Blank

Registrar: Joao Naro
Judgement of: 9 December 2003

**THE PUBLIC PROSECUTOR
V.
SALVADOR SOARES**

JUDGEMENT

The Office of the Public Prosecutor:
Mr. Marek Michon

Counsel of the accused:
Ms. Radmila Dimitriyevic

INTRODUCTION

1. The trial of Salvador Soares aka Salvador Leos Marobo (27 years old, married, born in Ritabou, Sub District of Maliana, Bobonaro District, East Timor, driver of public transport) before the Special Panels 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 29 September 2003, and concluded today, 9 December 2003 with the rendering of the decision.
2. After considering all the evidence presented during the trial, all the written and oral statements from the office of the Prosecutor General (hereafter: the "Public Prosecutor") and from the defense counsel for the defendant, considering the arguments of the parties including their final statements of 21 November 2003, 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 24 June 2002, the Public Prosecutor filed before the Dili District Court a written indictment (in English and Bahasa) against Lt. Sustrino and 9 other persons among which the accused Salvador Soares. The accused Salvador Soares was charged in two Counts with Crimes Against Humanity: one count of murder as a crime against humanity (count 1), and one count of torture as a crime

against humanity (count 2). The Indictment identified as victims of murder Domingos Pereira and Ruben D. Barros; the later is also the victim of torture.

5. Attached to the indictment were copies of the following documents: United Nations Commissions of Human Rights, Questions of Violations of Human Rights and Fundamental Freedoms in any Part of the World, Profiles in displacement: East Timor (6 April 2000); Report of the Representative of the Secretary General on internally displaced persons, Mr. Francis Deng, to the Commissions of Human rights in accordance with commission Resolution 1999/S-4/1, 27 September 1999; Report to the Security Council Mission to Jakarta and Dili, 8 to 12 September 1999 (English); Report of the High Commissioner for Human Rights on the human rights situation in East Timor (English); Situation of Human Rights in East Timor, 10 December 1999 (English and Bahasa Indonesian); Report of the international Commission of Inquiry on East Timor to the Secretary General, January 2000 (English and Bahasa Indonesian); Report of the Indonesian Commission on Human Rights Violations, January 2000 (English); Report by Peter Bartu on Crimes against humanity in Bobonaro District (English and Indonesian).
6. The Prosecution submitted also with the indictment the statements of the accused Salvador Soares, the statements of the witnesses Antonio Siga (English and Indonesian), Manuel Lak-Suri (English, Indonesian and Tetun), Jose Fernando Dos Santos, Eugenia Rahayu Soares, Julieta Barros Soares, Domingos Amaral and the photographs of Ruben Soares in the coffin.
7. The Court clerk provided notification of the receipt of the indictment to the accused Salvador Soares and to the legal representative on 15 July 2002, pursuant to Sect. 26.1 & 2 U.R. 2000/30.
8. On 27 July 2002, the Prosecution submitted the autopsy report and the report of post mortem examination of Domingos Pereira. The copy of the statement of the witness Domingos Amaral was submitted on 6 September 2002.

9. The accused Salvador Soares was arrested and detained since 21 June 2002. On 19 July 2002 the Public Prosecutor presented a request for the extension of detention until the conclusion of the trial and any appeal. On 5 August 2002, the detention of Salvador Soares was extended for the duration of the trial. On 17 August 2002 a mass escape took place from Becora prison. The accused was one of the escapees and was recaptured in Ritabou on 21 August 2002. The Court confirmed on 16 September 2002 its decision that the detention of the accused Salvador Soares is extended for the duration of the trial.
10. The Preliminary hearing was held on 6 September 2002. The Court decided to sever Salvador Soares's case from the case of the other 9 co-accused persons still at large, and asked the Public Prosecutor to submit a new indictment against the accused Salvador Soares. The amended indictment (in English and Indonesian) was filed on 13 September 2002.
11. On 16 September 2002, the Court issued a ruling with respect to the request from the defense relating to interference of the prosecution with the defense witnesses. The Court decided that the parties are allowed to communicate with adverse witnesses in order to verify information relating to a case, before presentation of the testimony of a witness. In doing so, the parties will avoid to make any suggestion of the nature to induce the witness to suppress or deviate from the truth, or in any degree to affect his free conduct when appearing before the Court. After a witness makes an oath to testify before the Special Panel, the Court will decide any issue relating to the possibilities of contact between a witness and one of the parties.
12. On 24 September 2002, the Prosecution submitted copy of the statement of the witness Domingos Amaral dated 5 July 2002.
13. On 2 October 2002, at the preliminary hearing, the defense counsel for the accused made an application for an order that a single judge is competent to hear preliminary hearings. On 16 October 2002, the prosecution replied to the defense's application for an order that a single judge is competent to conduct preliminary hearing. On 12 December 2002 in response to the oral motion by the defense



counsel, the Panels ruled that a single judge is competent to hold preliminary hearings of a case.

14. During the Preliminary hearing, the Court checked if the defendant Salvador Soares had read the indictment or if the indictment has been read to him, and asked him 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 Salvador Soares made a statement that he had read the indictment and understood the charges against him. The Court then accepted the list of evidence submitted by the Public Prosecutor.
15. The trial hearing was scheduled for 18 November 2002, but was postponed several times because the panel of judges was involved in the trial of another case.
16. On 18 July 2003, the defense requested for the postponement of the trial hearing scheduled for 21 July 2003 on the ground that the defense lawyer in the case Mr. Sipposami Malunga was scheduled to leave the mission and the case has to be handed over to another defense counsel. The court then considering that the new defense lawyer needs some time to consult the accused and to prepare the case, and that the prosecution also requested for a postponement in order to bring the witnesses before the court, decided to postpone the case on 29 September 2003. Ms. Radmila Dimitrijevic was then appointed as defense counsel substituting Mr. Malunga.
17. The trial hearing started on 29 September 2003 and was concluded on 9 December 2003.
18. On 27 September 2003, the prosecutor submitted the witness statement of Gracila Santos Marques dated 10-11 and 12 September 2002 and Theofilo Dos Santos Marques dated 6 June 2002.
19. On 29 September 2003, the court heard the statement of the accused Salvador Soares who was questioned by the court, the prosecution and the defense. The hearing was then postponed to 13 October 2003 to hear the prosecution evidence.

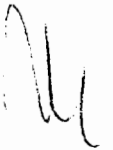


20. On 3 October 2003, the prosecution submitted the statement of the accused Salvador Soares dated 19-20 June 2002.
21. On 7 October 2003, the prosecution submitted the statement of the witness Luis Caiero dated 23 August 2002.
22. On 13 October 2003 the Court heard the testimonies of the witnesses Teofilo Dos Santos Marques and Antonio Siga.
23. On 14 October the court heard the testimonies of the witnesses Florinda Fatima, Gracinda Dos Santos Marques and Luis Caero. The prosecution submitted also the statement of the witness Bernardino De Araujo, dated 6 June 2002.
24. On 15 October 2003, the court heard the testimonies of the witnesses Manuel Lakasuri and Bernardino de Araujo.
25. On 16 October 2003, the prosecutor submitted a list of 12 witnesses, which was amended on 29 October 2003 and reduced to only 8 witnesses.
26. On 27 October 2003, the witness Domingos Amaral did not show up. The hearing was postponed to 4 November 2003.
27. On 5 November 2003, the court heard the witnesses Ignacio Soares, Fernanda Soares, Guilhermina Maia De Jesus, Fransisca Pereira, Abrao Soares Pereira, Paulo Dos Santos and Manuel Da Cruz.
28. On 6 November 2003 the hearing was postponed to 7 November 2003 to hear the witness Orlando.
29. On 7 November 2003, the court summoned the witnesses Domingos Amaral and Orlando Lopes to appear before the Court on 14 November 2003.
30. On 14 November 2003, the Court heard the witnesses Orlando Lopes and Domingos Amaral.
31. On 21 November 2003, the parties read their closing statements and the hearing was postponed to 9 December 2003 for Decision.

32. On 9 December 2003, the Court read out to the public the disposition of the decision and decided to notify the parties the whole judgment soon after.
33. Interpreters into English, Bahasa Indonesian and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

34. 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.
35. Section 1 of Law No.10/2003 provides that the applicable legislation in East Timor on 19 May 2002 means all Indonesian laws applied and that were in force de facto in East Timor prior to 25 October 1999. Section 2 of the same law held that the source of law in Democratic Republic of East Timor are:
 - a) The Constitution of the Republic



- b) Law emanated from the National Parliament and from the Government of the Republic
- c) Subsidiary, regulations and other legal instruments from UNTAET, as long as they are not repealed, as well as Indonesian legislation under the terms of Section 1 of the present law

D. FACTS OF THE CASE

The prosecution allegations

36. The facts of the case, as presented in the indictment by the Public Prosecutor, can be summarized as follows:
37. In 1999, the following militia groups, among others, operated in the Bobonaro District: The DADURUS MERAH PUTIH (DMP) operated in the Subdistrict of Maliana; the HALILINTAR MERAH PUTIH and the HARMOI MERAH PUTIH operated in the Subdistrict of Atabae; the HAMETIN MERAH PUTIH operated in the Subdistrict of Bobonaro; the FIRME MERAH PUTIH and the SAKO LOROMONU operated in the Subdistrict of Balibo; the GUNTUR MERAH PUTIH operated in the Subdistrict of Kailako and the KAER METAN MERAH PUTIH (KMMP) operated in the Subdistrict of Lolotoe.
38. From approximately April 1999 through September 1999, the militia groups in Bobonaro District operated in close connection with the Indonesian Military Forces (TNI) based in Bobonaro and carried out a widespread or systematic attack against the civilian population in the District of Bobonaro.
39. In September 1999 the DMP stronghold was in Ritabou village, Subdistrict of Maliana. Members of the DMP also resided in Raifun.
40. From approximately March to September 1999, Sutrisno aka Trisno was the Officer in Charge of Intelligence for the Indonesian Armed Forces in Bobonaro Subdistrict. During this time Sutrisno exercised

control over TNI members stationed in the District of Bobonaro and over militia members.

41. In September 1999 TNI Assis Fontes was the Deputy Commander of Intelligence at the Kodim. In addition, in 1999 TNI Assis Fontes was a commander of the members of the DMP militia group that resided in Raifun. In 1999 TNI Assis Fontes actively recruited people into the militia and exercised control over militia members.
42. In September 1999 members of the DMP militia worked closely with members of the TNI and carried out a widespread or systematic attack in the District of Bobonaro, Subdistrict of Maliana against members of the civilian population who were perceived to be pro-independence or to support FALINTIL. This included attacks on employees of the United Nations Assistance Mission in East Timor (UNAMET), who were viewed as supporting the vote for independence.
43. In September 1999 Ruben B. Soares worked as a language assistant for UNAMET and Domingos Pereira worked as a driver for the same organization.
44. As part of this widespread or systematic attack, on 2 September 1999 TNI member and militia leader Assis Fontes went to a house in Raifun where Ruben B. Soares was staying. Assis Fontes was carrying a hand held radio and spoke into it.
45. Immediately following that, other members of the DMP militia and the TNI including Sutrisno, two TNI soldiers, Joao Baptista aka Joao Gomblok, Vitalis Fernandes aka Vitalis Afonso, Marito Lelo Bere Moreira, Jose Soares aka Jose Besi Boro, Salvador Soares aka Salvador Leos Marobo and Dodo, Humberto Lopes, Martinho Afonso, Manuel [last name unknown], Paulo Taveres, Orlando Lopes, Francisco Cairo, and Demetrio Heu arrived at the house where Ruben B. Soares was staying. Sutrisno, Assis Fontes and the other TNI were armed with rifles.
46. In the presence of Sutrisno and Assis Fontes the member of the militia, including Humberto Lopes, Marito Lelo Bere Moreira and Vitalis Fernandes aka Vitalis Afonso broke into the house and

dragged Ruben B. Soares outside of the house. Militia members, including Vitalis Fernandes aka Vitalis Afonso and Marito Lelo Bere Moreira began attacking him.

47. During the attack, militia member Vitalis Fernandes stabbed Ruben Soares several times. Ruben B. Soares attempted to defend himself.
48. During the attack, militia members Joao Baptista, Marito Lelo Bere Moreira, Salvador Soares, Humberto Lopes, Martinho Afonso and Manuel stabbed Ruben B. Soares.
49. In addition, militia member Manuel smashed the head of Ruben B. Soares with a rock.
50. Ruben B. Soares died from the injuries received during the attack.
51. While the members of the militia were attacking Ruben B. Soares, Domingos Pereira came out of his house, which was located next door. Domingos Pereira yelled at the attackers. TNI Assis Fontes then shot Domingos Pereira.
52. In addition, militia member Jose Soares aka Jose Besi Boro approached Domingos Pereira and stabbed him in the neck and chest.
53. Militia members Marito Lelo Bere Moreira and Vitalis Fernandes also stabbed Domingos Pereira.
54. Domingos Pereira died from the injuries he received during the attack.
55. The Prosecution considers that the acts were undertaken as part of a widespread or systematic attack against the civilian population, specially targeting pro-independence supporters, with knowledge of the attack and thus must be considered as crimes against humanity.
56. The Prosecution charges the accused Salvador Soares with individual criminal responsibility (within the meaning of Section 14 UNTAET Regulation 2000/15) for the murders of Ruben B. Soares and Domingos Pereira and with the torture of Ruben B. Soares.

The defense case

57. The defendant pleaded not guilty to all the charges in the indictment. The defense case comprises four general arguments:
- Salvador Soares joined the militia because he was forced
 - Salvador Soares was the supporter of independence movement
58. For the defense “ *it is more than obvious that there is no criminal responsibility for Salvador Soares for the above mentioned charges*”[charges in the indictment]
59. The defense underlined that Salvador Soares was a driver of FALINTIL Commandant Semosai Ignacio from 1995 to 1999 and a supporter of Independence movement. During that period of time, Salvador Soares provided transport, food, clothes and information about the plans of militia to the members of Clandestine and Falentil.
60. With respect to the fact that Salvador Soares was forced to join the militia, the defense underlined that on several occasions, militia members from Ritabou who knew Salvador Soares activities, threatened him as well as his family to join the militia. Salvador Soares escaped to the mountains and used to come to the villages during the nights in order to visit his family and to take food. While he was in the mountains, the militia members Joao Gomblo and Marito Lerobere from Ritabou arrested his wife and kept her for several hours at the militia post on 10 May 1999, where she was captured and tortured by militia members because her husband did not join the militia. While in the mountains, Salvador Soares spoke with Commandant Semousai Ignasio who advise him to do whatever the militia will ask him to do, including to join the militia, in order to save his family.
61. The defense advanced that people who forced Salvador Soares to become militia members are Giko Maubeto, Manuel Barito, Jose Acibere, Miguel Botoh, Armido Munis, Natalino Monteiro.

62. The defense also says that after joining the militia Salvador Soares continued to support the independence movement and to provide transport, food, clothes and pass on information about plans of militia to the members of clandestine and Falintil.
63. The defense continued saying that on 2 September 1999 Salvador Soares was attacked by militia members from Ritabou and members of Dadarus Merah Putih Joao Gomblo, Marito Lelbere and Jose Acibere who arrested him, beat him, tied him up and took him with them to the militia post in Ritabou. He was released about 6 hours in the afternoon.
64. The defense does not contest that the victims were killed in Ritabou on the 2nd September 1999. She says “ *It is a sad fact that two young people were killed; Ruben Baros and Domingos Pereira and the family of the victims need justice as well as the citizens of East Timor*”. According to the defense, “ *the real murders of the victims are in West Timor, enjoying their freedom without any restraints (...) Salvador Soares is nothing else except a victim*”.
65. The defense underlined in her closing statement that there is no criminal responsibility for Salvador Soares for the charges in the indictment. According to the defense, “ *at the time when Ruben Soares and Domingos Pereira have been killed Salvador Soares was at his home*”.

E. FINDINGS OF THE COURT

66. In light of the evidence before the court, especially the testimonies of the witnesses, 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 occurred¹:

¹ Those reports were filed with the indictment and admitted into evidence.

67. 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 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.
68. 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.
69. 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 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.
70. 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.

71. 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.
72. 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.
73. 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.
74. 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.
75. Raifun and Ritabou are two villages in the Subdistrict of Maliana, Bobonaro District.
76. In 1999, different militia groups operated in the Bobonaro District, distributed in Subdistricts: The DADURUS MERAH PUTIH (DMP) operated in the Subdistrict of Maliana.
77. From approximately April 1999 through September 1999, the militia groups in Bobonaro District operated in close connection with the Indonesian Military Forces (TNI) based in Bobonaro and carried out a widespread or systematic attack against the civilian population in the District of Bobonaro.



78. In September 1999 the DMP stronghold was in Ritabou village, Subdistrict of Maliana. Members of the DMP also resided in Raifun.
79. From approximately March to September 1999, Sutrisno aka Trisno was the Officer in Charge of Intelligence for the Indonesian Armed Forces in Bobonaro Subdistrict. Sutrisno exercised control over TNI members stationed in the District of Bobonaro and over militia members.
80. In September 1999 TNI Assis Fontes was the Deputy Commander of Intelligence at the Kodim. In addition, in 1999 TNI Assis Fontes was a commander of the members of the DMP militia group that resided in Raifun. In 1999 TNI Assis Fontes actively recruited people into the militia and exercised control over militia members.
81. In September 1999 members of the DMP militia worked closely with members of the TNI and carried out a widespread or systematic attack in the District of Bobonaro, Subdistrict of Maliana against members of the civilian population who were perceived to be pro-independence or to support FALINTIL. This included attacks on employees of the United Nations Assistance Mission in East Timor (UNAMET), who were viewed as supporting the vote for independence.
82. **The prosecution witness Teofilo Dos Santos Marques** testified before the court and declared that in 1999 Assis Fontes was a TNI Sergeant Major, in charge of intelligence, from the Kodim. The witness declared that he knew Assis Fontes for four years and he lived just across the road from his house. Assis Fontes was also the big commander of the militia in Raifun.
83. The witness was himself a member of the militia Dadurus Merah Putih (from April to August 1999). He joined for fear of being killed, and left to hide at home.
84. The militia from Raifun and Ritabou wanted to arrest and kill Antonio Soares because he was a pro-independence leader. Antonio Soares was also the village chief of Raifun and uncle of the witness. Antonio Soares told the witness that Assis Fontes asked Orlando Lopes to kill him.

85. The witness declared that Ruben Soares and Domingos Pereira were working with UNAMET.
86. According to the witness Teophilo Dos Santos Marques, in the afternoon of the 2 September 1999, at 3.00 O'clock people started shooting each other in the market, and when they were shooting the Indonesian military shot someone called Mateus. The military and the Indonesians chased people up to the mountains in the afternoon. Some people was frightened and gathered together in the house of Antonio Soares. The witness also left his home to go to Antonio's house. In the way he saw militia members gathering in front of Assis Fontes house. Among them were Francisco, Orlando Lopes, Demetrio, Abel, and lots of other militias.
87. The witness got to Antonio Soares house around 6 o'clock. Antonio had already left to Dili. It was getting dark. When the witness got there, Atino (Domingos), Marcal Vidigal and Paulo were sitting on the veranda of the house, and inside there were Ruben in his room and Antonio Siga. Then the witness went outside, to the toilet, and in his way back he saw Sergeant Major Assis Fontes standing with a short gun.
88. The witness ran back inside the house and told the others that he had seen Assis with a gun standing near the car and then the witness went to tell Ruben Soares inside the house and Ruben said "Go and call Domingos from the house". The witness went at the door and knocked and said that the military were outside and were going to break the house. Domingos went inside and picked his shirt and said: "Go ahead" The witness refused to go and then Domingos went first. The militias came and Domingos screamed: "Who is going to break the house"? And as soon as he screamed, they started shooting and they broke his leg. He fell down. The witness stayed 50 metres away. When he looked he saw a gun shot come from where Assis was standing. Then Ameu (Domingos) was shot and he fell down and then Ruben came out and said: "Why shoot my brother-in-law". Domingos was shot by Assis. The witness doesn't know who shot Reuben. Lots of militia and military came, about 20 to 25. It was dark and the witness didn't recognize them apart of Assis. They were carrying instruments like knives, swords and spears. The witness

declared that he could not recognize their faces because they were covered like ninjas, but he could hear the voice of Orlando Lopes saying “just attack”.

89. **The witness Antonio Siga Mau** testified before the Court that in Ritabou there was a militia group called *Dadurus Merah Putih*. The commander of this group was Enginheiro Natalino Monteiro. They organized the youth to join the militia. The headquarters of the Ritabou group were located in a small post in front of Natalinos’ house. Salvador Soares was a member of *Dadurus Merah Putih* militia.
90. Assis Fontes was a Sergeant Major of the military. Fontes went to Raifun, and said that all the men had to join the militia. Assis Fontes created a militia group in Raifun named “*Ramahana*” (bow and arrow). He was the person in charge, assisted by Francisco Caieiro and Demetrio. Among the non military, Francisco Caieiro was head of Letum, Demetrio was also head of Letum, Orlando Lopes he was the commander of Letum, Paulo Tavares.
91. Domingos Loko, that was the person who was in charge and had contact with Falintil, was the first to enter the militias’ group and advised the others to all join the militias to save themselves. And then, all in Raifun, including the witness, joined the militias (around 100 people joined).
92. The militia (including the witness) did an operation to arrest a person called Sebastião Correia (a priest). Before they went, the witness went to advise Ruben Soares and told him to ring father Sebastiao and tell him to wear his priest clothes, so the militia would not beat him up or arrest him.
93. At the time when they arrived father Sebastiao already had priest clothes on, and then they handed father Sebastião, to a Babinsa called Paul Leto. Paulo Leto put him on motorbike and brought him to Raifun. In Raifun the head of SPDK named Francisco Soares said that they could let him go as he has done no wrong.

94. In June UNAMET arrived in Maliana, and then all those (including the witness) who joined the militia but wanted independence left the militia group. Then the witness worked with UNAMET.
95. Ruben Barros Soares and Domingos Pereira also joined UNAMET. They worked with UNAMET until 30th of August.
96. On 2 September at 4 o'clock, the militaries started to shoot in the market of Maliana. At that time Domingos Pereira has just returned from Dili. The witness and Ruben were also in Maliana. After the shooting in the market the witness told Ruben to run away, Ruben said that all the roads were closed and therefore they could not leave.
97. At 6 pm the militias of Raifun came and surrounded the house where they were. The group from Raifun was formed by Francisco Soares, Demetrio, Orlando Lopes, Paulo Tavares, and Assis Fontes. The witness went to speak to Assis Fontes, but he did not talk to him. The witness sat outside, more or less from his house was 100 to 150 meters and then he went to Luis Caieros' house.
98. The witness rang to Ruben Barros and told him that, "your house has been surrounded". Ruben told him, "when they came around I have seen them I saw them all". Then the witness told him "if it is like that, you sit quietly don't talk". And then Ruben said "don't leave the house, if you leave the house they could kill you with an arrow". The witness returned from Luis Caieros' house to his own house.
99. As soon as the witness arrived at Antonio Soares' house, another group of militias, from Ritabou, came to break the chief of village's house "who ever is inside kill them all". Francisco Soares took the witness to hide in their house and less than 2 minutes later the witness left. The witness returned to his house, about 50 meters distance from there. There were a tractor and also a coconut tree in front of the witness but the coconut tree was still small. At that time there was electricity and the witness could see what was going on in the house.
100. The group from Ritabou that entered Raifun was formed by: Marito, Salvador Soares, Joao Gomblok, Vitalis and his brother Martino, Umberto and Manuel.

101. The witness knew Salvador Soares because they are cousins and they were together at Junior High School. The witness knew that the other people were also from Ritabou because before joining the militia they used to play ball together with them.
102. They were surrounding Antonio's house because everybody knew that Antonio and his family they voted independency. The witness was hiding in front of Antonio's house near a banana tree. There was electricity at the time.
103. First of all they throw rocks and Paulo Tavares broke the windows. As the people inside did not reacted, a person called Vitalis, a health employee, kicked the door and went in, he went into room to room, he found Ruben in his room, he pulled outside Ruben they manage to fight each other, Ruben kicked Vitalis and felt down then Vitalis pulled this machete and cut Ruben twice, Ruben tried to protect himself and received cuts in his arms and clothes.
104. Vitalis also retaliated and Ruben fingers were cut off. Ruben got Vitalis machete in his stomach, and at that moment Ruben screamed "I am going to die". And then Vitalis still speared him with the machete. Ruben Soares fall down. Vitalis grabbed Ruben Barros by the legs and pulled him out. Ruben Soares screamed "I am going to die", he called "brother in law I am going to die".
105. At that moment Domingos Pereira came from inside of the house where he has just finished his shower, and he had no shirt and shorts; he said "before you kill my brother-in-law kill me first". Assis Fontes straight away shot Domingos Pereira, and then Domingos Pereira started to walk, he was going to fall down, but he didn't and he continued to walk until he reached a car called kijan and he leaned on that car. Assis Fontes started to come to meet Domingos Pereira, Domingos Pereira walked from the kijan towards him and then Asis Fontes once again shot him on his back.
106. Domingos Pereira could not walk and he was holding on to the tiers of the truck, and as his hands went, gave way, he felt down, he just crawled to his brother-in-law, Assis Fontes came towards and in front of him and pointed the pistol to Domingos and then Domingos

Pereira said “oh brother-in-law are you going to kill me? And then Assis Fontes shot Domingos Pereira, who said “Oh God I am dying”.

107. Then Jose Besiboro came and shot Ruben, but before he chopped he said “brother-in-law why you kill me too”, at that time Domingos felt to his back, and a person called Marito came and stabbed Domingos Pereira on the chest with a sword.
108. Ruben Barros Soares pull him away, and one Joao Gomblok speared Ruben on the stomach twice, and Salvador Soares also stabbed twice Ruben Barros. Martino (Vitalis brother) stabbed once, another person called Umberto (Manuel Cancio brother) stabbed Rubens once, and then Umberto went to Rubens’ motorbike and burnt Ruben’s motorbike. One person called Manuel came with a rock and threw it to Rubens’ head and then Vitalis pulled Ruben up to the main road and then took him back inside, Marito stabbed once more, at that moment Ruben was still alive. Manuel stabbed him once more and as he saw that Ruben had no voice but his hands and his feet were still moving he got a big rock and threw it to his head. At that moment Ruben and Domingos were already dead. During the attack Orlando Lopes, a cousin of the witness from Raifun, was watching the house, he joined the attack and he was watching the back door of the house and he was carrying a machete.
109. A militia from Ritabou said, “In here finished.” The one called Marito said, “now we go back, we are going to this teacher called Anacleto”. At that moment the witness ran away.
110. The militias then went to the KODIM 1636. Francisco (brother of Domingos Pereira) came out from his house to see Ruben and Domingos. As he came he didn’t see his brother, he got water and he went to put out the fire on the motorbike, as the fire went off he came, he tripped on Domingos’ hand, then he said “Oh God my brother is dead”. He went and got his car and he went down to the KODIM.
111. Then the witness approached the bodies of Domingos and Ruben. Then militias came together with TNI including Sutrisno, and another one from Ambon, that people called Ambon Ambon. The witness realized that Domingos and Ruben were dead. Then he ran to

the POLRES, to go and advise Rubens' family telling them that Ruben was dead. Then Francisco Soares called the ambulance and took Domingo and Ruben to Maliana hospital. At 10 o'clock at night they gave Domingos Pereiras' body to his family. And Ruben Barros Soares body was handed to POLSEK. Ruben was buried on the afternoon of the third.

112. **The witness Florinda Fatima** told the court that he does not know Domingos Pereira or Reuben Soares. She declared that she knew they died on the 2 September 1999.

113. On the 2nd in the morning, around 11.00 O'clock, Joao Gomblok and his colleague Salvador (Soares, the witness recognized the accused in the Court room) together with other people went to the Posko (the place where students stay), behind the Maliana market, in Maliana. They went to shake hands with the youth staying at the post in Maliana. The youth were drinking coffee when they saw the militia arriving. They tried to run away but the militia told them to stay, they were there just to shake hands.

114. In the afternoon, at 4.00 O'clock, Joao Gomblok, Salvador Soares and his other colleagues attacked the witness and other people. The witness and a colleague (Reina/Lena) were going to the witness' uncle house, and as they were walking close to the Posko, then the group of the accused started throwing rocks. The Police also arrived, but they started shooting and the witness and other went to hide. They shot to stop them from throwing rocks. They were shooting into the air. The witness doesn't know if any person was injured during that shooting.

115. The Posko was burnt. That night the witness and others stayed in a house that was around the Posko. In the morning the witness and her colleague Noria were scared that they would be killed and ran away to the Police. They stayed at the Police Station until the 8 September 1999. Then in the afternoon the militias called Ritabou came and attacked the Police.

116. The witness heard that on that day a brother called Mateus was shot on his back. Another brother called Silvano was shot on his leg.

117. The witness heard that on 2nd September 1999 an incident happened in Raifun. She heard that brother Aru (Ruben Barros) and Domingos (Pereira) had died in Raifun, stabbed inside the house. At that time many people talked about it and the witness can't say who told her.
118. **The witness Gracinda Do Santos Marques** came before the court and testified that she is family related with the victims. Ruben, Domingos and the witness' father are family. They called her father "uncle Martino". Domingos was also married with the witness' sister. Reuben and Domingos were brothers-in-law and their houses were next to each other.
119. The witness declared that in 1999 Ruben Soares (also called Aru) and Domingos Pereira worked for UNAMET. At the time of the Popular Consultation, they were also independence supporters. The witness was also an independence supporter. At the time she stayed with them like a sister. They were there together at their houses to exchange ideas, to look for ways of getting out and not meeting death from the militia.
120. The witness said that, at the time, the accused Salvador Soares belonged to a group called Besimera that was "going up and down" in Maliana. Their objective was to threaten people in order to support the pro-autonomy option. Among the militia members from Raitabou the witness knew Salvador Soares, Marito, Joao Gomblok and Jose Besimoro, there were others that witness didn't know. At that time they dominated the area, they tied their heads with red and white material and wore Autonomy T-shirts. This is the group of people that attacked the house of Reuben Soares.
121. On 2 September in the afternoon, Reuben was back from work and Domingos had just returned from Dili to Maliana. It was about 6.00 O'clock, getting dark already. Aru (Ruben Soares) had taken a shower and had gone to his room to get dressed. He was going to make a phone call because Aru's family and Domingos' family were all at UNAMET compound (in Dili) at that time.
122. Because Ruben and Domingos' houses were in front of the road, the militia from Ritabou had a program and they were doing that program. Ruben's father was the head of the village and the militia

members were going up and down screaming: “That house is not the house of the chief of the village but it is the house of CNRT”.

123. The witness was near the road going to the house of Mr. Antonio to ask him information about the situation because Domingos had just returned from Dili to Maliana. Then she saw the Besimera came from Ritabou shouting. They came by car. The witness only saw one car.
124. They were going up and down on the road to look at the situation. Then they went down again to Ritabou and when they came back they went into the house of Ruben Soares.
125. Aru (Ruben Soares) knew a bit of Tai-kwando and tried to defend himself. The witness was scared and ran to her home. The houses were next to each other, about 20 metres far. Not long after the witness heard Ruben Soares screaming, “My mother, I am dying”. They brought him out. The witness could not see this but knew because at that time her younger brother Tiaflu and other people in the house including Manuel Lakasuli managed to peep and saw.
126. Ruben Soares could not save himself because Besimera took sharp instruments and killed him. When the Besimera came out, she managed to see them. Then Ameu (Domingos), that lived next to Ruben’s house said: “Before you kill my brother-in-law, you kill me first”. Then the militia also killed him. The witness (from inside the room) only heard him scream.
127. Then Aru’s mother’s family picked him up, took him to bury at the village of Holsa in Maliana. Domingos was taken by his younger brother Shiku to Barapa in Gardeni. On the 3rd September in the morning the witness and others were and went to Horesh in Maliana, where they were for five days. There were many people there at the Police. On the 5th the situation looked normal but then an Indonesian military talked to them and proposed them to be brought to Becode to be save in there but the witness’ father didn’t want.
128. **The witness Duarte Barros** told the court that he knew about the death of Reuben Soares and Domingos Pereira but he was not

present. He heard they died on the 2 September 1999 in the afternoon about 5.30p.m.

129. On the 2 September the militia came to meet with Falintil around 11.00 O'clock. They came from Datorio to go to the place of Falintil.

130. The militia group was the so-called Besimera, together with John Tavares' son Ruben. They were going to meet with Falintil to make peace in the Falintil place. The place of Falintil was the meeting place where they concentrated together and the house where they were staying. Mateus and Paulo were there. That place is in Zinda's house, and is where they killed Mateus.

131. Ruben who is John Tavares son was the commander of the Besimera who came and went to talk peace with Falintil. He was with Salvador Soares and they passed in front of the witness' house.

132. When they went there didn't meet the Falintil people there to talk peace. Then at 3.00 O'clock they went passed there, they said that they already talked peace with Falintil so there was nothing else. And then they went down and at 4.30p.m they started burning the houses of Falintil and they killed the Falintil who were guarding the houses there: one called Mateus, that died next to the witness' house. Then the witness heard that there were other deaths, that of Reuben and Domingos in Raifun. It was already night when the witness heard that Reuben and Domingos had died. The witness was told about the deaths from John Munic. They died because Besimera shot them.

133. In the month of September 1999 the witness lived in Maliana, Village of Lahomero. In August he stayed at his home during the Popular Consultation and in September he went to the bush where he stayed until the 8 September 1999 when people came to the Police and then after that he went to the mountains. People moved to the Police because that day they started to kill and burn the houses, the military and Besimera arrested and killed people, that is why people ran away to that place They went there because they thought that the Police was neutral and would not kill people.

134. On 2 September groups of militia went around town announcing that everyone who wants to go to Atambua should go to the Koramil, those that wanted independence should go to the polling station. Among those militia members were Aru, Shigo Mataleo, Domingos Dadulus Besimera, Marlito, Vota and others (Antonio Metan, Eferino, Marlito, Salvador Soares aka Dodo, Jose)
135. The witness Luis Caiero testified before the court that in 1999 Ruben Barros aka Aru and Domingos Pereira, were staff members of UNAMET. On the 2nd September 1999 in the afternoon Domingos Pereira (who was a driver) was driving a UNAMET car and he returned from Dili to Maliana. When he arrived it was about 6.00 O'clock in the afternoon, it was getting dark.
136. Soon later Besimera (militias) from the village of Ritabou arrived to attack the houses of Ruben Barros and Domingos Pereira. They came up in a black kijang car. The car was full of people and some were walking. The witness recognized Salvador Soares among them.
137. The witness knew Salvador Soares from before 2 September 1999. The witness considered Soares as the commander of the *Merah Putih* militia from the village of Ritabou. In Ritabou in the morning they jogged, they tied red and white banners on their heads.
138. The militias were coming from the Kodil and the former chief of village's house. The witness heard that the militias received orders from the military. The group that attacked Barros and Pereira was commanded by an Indonesian intelligence TNI called Assis Fontes.
139. The witness was on the side of the road behind a small kiosk and saw from far (about 50 metres) that Assis Fontes was standing by one of the bamboo tree, from where he shot Domingos Pereira aka Ameo's back with a pistol. After Assis Fontes shot Domingos Pereira, militia members took profit of the weakness of the wounded Domingos Pereira and stabbed him. They all went jointly: the accused Salvador Soares, Marito, Joao Gomblok, Jose Besiburu and Vitalis stabbed him, they all went to attack together not one person stabbed alone.

140. The witness did not see who killed Ruben Soares. They stabbed him inside the house and then he ran out of the house, still alive, and he came near the road and then screamed: "I am dead"! He already had a big wound; he returned and fell at base of the plants. He was not dead yet and they beat him with a stone. The witness did not see properly who did that.
141. **The witness Manuel Lakasuri** testified that on the 2 of September in 1999, in Maliana at 6 o'clock in the afternoon the following facts took place:
142. That day groups of the *Dadurus Merah Putih* militia were in Maliana.
143. They went to attack the house of Ruben Barros. The witness was in that place, initially hiding inside the house and later outside, in a banana plantation on a distance of 15 meters, hiding next to a banana tree.
144. Assis Fontes called the militia from Ritabou to attack the place. There were many militia members, the witness doesn't know how many. They were carrying sharp instruments, holding Rakitan, SQS, SP guns from the military, machetes with the sticks.
145. The witness said he saw Marito Moreira, Jose Apalage, Jose Besiboro, Martinho Afonso, Umberto Lopes and Dodo. He said Salvador Soares is Dodo.
146. Ruben Barros Soares was inside, they arrested him, they put him outside but they stabbed him inside before they brought him out. When they came out he was screaming "My mother, my father I'm going to die" they put him up to the road and then they put him back to the house and they killed him in front of the house, they stabbed him on the chest and on the back.
147. Domingos Pereira had no clothes, and they also brought him outside. He was screaming, "If you are going to kill my brother kill me too". Assis Fontes grabbed the pistol and shoot him on the leg and Pereira felt down. He went down on his knees and then Assis Fontes shoot him on the back.

148. After this they stabbed Ruben Soares 12 times until he died. Vitalis, Humberto/Norberto, Jose Soares, Marito, Paolo Tavares, Jose Amaral, Jose Besiboro, Umberto Lopes and Salvador Soares aka Dodo participated in the attack and stabbed Ruben Soares.
149. During the attack Salvador Soares was carrying a machete. The witness couldn't see his clothes.
150. The witness stayed next to the banana tree 15 minutes. When militia members left from the place the witness ran away.
151. **The witness Bernardino de Araujo** only knows about the death of Ruben Soares or Domingos Pereira for what he was told because at that time he was in the bush.
152. He got the information from Mr. Manuel Lakasuri who told him that Ruben Soares and Domingos Pereira had died. He said that Salvador Soares and his elements (members of *Dadurus Merah Putih*) killed Ruben Soares and Domingos Pereira.
153. The witness testified that the militia group in Ritabou was *Dadurus Merah Putih*. The commander of this group was Natalino Monteiro. The deputy was Alberto Soares. The witness does not know what was the position of Salvador Soares in *Dadurus Merah Putih* and he does not know who was the instructor of that group.
154. **The defense witness Abraao Soares Pereira** is the brother of Salvador Soares. He told the court that on 2 September 1999 Salvador Soares was at home. From 7 he started working at the coffee plantation, until 9.30-10, and then he rested. The witness returned home and he still was at the coffee plantation.
155. Around 10 in the morning they (militia members) came looking for Salvador. The witness was sleeping, then his mother told him that they were beating Salvador. The witness could not do anything because they had sharp instruments.

156. They arrested Salvador and took him to the militia post in Natalino's house. At 5.30 Salvador returned and his face was wounded. He didn't go anywhere else that day.

157. **The witness Domingos Amaral** told the court that on September 1999 the witness belonged to a group formed with the CNRT and called JLA (*Juvente Lorico Asswan*). Initially he had been forced by Assis Fontes to join the militia but then he left it and joined CNRT. The commander of the militia in Raifun was Chico. Other member was the witness' brother Orlando. From the militia in Ritabou the witness knows the members Joao Gomblok and Jose Besibolo

158. On the 2 September 1999 the witness was in the CNRT office in the GOR. At the time, all the young people worked in GOR office to protect themselves. At 12 o'clock, they went back to their office to have lunch and after that they went to the market and just sitting. Then at 2 o'clock, the militia came to attack them, throwing stones at them. Then there was a noise of guns, and so all ran away.

159. The witness ran up to the house of Antonio Soares where he got around 5.30. Other young people were also there. Then, around 6 o'clock in the afternoon, already dark, one of them, Teofilo, saw the militia Assis Fontes approaching. They saw that Assis Fontes was holding a pistol and another weapon hanging of his neck. Everybody ran away but 4 people. Then also Ruben Barros arrived but soon went to call Domingos to inform him of the danger. The militia who came first to attack Antonio Soares's house were from Raifun. Marcal Vidigal and the witness ran away to their respective houses. The witness did not see Salvador Soares on 2nd of September 1999.

160. **The witness Fernanda Soares** testified that she was a friend of Guilhermina (Salvador Soares' wife). On the 10 of May 1999 the witness went to Guilhermina's house, and then saw how Joao and Umberto told her that Salvador was supporter of Falintil. Guilhermina came out and said "you can beat me up and can kill me I am here". They took her outside and pushed her twice and said "you go home and tell your husband not to help Falintil". They also said "tell your husband to follow, to join the militias otherwise we will kill his wife and the children". After militia told Guilhermina

that Salvador Soares had to follow the militia he did not become a member of the militia.

161. **The witness Francisca Pereira** is the mother of Salvador Soares. She told the court that in 1999 Salvador Soares family supported Falintil. Salvador himself worked for Falintil. In 1999 he also worked for the militia just as cover up, to avoid being killed. He joined the militia in September, but continued working separately with Falintil. He was forced to join by Jose Atibere, Joao Gomblok and Marito Legobere, they forced him, they said “if not join we kill your wife and child.”
162. On 2 September 1999 Salvador Soares was at home, watering is coffee plantation. Around 10 o'clock, Marito, Jose and other militia members came to his home. They beat him and took him to the post in Natalino's house because he worked for Falintil. At 5 o'clock he returned home. When he came he had blood in his face.
163. On 28 August Salvador Soares' father and Ignacio (Soares) went to Ermera. They returned at night. The militia went to their house and grab the witness husband and killed him. The killer of Salvador Soares' father is still at large.
164. **The witness Guilhermina Maia de Jesus** is the wife of Salvador Soares. According to her, in 1999 Salvador belonged to Falintil.
165. On 10 May, at 10 o'clock, Jose, Marito and Joao went to Salvador Soares' house and called his wife, the witness, and told her “Guilhermina, your husband Salvador helped Falintil”, the witness confirmed that and they took her out, together with her child, they took her to the post in Natalino's house, and beat her up. She was beaten about 2 hours. They told her that her husband should join the militia otherwise they would kill the children. The witness then told her husband to join the militia. She said “if don't join the militia one day something will happen to you”. He joined the militia but he was a simple member. He stayed at home all day.
166. On 2 September 1999, Joao Gomblok, Marito and Jose came and scream at Salvador Soares. They took him outside the house and beat him up. Then they took him to the post. The witness and Salvador's

mother called his father. Salvador Soares was taken to Natalino's house. When he returned home, around 6 o'clock, his body was badly hurt. Then Salvador was at home watering the coffee plantation.

167. **The witness Ignacio Soares** has a distant family relation with Salvador Soares, they share the same great grandfather. The witness is a Falintil /FDTL military.

168. The witness declared before the court that he knows Salvador Soares since 1975. From 1995 to 1999 Salvador Soares was a clandestine supporter of Falintil. He was a good driver and the witness had contact with the accused many times during that period. He also gave food and medicine for the people in the bush. In August 1999 the witness had contact with Salvador and his family. Because they were supporters of independence, on the 28 August 1999 the witness asked him for help. The father of Salvador Soares helped the witness, put him on a motorbike and took him to Ermera. From the 28 August the witness didn't have any more contact with Salvador as the witness voted in Ermera. The witness was a Section commander of Falintil and because the situation was bad he told Salvador Soares "whatever you follow you have follow because you have defend yourself".

169. **the witness Manuel da Cruz** is a neighbor of Salvador Soares. He testified that on 2 September 1999 Salvador was at home watering his coffee plantation, in the garden in front of the witness' house. Then 3 men, namely Jose Atibere, Joao Gomblok and Marito came and arrested him in his coffee plantation. The witness saw this from a distance of 20 metres. They took him to his house and beat him up, and then took him to Natalino's post. At 4.30 the witness went near Natalino's post and saw him still there, lot people around him (that the witness could not recognize), and beating him up. Then he was sitting in Natalino's house and his face was in blood, and then after 5 o'clock, he left the place and went to his house, and the witness followed him to his house. The witness did not know if Salvador Soares was anywhere else that day. The witness believes that Salvador Soares was arrested because He used to carry out clandestine activities. The witness could not hear the people who came to arrest Salvador.

170. **The witnesses Orlando Lopes** told the court that he went to school with Salvador Soares. In 1999 the witness belonged to *Dadurus Merah Putih* militia. He was part of the group commanded by Assis Fontes. In September 1999 the witness was in his house. He didn't see Salvador Soares and doesn't know anything about the death of Rubens Soares and Domingos Pereira.
171. About the meeting in the militia post, the witness knows that Assis Fontes said that they were going to burn the house of Domingos. The witness attended the meeting but then dispersed and did not join the militias in the attack. Assis Fontes gave the order to Juliao da Costa, Mario Moniz, Antonio Tavares, Jose Alves, and many others the witness didn't remember. These people were the militia from Raifun. Salvador Soares was not present in the meeting. He was in Ritabou.
172. Salvador Soares belonged to the group of Ritabou that was also part of the Bobonaro *Dadurus Merah Putih*. He does not know the name of the commander of the group Salvador Soares belonged to.
173. **The witness Paulo dos Santos** is a neighbor of Salvador Soares. He testified that on the 2nd of September at 10 o'clock, the witness saw how 3 people, namely Joao Gomblok, Marito and Jose Atubele, from the command post came at Salvador Soares house, called him, they punched and beat him and took him to the command post (200 m. from Soares home). Then around 5.30 Salvador returned home from the post commander. He was sick and his face wounded. They beat him up because at that time he didn't follow what people was doing (militia activities, he was working in his house watering his coffee plantation).
174. The witness does not know that Salvador were part of any group or organization in 1999.
175. **After analyzing the testimonies of the witnesses, the Court is convinced that** in September 1999 Ruben Soares aka Aru and Domingos Pereira worked for UNAMET. They were also known as pro-independence supporters. Antonio Soares was also a pro-independence supporter. [*Testimonies of the witnesses Teofilo Dos Santos Marques, Antonio Siga Mau, Gracinda Dos Santos Marques*].

176. In 1999 there were two different militia groups operating in the Subdistrict of Maliana. In Ritabou there was a militia group called Dadurus Merah Putih. The commander was Natalino Monteiro. In Raifun there was a sub-group within *Dadurus Merah Putih* named *Ramahana* and led by TNI Assis Fontes. [Testimonies of the witnesses *Teofilo Dos Santos Marques, Antonio Siga Mau, Luis Caiero, Manuel Lakasuri, Bernardino De Araujo, Orlando Lopes*].
177. In September 1999 Salvador Soares was a member of the *Dadurus Merah Putih* Militia operating in Ritabou [Testimonies of the witnesses *Antonio Siga Mau, Gracinda Dos Santos Marques, Luis Caiero, Bernardino De Araujo, Guilhermina Maia de Jesus, Orlando Lopes*].
178. In 1999 Assis Fontes was a TNI Sergeant in charge of intelligence activities. He was also the commander of the militia in Raifun [Testimonies of the witnesses *Teofilo Dos Santos Marques, Antonio Siga Mau, Orlando Lopes*].
179. On the 2 September 1999, in the afternoon, there was an incident in the market of Maliana between militia members and pro-independence supporters. During the incident Indonesian military shot their guns [Testimonies of the witnesses *Teofilo Dos Santos Marques, Antonio Siga, Florinda Fatima, Manuel Lakasuri*]. The accused Salvador Soares participated in the incident [Testimony of the witness *Florinda Fatima*]
180. On the same day 2 September 1999, at around 6 in the evening Sergeant Assis Fontes, armed with a gun appeared outside of the house of Antonio Soares [Testimonies of the witnesses *Teofilo Dos Santos, Antonio Siga Mau, Luis Caiero, Manuel Lakasuri, Domingos Amaral*].
181. Soon after the house of Antonio Soares was surrounded by members of the Raifun militia [Testimonies of the witnesses *Teofilo Dos Santos, Antonio Siga Mau, Domingos Amaral, Orlando Lopes*] and members of the Ritabou militia [Testimonies of the witnesses *Antonio Siga Mau, Gracinda Dos Santos, Luis Caiero, Manuel Lakasuri, Bernardino De Araujo*] including the accused Salvador

Soares [*Testimonies of the witnesses Antonio Siga Mau, Luis Caiero, Manuel Lakasuri, Bernardino De Araujo*]. The court is not convinced by the statements of the wife, the mother, the brother and the neighbor of Salvador Soares who said that the accused was taken by the militia the day of the crime and brought him back home later in the evening, just before the commission of the crime by the same militia members.

182. The militia from Ritabou arrived in a car. They were carrying sharp instruments, spears, swords, machetes and sticks [*Testimonies of the witnesses Teofilo Dos Santos, Antonio Siga Mau, Gracinda Dos Santos, Luis Caiero, Manuel Lakasuri*]. Between 20 and 25 militia members gathered outside the house [*Testimony of the witness Teofilo Dos Santos.*]
183. Members of the militia broke into the house, Paulo Tavares broke the windows and Vitalis kicked the door and went in [*Testimony of the witness Antonio Siga Mau.*] Vitalis dragged Ruben B. Soares outside of the house and they fought. When Ruben went outside he was injured [*Testimonies of the witnesses Antonio Siga Mau, Luis Caiero, Manuel Lakasuri*].
184. Ruben B. Soares was then stabbed by several people including the accused Salvador Soares, Joao Gomblok, Vitalis, and others [*Testimonies of the witness Antonio Siga Mau and Manuel Lakasuri*].
185. While Ruben Soares was being attacked Domingos Pereira came out from the neighboring house [*Testimonies of the witnesses Teofilo Dos Santos Marques, Antonio Siga Mau, Gracinda Dos Santos, Luis Caiero, Manuel Lakasuri*]. He shoot something like “don’t kill my brother-in-law, if you kill him you have to kill me too” [*Testimonies of the witnesses Teofilo Dos Santos, Antonio Siga Mau, Gracinda Dos Santos Marques, Manuel Lakasuri*]. Then Assis Fontes shot his gun at Domingos [*Testimonies of the witnesses Teofilo Dos Santos, Antonio Siga Mau, Luis Caiero, Manuel Lakasuri*] first in the leg and then in the back. Domingos, already injured by the bullets was then stabbed by the accused Salvador Soares, Joao Gomblok, and Vitalis [*Testimony of the witness Luis Caiero*].

commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

190. The legal elements of this form of individual responsibility is to be found in Sect. 18.1 Reg. 2000/15 that reads:

“A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels only if the material elements are committed with intent and knowledge.

Sect. 18.2 For the purposes of the present Section, a person has “intent” where:

In relation to conduct, that person means to engage in the conduct;

In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

18.3 For the purposes of the present Section, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

191. Sect. 18 incorporates, *verbatim*, Art. 30 of the ICC Statute. In the general introduction of the Elements of Crimes of the ICC statute, paragraph 3 states that “the existence of intent and knowledge can be inferred from relevant facts and circumstances.”

G. LEGAL FINDINGS

192. 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 murder and Torture.

193. The accused Salvador Soares is accused of murder and Torture as crimes against humanity.

Salvador
Soares

Dissenting Opinion

regarding the sentence of 8 years for the murder of Ruben Soares
(point a) of the Disposition):

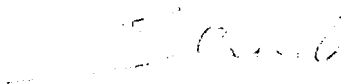
The generally recognized sentencing aims are deterrence, retribution, reconciliation and reprobation. Most prominent in accordance with the Security Council's general aim of restoring and maintaining peace are deterrence and retribution (see ICTY, Erdomevic Sentencing Judgement, 19 November 1996, para. 58).

For violations of international law the most important aim is deterrence (ICTY, Delalic Judgement, 16 November 1998, para. 1234). This means "dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights" (ICTR, Kambanda Judgement and Sentence, 4 September 1998, para. 28).

In East Timor there is an additional requirement for deterrence because just across a hard to guard border there are thousands of recalcitrant ex-militia men with the capability of once again destabilizing this country by means of murder.

Sentencing an accused who has committed Murder as a Crime against Humanity by his own hands to less than 10 years imprisonment fails to meet these requirements.

9.12.2003



Judge Siegfried Blunk

Credit for time served

According to Section 10.3 of UNTAET Regulation 15/2000, Section 42.5 of UNTAET Regulation 30/2000 and Article 33 of Indonesian Penal Code, the Special Panels deducts the time spent in detention by Salvador Soares, due to an order of this Court. The defendant Salvador Soares was arrested and detained since 19 June 2002. He escaped from Becora Prison on 17 August but was recaptured on 21 August 2002. Therefore he was under detention for 1 year 5 months and 6 days. Accordingly, his period of 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 UNTAET Regulation 2000/30 (as amended by UNTAET Regulation 2001/25), 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.

One copy of this decision is to be provided to the Defendant and his legal representative, the Public Prosecutor and to the prison manager.

This Judgment was rendered on the 9th December 2003 in the District Court of Dili by

Judge Sylver NTUKAMAZINA, presiding

Judge Maria NATERCIA GUSMAO PERREIRA.

Judge Siegfried Blunk

*See accompanying opinion
attached*

Murder as a Crime Against Humanity

194. The offence of Murder as a Crime Against Humanity is provided for in Section 5.1 (a) of UNTAET Regulation 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*². In the mentioned case the Special Panel provided with 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 mens rea is restricted to the deliberate

² 9-PJD.C.G/2000 General Prosecutor vs. Joni Marques & 9 others, decision on 11 December 2001

186. Salvador Soares was armed with a machete and participated in the attack that resulted in the death of Ruben Soares and Domingos Pereira [*Testimonies of the witnesses Antonio Siga Mau, Luis Caiero, Manuel Lakasuri, Bernardino De Araujo*].

F. INDIVIDUAL CRIMINAL RESPONSIBILITY

187. The accused Salvador Soares did participate in the killings, pursuant to what is considered as individual criminal responsibility according to UNTAET regulations. By joining the militia and participating on the 2nd September 1999 armed with a machete in the attack that resulted in the death of Ruben Soares and Domingos Pereira, the accused had deliberate intent to accomplish the purposes of the militia group. Since he joined the militia, the accused obviously knew about the purposes of the group.

188. The alleged duress alleged by the defense can be assessed along the accused whole activity in the militia group. The accused was member of militia 1999; he did it supposedly to avoid threats to himself and his family, as submitted by the defense. The defense alleged that the militia could kill him or his family if he refused to join. However, such constraint is not plenty to put aside his criminal responsibility for the acts he was latter involved. The Court is persuaded that the accused had many opportunities to flee and go to hide in the mountains with his family. Before the operation, he went to hide for several occasions but came back. Many other persons resisted joining the militia and were forced to hide in the mountains.

189. The accused, Salvador Soares is therefore responsible for committing the crime of murder as a crime against humanity pursuant to a joint criminal enterprise to murder the pro-independence supporters working for UNAMET. Section 14.3 (a) of UNTAET Regulation 2000/15 reads as follows:

“14.3 In accordance with the present regulation, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels if that person:

intent to cause the death of the victim or that such result would occur in the ordinary course of events."

195. This definition was followed by the Special Panel in successive decisions, *inter alia* in the case the *Public Prosecutor against Jose Cardoso*³ and the *Public Prosecutor against Domingos Mendonca*⁴. Therefore the Panel must analyze 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.
196. Death of the victim. It has been proved that Ruben B. Soares and Domingos Pereira were killed in Raifun on the 2 September 1999. Ruben B. Soares was stabbed several times and his head was smashed with a rock. Domingos Pereira was shot with a rifle and stabbed. Both resulted dead as a consequence of that.
197. Death as a result of the perpetrator act. It has been proved that the victims died as a result of the attack where they were stabbed (both) and shot (Pereira). It has been proven that the accused participated in the attack and was a member of the group that caused the injuries.
198. Substantial causality. It has also been showed that the victims died as a consequence of the wounds suffered in the hands of the accused and his partners.
199. Intention to cause the death or awareness of the possibility. The Court considers that at the time of the killing the accused persons meant to cause the death of the victims or at least was aware that it would occur in the ordinary course of events. The deaths were the result of the accused persons and his fellow militia members' behavior. The nature of the attack, that included a series of stabbings by several participants show 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.

³ 4-PID.C.G/2001 General Prosecutor vs. Jose Cardoso, decision on 5 April 2003

⁴ 18b-PID.C.G/2001 General Prosecutor vs. Domingos Mendonca, decision on 13 October 2003

200. It is therefore clear that elements of murder are satisfied in the present case.

Torture as a crime against humanity

201. The court has to analyze whether or not the elements of torture as crime against humanity are satisfied. In case they are not satisfied the court will assess if the accused can be convicted for lesser offence of torture pursuant to Section 32.4 of UNTAET Regulation 2000/30 which says: "*The accused shall not be convicted of a crime that was not included in the indictment, as it may have been amended, or of which the accused was not informed by the judge. For purposes of the present subsection, a crime which is a lesser included offense of an offense which is stated in the indictment shall be deemed to be included in the indictment*".

202. Torture is prohibited in international and national law. Art. 5 of the Universal Declaration of Human Rights holds that "*no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment*". The same wording is used in the Art. 7 of the International Covenant on Political and Civil Rights and in the European Convention of Human Rights, the African Charter on Human Rights and the American Convention of Human Rights.

203. Two ideas of torture can be differentiated. The first refers to the infliction of extreme pain and suffering by a victimizer who dominates and controls. The pain may have either physical or psychological elements or a combination of both. The second version concerns the more restrictive legal definition, which includes official state sanction or participation. The central characteristic of the legal concept of torture is therefore the element of the official behavior.

204. The 1984 UN Convention against Torture, main international instrument aiming to eradicate such a crime, narrowly defines torture within the confines of the second form. The Convention defines torture as "*any act, which inflicts severe mental or physical pain on a victim for the purpose of obtaining information or a confession or for punishing the victims for conduct or suspected conduct*". Torture also takes place when the infliction of pain and suffering is

motivated by any form of officially sanctioned discrimination. Another facet of the Convention definition of torture is that pain or suffering is administered at the instigation, consent or acquiescence of a public official or another person acting in an official capacity.

205. The European Court of Human Rights and the Council of Europe after declaring the non-derogability of the protection against torture under no circumstances⁵ have developed through the jurisprudence⁶ a concept of torture defined as “*the deliberate inhuman treatment causing very serious and cruel suffering*”. However the Court has not established the objective criteria for the severity of the maltreatment to qualify as torture.

206. The U.S Courts based on the definition provided by the Convention Against Torture and in the national legislation⁷ has also developed case law in the matter⁸ that clarify the concept. For the American Courts mass rape, coerced prostitution and other forms of violence (*Kadic vs Karadzic*) were torture even if the actor had not actual authority but merely the semblance of official authority. Equally (*Ortiz vs. Gramajo*) in order to qualify as an official act, the torture need not occur while the defendant has direct custody over the victim; rather the torture need only the “*consent or acquiescence of a public official*”.

207. As for the ICTs, torture is specifically included in Art. 5 of the ICTY Statute, Art. 3 of the ICTR Statute and Art. 7 of the ICC Statute. Beyond including the term within the concept of “crimes against humanity” the above two formulations did not provide any insight as to the meaning and scope of torture. Various judgments of the Tribunals for the Ex-Yugoslavia and Rwanda have clarified the concept of torture as a crime against humanity. The *Celebici* Trial Judgement stated that the prohibition on torture is a norm of customary international law and *jus cogens*.

⁵ Resolution DH (70) 1 of the Committee of Ministers of the Council of Europe, 1969

⁶ Inter alia *Tomasi vs. France* 241 ECHR (1992), *Ribitsch vs. Austria* 336 ECHR (1995), *Selmouni vs. France* 1109 ECHR (1999).

⁷ Mainly the Alien Tort Claims Act and the Torture Victim Protection Act

⁸ Inter alia *Brown vs. Miss.*, *Williams vs. United States*, *Filartiga vs. Pena-Irala*, *Kadic vs. Karadzic* and *Ortiz vs. Gramajo*

208. The definition of the prohibition on torture was modified in relation to the perspective of an armed conflict in the *Furundzija* Trial Judgement. The definition reads:

The elements of torture in an armed conflict require that torture: (i) consists of the infliction, by act or omission, of severe pain or suffering, whether physical or mental; in addition (ii) this act or omission must be intentional (iii) it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person; (iv) it must be linked to an armed conflict; (v) at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, e.g., as a de facto organ of a State or any other authority-wielding entity.

209. The Trial Chamber in *Kunarac* held that the definition of torture under international humanitarian law does not comprise the same elements as the definition of torture generally applied in human rights law. It abandoned the element that the perpetrator of the crime of torture must be a public official. It also held the view that humiliation is not a purpose of torture acknowledged under customary law. The *Kunarac* Appeal Judgment confirmed the position of the Trial Chamber in excluding the public official requirement when considering criminal responsibility of an individual for torture outside the framework of the torture convention.

210. Art. 7 of the ICC provides a definition of torture that reads:

Torture means 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 sanctions.

211. Although the various conventions consider an essential element of the crime of torture the purpose of obtaining a statement or a

confession from the tortured person or to discredit that person, some part of the doctrine (Bassiouni)⁹ believe that torture in general, as it should be included in “crimes against humanity” must not be limited to any purpose.

212. In East Timor the crime of torture is included in the UNTAET Regulation 2000/15 not only as a form of crime against humanity (as in the ICTs) but also as an autonomous crime.

213. Section 7.1 provides for the prosecution of torture independently of war crimes or crimes against humanity and states that:

torture means 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/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or humiliating, intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

214. Although there is no precedent in the statutes of other tribunals for separately enumerating torture, we have already seen how torture in itself is likely a crime of *jus cogens*. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on which the definition in Section 7.1 is based, requires that all states criminalize the offense.¹⁰

215. It is worth noting that although the definition is similar to that found in the Torture Convention, Section 7.1 does not require that torture be committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” This is consistent with the ICTY jurisprudence already mentioned.

⁹ M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, Second Revised Edition, Kluwer Law International.

¹⁰ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

216. On the other hand, Section 5.2(d) of UNTAET Regulation No. 2000/15 provides that in the context of crimes against humanity:

“Torture” means 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 sanctions.

217. This definition of torture as a crime against humanity, identical to that of article 7(2)(e) of the Rome Statute, does not require that there be a specific purpose, or that the offense be committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹¹

218. Consequently, the element of the “public official” is not present in any of the forms of torture in the UNTAET Regulation. However, the requisite of the “purpose” does appear but only for Torture as an autonomous crime as provided in Section 7.1.

219. Is it consistent to have two different definitions of torture depending on the fact of being a Crime against humanity or not? The Special Panel considers that the wording of Art. 7, that reads: “*For the purpose of the present regulation torture means*” is somehow confusing on whether it should include also art. 5 or not.

220. The differentiation is important because if considering the definition contained in Section 7 the elements of the crime are the following:

- (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.
- (ii) The act or omission must be intentional.
- (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.

¹¹ See Torture Convention, art. 1(1).

221. The third element, the aim of obtaining information or a confession, etc. is as we have seen a crucial element of the crime that is somehow omitted in the definition of art. 5.
222. However, for any of the definitions, the Court believes that the crime of torture requires something more than the objective element (infliction of severe pain); this has to be accompanied by an intention (subjective element) to torture, whatever the aim of the torture is.
223. The Court believes that torture and murder can appear together in certain cases (for example when the victim dies as a result of the pain or suffering provoked by the torture, or when the victim is first tortured and secondly executed) but considers that an action primarily aimed at causing the death of a person cannot be regarded as torture for the mere reason of being painful or unnecessarily painful. If such an idea would be admitted almost every murder could be considered torture.
224. In the present case the victim is stabbed several times by different people. The victim is not defenseless or under custody. Nothing seems to indicate that the stabbing had any other aim than killing or injured the victim. It has been alleged that the use of machetes and knives made the attack more painful. These kinds of arms are, however, the usual tool of a Timorese countryman and were widely used during the time of conflict. The choice of such weapons to carry out the attack doesn't seem to have any other motive than their availability and practicality.
225. Being the only aim of the attack to cause the death of the victim, the elements of the crime of torture are not satisfied.

H. VERDICT

226. For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt and therefore finds Salvador Soares guilty of murder of Ruben Soares and the murder of Domingos Pereira, as a crimes against humanity, according to Sect. 5.1 a. U.R. 2000/15.

227. The Court is not satisfied that the legal elements of the crime of torture are satisfied.

I. SENTENCING

228. The Special Panel has taken into account the following:

Mitigating circumstances:

229. The accused person Salvador Soares, prior to the commission of the crime, for which he have been convicted, was living in a very coercive environment.

230. 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 may be said of many accused persons and cannot be given any significant weight in a case of this gravity.

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

232. 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 them some clemency.

Aggravating circumstances:

233. The accused acting together with a group murdered victims that were defenseless persons, unable to respond to the attack of a superior force and the threats and harm were therefore unconditional;

234. In addition to the fact that the victim Rubben Soares was defenseless and under the custody of the accused, the court finds also that he was killed in the very horrible manner. He was stabbed several times by the accused and many other different people before his head was smashed with rock.

Sentencing policy

235. 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).
236. The penalties imposed on both 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*).
237. 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.
238. 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 International Tribunal for Yugoslavia 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

239. 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 Timor¹²
240. 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 8 (eight) years imprisonment for the murder, as crimes against humanity, of Ruben Barros Soares, and 7 years imprisonment for the murder, as crime against humanity of Domingos Pereira.
241. 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 65.¹³ of the Indonesian Criminal Code, this total must not exceed one third beyond the most severe maximum punishment, which in this case is 8 years. Therefore, the Court deems relevant to sentence Salvador Soares to a single punishment of 10 years and 6 months imprisonment for all the crimes on which he is convicted, being the most severe punishment (8 years) plus one third of this punishment.

J. DISPOSITION

¹² 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 (...)"

¹³ Article 65 of IPC: "(1) In case of conjunction of more acts which must be considered as separate acts and which forms more crimes on which similar basic punishment are imposed, one punishment shall be imposed. (2) The maximum of this punishment shall be the collective total of the maximum punishment s imposed on the acts, but not exceeding one-third beyond the most severe maximum punishment.

Having considered all the evidence (statements from the witnesses and the Accused before the Court, the reports that support the indictment) and the arguments of the parties, the Transitional Rules of Criminal Procedure, the Special Panels for Serious Crimes finds and imposes the sentence as follows:

With respect to the defendant Salvador Soares :

- a) Guilty of the murder of Ruben Barros Soares, as a crime against humanity, in violation of Section 5.1(a) of UNTAET Regulation 2000/15;
- b) In punishment of the crime, sentences Salvador Soares to 8 years imprisonment
- c) Not guilty of the torture of Ruben Soares, as crime against humanity, in violation of Section 5.1(f) of UNTAET Regulation 2000/15;
- d) Guilty of the murder of Domingos Pereira, as a crime against humanity, in violation of Section 5.1(a) of UNTAET Regulation 2000/15;
- e) In punishment of the crime, sentences Salvador Soares to 7 years imprisonment;
- f) Holds that 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, which in this case is 8 years;
- g) Therefore sentences Salvador Soares to a single punishment of 10 years and 6 months imprisonment for all the crimes on which he is convicted, being the most severe punishment (8 years) plus one third of this punishment;
- h) Orders the defendant to pay the costs of the criminal procedure.



749
393f

Credit for time served

According to Section 10.3 of UNTAET Regulation 15/2000, Section 42.5 of UNTAET Regulation 30/2000 and Article 33 of Indonesian Penal Code, the Special Panels deducts the time spent in detention by Salvador Soares, due to an order of this Court. The defendant Salvador Soares was arrested and detained since 19 June 2002. He escaped from Becora Prison on 17 August but was recaptured on 21 August 2002. Therefore he was under detention for 1 year 5 months and 6 days. Accordingly, his period of 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 UNTAET Regulation 2000/30 (as amended by UNTAET Regulation 2001/25), 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.

One copy of this decision is to be provided to the Defendant and his legal representative, the Public Prosecutor and to the prison manager.

This Judgment was rendered on the 9th December 2003 in the District Court of Dili by

Judge Sylver NTUKAMAZINA, presiding

Judge Maria NATERCIA GUSMAO PEREIRA.

Judge Siegfried Blunk

See dissenting opinion attached

746
7

Salvador
Soares

Dissenting Opinion

regarding the sentence of 8 years for the murder of Ruben Soares
(point a) of the Disposition):

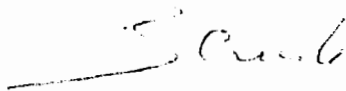
The generally recognized sentencing aims are deterrence, retribution, reconciliation and reprobation. Most prominent in accordance with the Security Council's general aim of restoring and maintaining peace are deterrence and retribution (see ICTY, Erdomevic Sentencing Judgement, 19 November 1996, para. 58).

For violations of international law the most important aim is deterrence (ICTY, Delalic Judgement, 16 November 1998, para. 1234). This means "dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights" (ICTR, Kambanda Judgement and Sentence, 4 September 1998, para. 28).

In East Timor there is an additional requirement for deterrence because just across a hard to guard border there are thousands of recalcitrant ex-militia men with the capability of once again destabilizing this country by means of murder.

Sentencing an accused who has committed Murder as a Crime against Humanity by his own hands to less than 10 years imprisonment fails to meet these requirements.

9.12.2003



Judge Siegfried Blunk