



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

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

Case No. 28/2003
Date: 06/12/2004
Original: English

Before:
Judge Maria Natércia Gusmão Pereira, Presiding
Judge Phillip Rapoza
Judge Brigitte Schmid

Registrar: Joao Naro
Judgement of: 06/12/2004

**THE PROSECUTOR
V.
ALARICO MESQUITA
FLORINDO MOREIRA
DOMINGOS AMATI
FRANCISCO MATOS
LAURINDO DA COSTA
LORENÇO TAVARES
MATEUS GUTERRES
ANGELINO DA COSTA**

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Essa Faal

Counsel of the accused:

Mr. Sebastian Appenah (for Alarico Mesquita and Laurindo da Costa)

Ms. Radmilla Dimitrijevic (for Florindo Moreira)

Mr. Jed Abab (for Domingos Amati and Fransisco Matos)

Ms. Chitra Subramoni and Mr. Ramavarma Thamburan (for Lorenço Tavares, Mateus Guterres and Angelino da Costa)

INTRODUCTION

1. The trial of (1) Alarico Mesquita (male, approximately 50 years old, married, living in Akanunu), (2) Florindo Moreira (male, married, born in Atsabe on 9 August 1969, living in Atsabe), (3) Domingos Amati (male, married, approximately 30 years old and living in Hera), (4) Frasiisco Matos (male, married, born on 1 October 1966 in Hera), (5) Laurindo da Costa (male, married, approximately 40 years old, born in Lolesu- Hera, and living in Akanunu village, Hera), (6) Lorenço Tavares (male, married, born in Lolesu on 4 April 1970, living in Akanunu, Hera), (7) Mateus Guterres (male, married, approximately 40-45 years old, born and living in Lolesu, Hera) and (8) Angelino da Costa (male, married, born in 1964 in Akanunu, Hera) before the Special Panel for the trial of Serious Crimes in the District Court of Dili (hereafter: the "Special Panel"), responsible for the handling of serious criminal offences, commenced on the 7 July 2004, and concluded today, 25 November 2004 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 counsels for the defendants, considering the arguments of the parties including their final statements of 5 of November 2004, 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 25 September 2003, the Public Prosecutor filed before the Dili District Court a written indictment (in English) against the accused Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurindo da Costa, Lorenço Tavares, Mateus Guterres and Angelino da Costa.
5. All the accused are charged with a crime against humanity in the form of torture (count 2) for their actions against Sebastiao Gusmao and Thomas Ximenes on 8 May 1999 in Akanunu, Dili District, as part of a widespread and systematic attack against the civilian population. The accused Alarico Mesquita, Florindo Moreira, Domingos Amati and Francisco Matos are also charge with a crime of persecution in the form of abduction (count 1) of the same victims, Sebastiao Gusmao and Thomas Ximenes on the same date.
6. Attached to the indictment, as Annex A was the list of evidence. The Prosecutor also submitted: 4 human right reports and one photograph of Mateus de Carvalho (as background information related to the Aitarak militia in Hera); written statements of 20 witnesses, written statements of the accused Alarico Mesquita, Francisco Matos, Laurindo da Costa, Lorenço Tavares, Mateus Guterres and Angelino da Costa, taped interview and transcript of interview with Alarico Mesquita, crime scene sketch and one investigative statement, autopsy and anthropological reports of the presumed bodies of the two victims and the school certificate of Sebastiao Gusmao.
7. The Court clerk provided notification of the receipt of the indictment to the accused and to their legal representatives, on 10 of October 2003, pursuant to Sect. 26.1 and 26.2, U.R. 2000/30.
8. The preliminary hearing took place on 30 January 2004. During the Preliminary hearing, the Court checked that the defendants had read the indictment or the indictment had been read to them, and asked them if they understood the nature of the charges, their right to be represented by a legal advisor, their 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 Prosecutor read the charges in the indictment and the accused refused to make any statement. The Court then accepted the

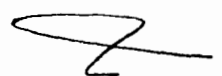


list of evidence submitted by the Public Prosecutor and ordered the defense counsels to submit their evidence before the commencement of the trial and the trial was scheduled for the 3 May 2004. The commencement of the trial was later on re-scheduled to take place on 7 July 2004.

9. On the 7 July 2004 the respective counsels of the defense filed a joint defence motion to dismiss the indictment because the Prosecution did not plead with sufficiency the facts forming the basis of the two charges. The Court denied the motion. In the same session the Court heard the accused persons.
10. On 8 July 2004 the trial continued with the deposition of the witnesses and concluded on 5 November 2004 for final statement.
11. Interpreters into English, Bahasa Indonesian, and Tetum languages assisted every act before the Court.

C. APPLICABLE LAW

12. Section 2.3 of Disposition Law No. 10/2003 of the Republic of East Timor determines that the sources of law in East Timor are:
 - The Constitution of the Republic;
 - Laws emanated from the National Parliament and from the Government of the Republic;
 - Subsidiarily, regulation and other legal instruments from UNTAET, as long as these not repealed, as well as Indonesian Legislation under the terms of Section 1 of the present law.
13. Section 3 of Regulation UNTAET 15/2000 states that in exercising their jurisdiction the panels shall apply:
 - Law of East Timor as promulgate by Sections 2 and 3 in UNTAET Regulation No.1/1999, and subsequent UNTAET Regulations and directives; Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;



D. FACTS OF THE CASE

STATEMENT OF THE FACTS BY THE PROSECUTOR

14. The facts, as submitted by the Prosecutor can be summarized as follows:
15. Between April and September 1999 the Aitarak militia and the TNI in Hera worked closely together and engaged in a campaign of violence including intimidation, assault, destruction, murder and deportation.
16. The militia in Hera operated from a number of militia posts including from the home of Mateus de Carvalho in Akanunu. They also manned a number of roadblocks at which they stopped persons traveling between Dili and Baucau and arrested, assaulted and killed persons they suspected of being pro-independence supporters.
17. The Aitarak militias in Dili were divided into four companies, A, B, C and D. Mateus de Carvalho was the Commander of Aitarak Company D, which covered Hera.
18. In the afternoon of 8 May 1999 a number of Aitarak militia members including **Florindo Moreira, Alarico Mesquita, Domingos Amati, Fransisco Matos** and Lino "Watulari" stopped a car containing Thomas Ximenes and two other persons at a militia roadblock in Akanunu. The militia members were under instructions from the Aitarak militia commander of Hera, Mateus de Carvalho, to detain any suspected pro-independence supporters.
19. Aitarak militia member, **Alarico Mesquita**, pulled Thomas Ximenes out of the truck. Militia members **Florindo Moreira** and **Mateus Guterres** then began to beat Thomas Ximenes with wooden sticks and **Alarico Mesquita, Domingos Amati, Fransisco Matos, Angelino da Costa**, Manuel da Silva, **Laurindo da Costa** and Lino "Watulari" joined in and began to punch and kick Thomas Ximenes. Thomas Ximenes was badly injured during this attack. Militia members including Manuel da Silva, **Domingos Amati** and



Alarico Mesquita then tied the hands of Thomas Ximenes and took him to the front of the TNI compound, close to the militia roadblock.

20. A short time later a number of Aitarak militia members including **Alarico Mesquita, Florindo Moreira, Domingos Amati** and **Fransisco Matos** stopped a truck containin Sebastiao Gusmao. Alarico Mesquita accused Sebastiao Gusmao of being a trouble maker and ordered Sebastiao Gusmao down from the truck.
21. Militia members including **Alarico Mesquita, Laurindo da Costa, Mateus Guterres, Florindo Moreira, Lino "Watulari", Domingos Amati** and **Fransisco Matos** then began to assault Sebastiao Gusmao. Sebastiao Gusmao was badly beaten during this attack. He was then taken to the front of the TNI compound by militia members including **Alarico Mesquita, Florindo Moreira, Domingos Amati** and **Fransisco Matos**.
22. Sebastiao Gusmao and Thomas Ximenes were tied by the hands, feet and neck outside the TNI compound by militia members including Gaspar da Silva and Florindo Malimeta. Thomas Ximenes was beaten in the face, chest and legs by militia members including **Laurindo da Costa, Lorenço Tavares** and **Mateus Guterres**.
23. Mateus de Carvalho was present during the arrest and torture of Sebastiao Gusmao and Thomas Ximenes and gave orders to his militia members during the attack.
24. During the evening Sebastiao Gusmao died of the injuries sustained during the attack on him. His body was placed into an empty petrol drum. In the late evening the body was loaded into a Kijang truck parked outside.
25. Later the same evening, militia members led Thomas Ximenes out of the TNI/militia compound towards the Kijang car in which Sebastiao Gusmao's body had been placed. After he saw the corpse of Sebastiao Gusmao, Thomas Ximenes attempted to run from the militia. Mateus de Carvalho shot at Thomas Ximenes a number of times killing him.



26. The militia members, under the directions of Mateus de Carvalho, then placed the body of Thomas Ximenes into the car with the body of Sebastiao Gusmao. Militia members including Mateus de Carvalho, **Alarico Mesquita**, **Laurindo da Costa** and **Domingos Amati** then took the bodies of Sebastiao Gusmao and Thomas Ximenes to the Ramean cemetery in Hera where they were buried.
27. Following the burial of the two bodies, **Florindo Moreira** called the militia members together at the home of Mateus de Carvalho and advised them not to disclose anything about the killings.

CHARGES

28. The Prosecutor charges the accused Alarico Mesquita, Florindo Moreira, Domingos Amati and Francisco Matos, by their acts or omissions in relation to the events with a crime against humanity of persecution in the form of abduction, and considers them responsible as individuals for the persecution by abduction of Sebastiao Gusmao and Thomas Ximenes on 8 May 1999 in Akanunu, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1(h) and 5.2(f) of UNTAET Regulation 2000/15.
29. The Prosecutor charges the accused Alarico Mesquita, Florindo Moreira, Mateus Guterres, Domingos Amati, Francisco Matos, Angelino da Costa, Laurindo da Costa and Lorenzo Tavares by their acts or omissions in relation to the events with a crime against humanity of torture, and considers them responsible as individuals for the torture of Sebastiao Gusmao and Thomas Ximenes on 8 May 1999 in Akanunu, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1(f) and 5.2(d) of UNTAET Regulation 2000/15.



E. FINDINGS OF THE COURT

I. The attack against the civilian population and related requirements

30. 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.
31. 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.
32. 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.
33. The widespread or systematic attack was directed against civilians and 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.

34. As part of the widespread or systematic attack against the civilian population the militia destroyed property, including houses and livestock belonging to the civilian population.
35. 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.
36. 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 failed to meet these obligations.
37. The Indonesian Military in East Timor consisted of both regular territorial forces and Special Combat Forces ie the Strategic Reserve Command (KOSTRAD) (*Kommando Strategis Angkatan Darat*) and Special Forces Command (*Kommando Pasukan Khusus*) all of which had units, staff officers and soldiers stationed in East Timor.
38. From February to October 1999, the Indonesian Police Force (POLRI), the state agency for upholding the law and public order were also present in East Timor. It also included a Mobile Police Brigade (BRIMOB), whose Units and members were stationed in East Timor, including in Dili District.
39. Hera is in Dili District, which is one of the thirteen district of East Timor.



40. Between April and September 1999, the Aitarak militia and the TNI in Hera worked closely together and engaged in a campaign of violence including intimidation, assault, destruction and murder.
41. The militia in Hera operated from a number of militia posts including from the home of Mateus de Carvalho in Akanunu. They also manned a number of roadblocks at which they stopped persons traveling between Dili and Baucau and arrested, assaulted and killed persons they suspected of being pro-independence supporters.
42. The Aitarak militia in Dili were divided into four companies and Mateus de Carvalho was the Commander of Aitarak Company D which covered Hera.

II. Factual finding on the charges against the accused

43. In light of all the evidence, especially the testimonies of the witnesses (Americo dos Santos, Cejalina Viana, Gregorio de Jesus Pereira, Anastacio Valeira, Caludino Magno, Rui Xena de Jesus, Rotario Marçal, Josefina Ricardo Fatima, Nicolao de Vasconcelos, Antonio Sarmiento, Diosdaldo Gallardo, Joanico Menezes, Aloisia Maia, Nurul Islam, Afonso dos Santos, Natalia Pereira Vidigal, expert witness Mikro Fernandes) the testimony of the forensic experts, the crime scene sketch, the autopsy reports and anthropological reports of the presumed bodies of Thomas Ximenes and Sebastiao Gusmao, the school certificate of Sebastiao Gusmao, and the reports on the situation of Human rights in East Timor, the note by the Secretary General, the Report of the Indonesian Commission on Human Rights violations in East Timor, January 2000, the Court is convinced that the following facts occurred:

Count 1 Persecution (Abduction)

44. Several witnesses called by the prosecutor and not disputed by defense counsels declared that from April 1999, Aitarak militia members set up a roadblock at the village of Akanunu, Hera, close to the Zipur compound with the intention to search cars and to find pro-independence supporters. Witnesses Americo dos Santos,



Cejaltina Viana, Rui Xena de Jesus, Claudino Magno, Antonio Sarmiento, Josefina Ricardo Fatima, Ratario Marcal and Afonso dos Santos confirmed the existence of such a roadblock. Other militia posts were set in the area [*witnesses Americo dos Santos and Afonso dos Santos*]. The issue was not disputed by the defence.

45. The accused **Florindo Moreira** was identified as the person who set the roadblock where the victims cars were stopped [*witnesses Americo dos Santos, Anastacio Valeria, Cejaltina Viana*]. At a certain stage during the setting or control of the roadblock, **Florindo Moreira** was together with a member of TNI [*witnesses Cejaltina Viana, Gregorio de Jesus*]. Some witness claims that **Florindo Moreira** and other militia members had their faces covered [*witness Cejaltina Viana*], other witnesses don't mention this fact.
46. On 8 May 1999, around 4 in the afternoon a kijang car coming from the direction of Hera was stopped at the roadblock by militia members. Victim Thomas Ximenes was in the vehicle together with another man [*witnesses Americo dos Santos, Cejaltina Viana, Anastacio Valeria, Claudino Magno, Rui Xena de Jesus and Antonio Sarmiento*].
47. Militia members **Alarico Mesquita, Florindo Moreira, Domingos Amati and Francisco Matos** were at the roadblock among other people [*witnesses Americo dos Santos, Rui Xena de Jesus*]. Florindo Moreira stopped the vehicle [*witnesses Americo dos Santos*] and Alarico Mesquita [*witnesses Americo dos Santos, Claudino Magno, Antonio Sarmiento*], Domingos Amati [*witnesses Americo dos Santos and Rui Xena*] and Lino Watulari [*witness Rui Xena*] pulled Thomas Ximenes out of the kijang. Other Aitarak militia members surrounded the car. They dragged him into the Zipur compound.
48. Soon after a second vehicle, a yellow truck arrived at the roadblock containing Sebastiao Gusmao. Alarico Mesquita [*witnesses Americo dos Santos, Cejaltina Viana*], Florindo Moreira [*witness Americo dos Santos*], Domingos Amati [*witness Americo dos Santos*], Lino Watulari [*witness Cejaltina Viana*] and a TNI soldier [*witness Cejaltina Viana*] pulled Sebastiao out of the car. Sebastiao was dragged, tied up and taken to the Zipur compound. Witnesses Americo dos Santos and Claudino Magno said that the victims were



tied up. Expert witnesses Mirko Fernandez and Nurul Islam declared that the presumed body of Sebastiao Gusmao was found with ligatures. The victims were tied up by Laurindo da Costa and Alarico Mesquita [*Claudino Magno*] with the possible participation of other people.

49. The Court considers that the militia members that participated in setting the roadblock, stopping the vehicles and forcing the victims to leave the vehicles and proceed to the Zipur compound have no legal right to do so. As members of a unofficial organization without law-enforcement powers and lacking a lawful warrant, the detention they performed was illegal and possibly criminal. Up to what point it amounts to a crime against humanity and in particular to a crime against humanity of persecution in the form of abduction will be discussed in detail in the legal findings.

Count 2 Torture

50. While being dragged to the Zipur compound the victim Thomas Ximenes was beaten, amongst others, by **Alarico Mesquita** [*witnesses Americo dos Santos, Claudino Magno, Antonio Sarmento*], **Florindo Moreira** [*witnesses Americo dos Santos, Rui Xena, Antonio Sarmento*], **Domingos Amati** [*witnesses Rui Xena, Antonio Sarmento*] **Mateus Guterres** [*witness Antonio Sarmento*], **Lorenço Tavares** [*witness Antonio Sarmento*], and **Francisco Matos** [*witnesses Americo dos Santos, Antonio Sarmento*]. Domingos Amati, Mateus Guterres and Lorenço Tavares were armed [*witness Americo dos Santos*].
51. Witness Claudino Magno told the Court that **Alarico, Laurindo and Angelino** tied Thomas. **Alarico Mesquita** hit Thomas with an arrow. He also testified that, **Francisco Matos** beat Thomas “*until blood came out of his mouth and nose*”. The forensic experts who gave their testimony in court indicated the kinds of injuries they found on the remains of Thomas Ximenes. These injuries include blunt force trauma corroborates the testimonies of the witnesses that the victim was beaten. Witness Rui Xena testified before the court that **Florindo Moreira and Domingos Amati** beat Thomas.



52. Ratario Marcal testified that he was told about the killing of the two students by **Mateus Guterres**. And he also stated that **Mateus** told him that he was in front and participated in the beatings.
53. Although there were some inconsistencies among the witness about the exact moment of the beatings (in the way to the compound or inside the compound) the Court believes that these inconsistencies can be explained by the number of people congregated around the victim and the different situation and distances from which the eyewitnesses saw the events. Some beatings were probably seen only by certain witnesses.
54. Therefore the Court considers that Thomas Ximenes was beaten after being dragged from the car, both in the way to the compound and inside it.
55. After Sebastiao Gusmao truck was stopped, and in the way to the compound **Alarico Mesquita** [*witnesses Americo Dos Santos, Cejalina Viana, Rui Xena*], **Florindo Moreira** [*witnesses Americo dos Santos, Rui Xena*] **Domingos Amati** [*witnesses Americo dos Santos, Rui Xena*], **Francisco Matos** and Lino Watulari [*witnesses Cejalina Viana, Rui Xena*] beat Sebastiao.
56. According to the witnesses [*Rui Xena and Cejalina Viana*] **Alarico Mesquita**, Lino Watulari, **Florindo Moreira**, **Domingos Amati** and Carlos participated in beating Sebastião.
57. Witness Antonio Sarmiento testified that all of the accused beat Thomas Ximenes. And Sebastião was beaten while being dragged into the Zipur compound. Witness Americo Dos Santos in his testimony stated that **Alarico Mesquita**, **Florindo Moreira**, **Domingos Amati**, and **Francisco Matos** beat Sebastião.
58. After studying all the evidence before the court, the court believes that the two victims were being very severely. According to the witnesses, Sebastião became unconscious as a result. The militia inflicted serious physical pain or injury on both Thomas Ximenes and Sebastião Gusmão.



59. The presence of any of the militia members that actively participated in the beating implies their personal responsibility not only for the single blows that each of them executed against the victims but also for their contribution to the collective effort of the group. While a single perpetrator would have an understandable difficulty to beat two young victims in good health the same perpetrator when surrounded and supported by a group of fellow attackers can easily approach and injure a solitary victim. Therefore, a single bare-hands punch that in a street fight wouldn't be considered as torture is transformed, by means of the participation of the group, in a contribution to a severe beating that causes enough physical pain and injury as to fall within the concept of torture. Further considerations on the legal concept of torture follow in the legal findings below.
60. Finally the Court would like to comment on an issue of mistaken identity raised by the defense counsel of Laurindo da Costa. It was claimed that the resemblance of Laurindo with his brother could have provoked mistakes. However, the Court believes that the witnesses didn't seem to have doubts about the person they saw. They knew the accused from before and they identified him in Court. Therefore the Court dismisses the issue of mistaken identity.

Individual criminal responsibility

61. The accused are charged as individuals criminally responsible for their participation in the events set in the indictment. Section 14.3 of Reg. 2000/15 sets out the basis for an individual's criminal responsibility.

IV. Legal findings of the case

62. 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 are the crimes of persecution and torture.



63. The accused Alarico Mesquita, Florindo Moreira, Domingos Amati and Fransisco Matos are charged for the persecution by abduction of Sebastiao Gusmao and Thomas Ximenes. The accused Alarico Mesquita, Florindo Moreira, Mateus Guterres, Domingos Amati, Fransisco Matos, Angelino da Costa, Laurindo da Costa, and Lorenço Tavares and Angelino da Costa are charged for the torture of Sebastiao Gusmao and Thomas Ximenes.
64. Persecution and Torture are Crimes against Humanity under customary International Criminal Law as recognized by Nuremberg Charter, Tokyo Charter, ICTY Statute, ICTR Statute, ICC Statute, and pursuant to Sec. 5. UNTAET Reg. 2000/15.
65. The fact that U.R. 2000/15 did not yet exist when the criminal acts were committed, is irrelevant, because Crimes against Humanity are not based on written, but on customary law, and has been accepted as such by the International Community for more than half a century. In International Criminal Law it is unnecessary to have provisions similar to the ones contained in national penal codes specifying offences; what is necessary are statutes defining the jurisdiction of the International Tribunals.
66. Section 3.1 (b) U.R. 2000/15 says that “*where appropriate, applicable treaties and recognized principles of international law, including the established principles of the international law of armed conflict*” shall apply.
67. Therefore the conviction of the accused of a crime under customary International Law cannot violate the principle *nullum crimen sine lege*: unwritten customary law is law (*lege*) just as written law. This is recognized by Sec. 9.1 of RDTL Constitution, according to which customary principles of international law are part of the legal system of East Timor. Since this Section is part of the “Fundamental Principles” of the constitution, it obviously takes precedence over the personal right in Sec. 31.5 Timorese Constitution, that criminal law shall not be enforced retroactively.
68. Section 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 or systematic attack and directed against any



civilian population, with knowledge of the attack and that are within the jurisdictional limits of the Special Panels. While crimes against humanity can appear in different forms than those outlined in Section 5 of the UNTAET Regulation, the Special Panels must only deal with cases within the limits set by UR 2000/15. Among the acts described in UR 2000/15 are the crimes of persecution and torture.

Crime against Humanity in the form of Persecution

69. In Count 1 the accused Alarico Mesquita, Florindo Moreira, Domingos Amati and Francisco Matos are charged with a Crime Against Humanity in the form of Persecution (Abduction). The crime of persecution, though generally accepted in International Criminal Law as a form of Crime Against Humanity, is surprisingly ill defined by doctrine and jurisprudence, and the understanding of its elements differ from one scholar or tribunal to another. According to Bassiouni¹, through history the term persecution has come to be understood to refer to discriminatory practices resulting in physical or mental harm, economic harm or all of the above.
70. The discriminatory intention against a particular group is its more characteristic element but discrepancies appear when studying what conducts, when discriminatory, constitute a crime of persecution. A controversial issue is whether the discriminatory intent should appear together with acts that are themselves criminal in nature or, on the contrary, is the discrimination element what characterizes acts otherwise non-inhumane as inhumane acts.
71. World War II tribunals took the second approach: Nazi criminals were convicted for persecution regarding facts different from inhumane acts. They were convicted for their speeches instigating hate (Streicher) and for their bias in administering justice (*Justice case*), thus, negating certain rights with a discriminatory intent.
72. The doctrine didn't agree completely with this interpretation. Bassiouni concludes that persecution is not an international crime *per se* unless it is the basis for the commission of other crimes.

¹ Cherif Bassiouni, Crimes against Humanity in International Criminal Law, Kluwer Law International.



Therefore certain national crimes become international criminal violations as they are based on persecutory policies of an identifiable group of persons. A reasonable nexus between the discriminatory policy and existing international crimes is needed.

73. The ICTY and the ICTR Statutes define persecution in a similar way to the World War II tribunals, not requiring a link to another crime, but in practice their respective jurisprudence differ. The ICTY has typically applied the concept of persecution to acts committed in the context of a military or quasi-military campaign against civilian population. A campaign composed of acts of murders, destruction of villages, ransom, transfer of population, torture, etc. all against an identified group, is on the whole defined as a crime of persecution². People charged and condemned of persecution are normally in a position of responsibility over all the series of acts. It is the cumulation of different offences that constitutes the persecution. Eventually they are also charged for each of the individual episodes (murder, torture, etc).
74. The ICTR has used the concept of persecution for conducts regarding hate-speech in particular actions by media owners, journalists and high rank politicians that with their speeches lighted the violence. The same conducts are charged as persecution and as incitement to genocide³.
75. There is also a statutory difference in the definition of persecution in both tribunals: While the ICTY Statute considers the element of discrimination (*on political, racial and religious grounds*) only in the crime of persecution, the ICTR requires the discriminatory element (*on national, political, ethnic, racial or religious grounds*) for any of the crimes against humanity (including persecution).
76. In *Kupreskic and Others*, the ICTY defines the crime of persecution as “*the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other crimes against humanity*”. This definition alone does not make it apparent that the

² See, inter alia, ICTY Kupresic (14-01-2000), ICTY Blaskic (03-03-2000) and ICTY Kvočka (02-11-01).

³ See ICTR Nabimana et al (03-12-03)



violation of the fundamental right has to be a crime itself, but that possibility is not precluded either. In charging the perpetrator the Prosecution must prove the existence of the following elements: a) those elements required for all crimes against humanity (widespread and systematic attack...), b) a gross or blatant denial of a fundamental right reaching the same level of gravity as the other crimes against humanity, and c) discriminatory grounds. In terms of *actus reus* the ICTY held in *Blaskic* that the crime of persecution encompasses acts of varying severity, from killing to a limitation on the type of professions open to the targeted group, as well as acts of a physical, economic or judicial nature in violation of the right of an individual to equal enjoyment of basic rights.

77. In the ICTY interpretation, acts constituting persecution may overlap with one another, as for example in the case of murder and extermination, and each of these crimes may in itself constitute persecution. For example in *Blaskic* the ICTY found the accused guilty of the crime of persecution that comprised attacks upon cities, murder and causing serious bodily injury, destruction and plunder of property, inhumane treatment and forcible transfer of civilians. However the prosecution had to prove that the acts were committed on discriminatory grounds. This overlapping is not possible in the ICTR where as the discriminatory element is common to every CAH then it is necessary to find a different definitory element for the crime of persecution.
78. However, it is important to remark that the jurisprudence of the ICTs is not applicable to the Special Panels because the crime of persecution as regulated in UNTAET Regulation 2000/15 has a particularity (shared with the ICC Statute): it requires the connection of the persecutory intent with another crime against humanity or with another crime within the jurisdiction of the court.
79. Section 5.1 reads:

For the purpose of the present regulation, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack and directed against any civilian population with knowledge of the attack:



(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as identified in Section 5.3 of the present regulation, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the panels.

80. This necessary link to another crime, that didn't appear in the ICTs (but appeared in the Tokyo Charter) was directly copied from the definition of persecution contained in the ICC Statute, which included this extra requirement because several delegations at the Rome Conference considered that the notion of persecution was too vague and potentially elastic. The existence of another crime as a *conditio sine qua non* ensures that only serious violations of rights will appear before the Court.
81. In the present case the Prosecutor defines persecution in connection with the crime of abduction. However, abduction is neither a crime against humanity nor a crime within the jurisdiction of the Panels.
82. Section 5 of Regulation 2000/15 contains the list of Crimes Against Humanity for the purpose of the Special Panels. The list is form by the following acts, when committed under the "widespread or systematic attack" umbrella requirements:
 - Murder
 - Extermination
 - Enslavement
 - Deportation or forcible transfer of population
 - Imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law.
 - Torture
 - Rape and other sexual offences
 - Persecution
 - Enforced disappearance of persons
 - Apartheid
 - Other inhumane acts of a similar character intentionally causing great suffering.



83. Obviously abduction is not in the list of crimes mentioned in paragraph 5.1 but, could it be a crime within the jurisdiction of the Special Panels? The answer is no. Abduction is not mentioned, either as a crime or as a conduct, within the definitions of imprisonment or persecution, where the act wouldn't need any further qualification.
84. The only mention to the word "abduction" appears in the definition of Enforced disappearance of persons contained in Section 5.2 (h). This definition reads:

"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

85. From the text appears evident that "abduction" is a factual element of the crime, not the crime itself. In the formulation of the crime of enforced disappearance it is the refusal to give the information and the mental element that qualify the action. Indeed, arrest and detention, the other conducts that together with abduction constitute the factual element of the enforced disappearance, are not even illegal acts (for example, from a legal arrest can then derive a crime against humanity of enforced disappearance if the authorities refuse to communicate the arrest and the whereabouts of the prisoner). To claim that "abduction" is a crime against humanity because it appears in the definition of enforced disappearance would be similar to claim that "arrest" is a crime against humanity (when it is not even a crime).
86. From the above elements it is evident that the purpose of the definition of enforced disappearance is not to criminalize at an international level the conduct of abduction but to define a very particular crime, enforced disappearance, where the affected value is not only the freedom of the victim but more specifically the lack of



external protection (legal) and the lack of external knowledge about the situation of the victim.

87. For the same reason, the Court does not conclude that every abduction can necessarily be considered as a form of severe deprivation of liberty within the terms of Section 5.1 (e). The severity of the deprivation is a matter that has to be evaluated in each case in order to assess if the given conduct falls within the concept of severe deprivation of liberty.
88. In the present case it is obvious that a deprivation of liberty took place. Was it severe? The Court considers so. It is the belief of the Court that the severity of the deprivation of liberty should be measured, not only by the length of time of the said deprivation (in this case relatively short) but also by the conditions in which this deprivation of liberty takes place. In the present case the severity would be qualified by the illegality of the roadblock and the extreme violence with which the detention was executed.
89. To summarize the conclusion: the Court believes that, as defined by UNTAET Regulations, the Crime against Humanity of Persecution requires to be committed in connection with another crime within the jurisdiction of the Panels. The jurisdiction of the Special Panels doesn't include the crime of abduction *per se*. The obvious option of considering the abduction as an offence included within the concept of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law cannot apply automatically. The Court has to decide in a case-by-case basis if the deprivation of liberty implicit to the concept of abduction reaches a level of sufficient severity as to qualify within the limits of Section 5.1 (e).
90. The Court considers that in the present case there is a severe deprivation of liberty that in connection with an element of discrimination constitutes a crime of persecution.

Crime against humanity in the form of torture



91. Around the world 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 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.
92. Two forms of torture can be differentiated. The first refers to the infliction of extreme pain and suffering (either physical or psychological) by a victimizer who dominates and controls. The second version concerns the more restrictive human-rights definition, which includes official state sanction or participation.
93. The 1984 UN Convention against Torture, main international instrument aiming to eradicate such a crime, narrowly 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*”. The pain or suffering is administered at the instigation, consent or acquiescence of a public official or another person acting in an official capacity.
94. 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 as a modality of “crimes against humanity”. The *Celebici* Trial Judgment stated that the prohibition on torture is a norm of customary international law and *jus cogens*.
95. 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.

96. The Trial Chamber in *Kunarak* 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.

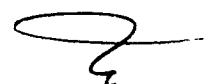
97. Art. 7 of the ICC provides a definition of torture that reads:

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.

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

99. 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 requires that all states criminalize the offense and both the Geneva and the Torture Conventions couple this requirement with the obligation to bring perpetrators to justice through prosecution or extradition. These have been recognized by the ICTY as sufficient to give rise to individual criminal responsibility under international law.⁴

100. 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 generally consistent with ICTY Appeals Chamber jurisprudence, which has held that “*the public official requirement is not a requirement under customary international law in relation to the criminal responsibility of an individual for torture outside of the framework of the Torture Convention.*”⁵

101. 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.

102. 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

⁴ Prosecutor v. Dusko Tadic a/k/a “Dule”, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 128 (Appeals Chamber, October 2, 1995) (noting that the “Nuremberg Tribunal considered a number of factors relevant to its conclusion that the authors of particular prohibitions incur individual responsibility: the clear and unequivocal recognition of the rules of warfare in international law and State practice indicating an intention to criminalize the prohibition, including statements by government officials and international organizations, as well as punishment of violations by national courts and military tribunals . . . Where these conditions are met, individuals must be held criminally responsible”).

⁵ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT- 96-23/1, Judgment, ¶ 148 (Appeals Chamber, June 12, 2002). However, it should be noted that the Appeals Chamber made this statement in the context of its analysis of torture as a war crime or a crime against humanity, rather than as an independent offense. See also Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT- 96-23/1, Judgment, ¶ 495 (Trial Chamber II, February 22, 2001). Thus, it remains unclear whether the public official requirement remains inapplicable to the criminal responsibility of an individual for torture when not prosecuted in connection with war crimes or crimes against humanity.



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.”⁶ At the Rome Conference, many believed it was necessary to expand the definition of torture because that found in the Torture Convention excluded acts committed by non-state actors and was, therefore, considered too restrictive.⁷ As mentioned above, the expansion is consistent with ICTY jurisprudence, which has recognized that the public official requirement is not necessary to establishing the individual criminal responsibility of an individual for torture outside the framework of the Torture Convention.⁸

103. The Special Panels, following the interpretation of the ICTs believe that no specific intention is needed for the crime of torture as a crime against humanity. Under Section 5, the only elements of the crime, beyond the umbrella requirements for every crime against humanity would be:

i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.

ii) The act is upon a person under the control of the accused.

iii) The act or omission must be intentional.

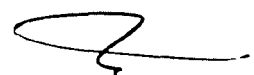
104. Therefore it is enough to demonstrate that the accused have willingly participated in the severe beating of the victims, in the case a beating of such severity as to provoke them to bleed, to faint and probably die, being restrain by ligatures for part of the time, therefore causing an intentional physical suffering for their conducts qualify as a torture under the meaning of the term in the context of crimes against humanity. Post mortem evidence of blunt force trauma to the body confirmed the severity of the beating.

105. The Court considers proven beyond reasonable doubt that all the accused were present and participated in the beating of the two

⁶ See Torture Convention, art. 1(1).

⁷ Suzannah Linton, *Rising from the Ashes: the Creation of a Viable Criminal Justice System in East Timor*, 25 MELB. U. L. REV. 122, 167 (2001) (citing Timothy McCormack and Sue Robertson, *Jurisdictional Aspects of the Rome Statute for the New International Criminal Court*, 23 MELBOURNE UNIVERSITY LAW REVIEW 635, 655-6 (1999)).

⁸ *Kunarac* Appeal Judgment, ¶ 148.



victims and can be held responsible for the crime against humanity of torture.

106. However, when sentencing, the Court will take into account the different degree of participation that, according to the witness, each of the accused had in the beatings.

VERDICT

For the reasons to be stated in its final written decision, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt and therefore finds Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurenço Tavares, Mateus Guterres, Laurindo da Costa, Angelino da Costa guilty of torture, as a crime against humanity, according to Sect. 5.1 (f) U.R. 2000/15 and, finds Alarico Mesquita, Florindo Moreira, Domingos Amati and Fransisco Matos guilty of the crime of persecution in the form of severe deprivation of liberty as a crime against humanity, according to Sect. 5.1 (h) in connection with Section 5.1 (e) of U.R. 2000/15.

SENTENCING

The Special Panel has taken into account the following:

Mitigating circumstances:

- All the accused persons (Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurenço Tavares, Mateus Guterres, Laurindo da Costa, Angelino da Costa) regularly received orders from their commander Mateus de Carvalho.
- All the accused persons (Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurenço Tavares, Mateus Guterres, Laurindo da Costa, Angelino da Costa) claimed to be members of the clandestine pro-independence movement.
- The Special Panel also bears in mind the family background of all the accused and the fact that they are married and have children. However



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

- The Special Panel has also taken into consideration the fact that none of the accused has a previous criminal conviction.

Aggravating circumstances:

- The accused persons (Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurenço Tavares, Mateus Guterres, Laurindo da Costa, Angelino da Costa) committed the acts for which they are sentenced against two victims who were defenceless. The commission of these acts occurred while the victims were surrounded by a number of militia members, thus preventing any possible defense on the part of the victims who were therefore unable to respond to the harm that was caused to them.
- Several of the defendants were armed and the victims were restrained by ligatures further limiting their ability to defend themselves.
- The criminal actions against the victims were completely unprovoked by any actions by the defendants themselves.
- In the case of the accused Florindo Moreira there was evidence that he held a leadership position in the militia.

Sentencing policy

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).

The penalties imposed on all the 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 peccatur*).

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.

The Panel considered all the aggravating and mitigating circumstances upheld both by the practices of East Timorese courts in applying the Penal Code of Indonesia (KUHP) and the standards derived from the ICTY and the International Tribunal for Rwanda, apart from those provided for under UR-2000/15 as well as under general principles of law.

Conjunction of punishable acts

It has been proved also that the accused **Alarico Mesquita, Florindo Moreira, Domingos Amati** and **Francisco Matos** committed Persecution on political grounds in the form of a severe deprivation of liberty against pro-independence supporters, being such persecution Crime Against Humanity. The same four accused committed as well a Crime Against Humanity in the form of Torture.

The Panel deems that the four accused performed several acts (stop the vehicles, removing the victims from the vehicles, forcing the victims to proceed to the compound, securing them with ligatures, beating them with hands, legs and tools, etc) that give rise to two different criminal types with different *actus rea* and *mens rea*: persecution in the form of deprivation of liberty and torture. The two crimes require a different intent (*mens rea*) and different means or actions (*actus rea*), and in this case were not committed at the same time (article 65.1 Indonesian Penal Code).

It has been proved also that the accused **Laurindo da Costa, Lorenzo Tavares, Mateus Guterres** and **Angelino da Costa** committed a crime of Torture as Crimes Against Humanity. Therefore, the Panel deems that the accused performed only one crime.

Taking into account the aggravating and mitigating circumstances, the Court deems appropriate to sentence **Alarico Mesquita** to 5 years of imprisonment for the Persecution (severe deprivation of liberty) of Thomas Ximenes and



Sebastião Gusmão; and to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to **Florindo Moreira**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Persecution (severe deprivation of liberty) of Thomas Ximenes and Sebastião Gusmão; and to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to **Domingos Amati**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Persecution (severe deprivation of liberty) of Thomas Ximenes and Sebastião Gusmão; and to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to **Francisco Matos**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Persecution (severe deprivation of liberty) of Thomas Ximenes and Sebastião Gusmão; and to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to **Laurindo da Costa**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to the **Laurenço Tavares**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to the **Mateus Guterres**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to sentence him to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

With respect to the **Angelino da Costa**, taking into account the aggravating and mitigating circumstances of the case, the Court deems appropriate to



sentence him to 5 years of imprisonment for the Torture of Thomas Ximenes and Sebastião Gusmão.

Article 65 Indonesian Criminal Code states that:

65.2 The maximum of this punishment shall be the collective total of the maximum punishments imposed of the acts, but not exceeding one third beyond the most severe maximum punishment.

In the present case, it has been proved that the several acts committed by the accused persons **Alarico Mesquita**, **Florindo Moreira**, **Domingos Amati** and **Francisco Matos** constituted different crimes committed in Hera during the same period of time. The maximum total punishment for the crimes committed is the collective total of the maximum punishment 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 is for **Alarico Mesquita**, 5 years; for **Florindo Moreira**, 5 years; for **Domingos Amati**, 5 years; for **Francisco Matos**, 5 years.

Therefore, the Court deems relevant to sentence **Alarico Mesquita** with a single punishment of **6 years, 8 months imprisonment** for all the crimes on which he is convicted, being the most severe punishment of 5 years plus one third of this punishment.

For **Florindo Moreira** **6 years, 8 months imprisonment** for all the crimes on which he is convicted, being the most severe punishment of 5 years plus one third of this punishment.

For **Domingos Amati** **6 years imprisonment** for all the crimes on which he is convicted, being the most severe punishment of 5 years plus one year, being less than one-third of this punishment.

For **Francisco Matos** **6 years imprisonment** for all the crimes on which he is convicted, being the most severe punishment of 5 years plus one year, being less than one-third of this punishment.



humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(h) in connection with sections 5.1 (e) and 5.2(f) and pursuant to section 5.1 (f) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused to **6 (six) years** imprisonment.

With respect to the accused Francisco Matos

The Court sentence the him of:

The Persecution (deprivation of liberty) and Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(h) in connection with sections 5.1(e) and 5.2(f) and pursuant to section 5.1 (f) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused to **6 (six) years** imprisonment.

With respect to the accused Laurindo da Costa;

The Court sentence the him of:

The Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as a crime against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(f) of UNTAET Regulation 2000/15. In the punishment for this crime sentence the Accused for **5 (five) years** imprisonment.

With respect to the accused Laurenço Tavares;

The Court sentence the him of:

The Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(f) of UNTAET Regulation 2000/15. In the



DISPOSITION

For the aforementioned reasons, having found all accused persons guilty and considering all the evidence including the arguments of the parties, including the aggravating and mitigating circumstances presented and the evidence presented at the sentencing hearing, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the accused Alarico Mesquita;

The Court sentence the him for:

The Persecution (deprivation of liberty) and Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(h) in connection with 5.1 (e) and 5.2 (f) and pursuant to section 5.1 (f) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused to **6 (six) years and 8 (eight) months** imprisonment.

With respect to the accused Florindo Moreira;

The Court sentence the him for:

The Persecution (deprivation of liberty) and Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(h) in connection with 5.1 (e) and section 5.2(f) and pursuant to section 5.1 (f) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused to **6 (six) years and 8 (eight) months** imprisonment.

With respect to the accused Domingos Amati;

The Court sentence the him for:

The Persecution (deprivation of liberty) and Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against



punishment for those crimes sentence the Accused for 5 (five) years imprisonment.

With respect to the accused Mateus Guterres;

The Court sentence the him of:

The Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(f) and 5.2(d) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused for 5 (five) years imprisonment.

With respect to the accused Angelino da Costa;

The Court sentence the him of:

The Torture of Thomas Ximenes and Sebastião Gusmão on the 8 May 1999 in Akanunu, as crimes against humanity committed as part of a widespread or systematic attack against civilian population with knowledge of the attack, pursuant to section 5.1(f) of UNTAET Regulation 2000/15. In the punishment for those crimes sentence the Accused for 5 (five) years imprisonment.

The Court orders all the defendant to pay the costs of the criminal procedure in the amount of \$10 per defendant.



Credit for time served (if any)

According to Section 10.3 U.R. 15/2000, section 42.5 UR-30/2000 and Article 33 of Indonesian Penal Code; the Special Panel shall deduct the time spent in detention by the defendants, if any, due to an order of an East Timorese Court. There being no evidence in the Court file of such detention, the Court permits the defendants to file an appropriate motion at a later date to adjust their respective sentences if any such adjustment is required.

Enforcement of sentence

Pursuant to Sections 42.1 and 42.5 of UR-2000/30, all convicted persons (Alarico Mesquita, Florindo Moreira, Domingos Amati, Fransisco Matos, Laurindo da Costa, Lorenço Tavares, Mateus Guterres and Angelino da Costa) will be immediately imprisoned and shall spend the duration of the penalty in East Timor.

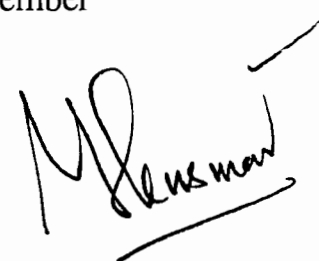
The sentence shall be executed immediately, providing this disposition as a warrant of arrest.

This decision is provided in one copy to the Defendants and their legal representative, Public Prosecutor and to the prison manager.

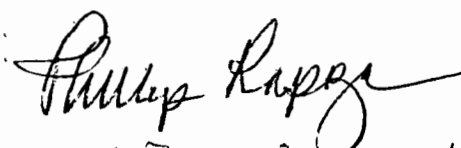
The Parties have the right to file a Notice of Appeal within the coming 10 days and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This Disposition of the Decision was rendered and delivered on the 25 November 2004, and the written decision is delivered today 6 December 2004 in the District Court of Dili (Building of Court of Appeal) by:

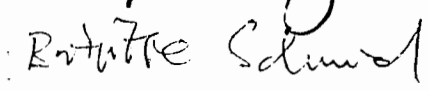
Judge Maria Natércia Gusmão Pereira, Presiding and Rapporteur



Judge Phillip Rapoza



Judge Brigitte Schmid



(Done in English)