



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

Case No. 22/2003
Date: 25.4.2005
Original: English

Before:
Judge Antonio Helder Viera do Carmo
Judge Oscar Gomes
Judge Francesco Florit, presiding and rapporteur

Registrar: Joao Naro

Judgement of:

The Prosecutor
V.
Januario Da Costa and Mateus Punef

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Charles Nsabimana
Mr. B.P. Bhandari

Counsel for the accused

Ms. Wanda Brito for Mateus Punef
Ms. Beatriz Sanchez for Januario Da Costa

INTRODUCTION

The trial of Mateus Punef - d.o.b. 1.1.1970, place of birth Haemnanu, Passabe sub district, Oecussi district, currently detained in Becora prison - and of Januario Da Costa - around 30 years of age, place of birth Passabe, Oecussi district, currently detained in Becora prison-- before the Special Panel for the trial of Serious Crimes in the District Court of Dili (hereinafter: the "Special Panel") started on the 24 January 2005 and ended today with the rendering of the decision.

After considering all the evidence presented during the trial and the written and oral statements from the Defense and from the Office of the Public Prosecutor (hereinafter: the "Public Prosecutor"), the Special Panel renders its judgement.

PROCEDURAL BACKGROUND

On 27th August 2003, the Public Prosecutor filed before the District Court of Dili a written indictment against Mateus Punef and Januario Da Costa, charging them with several counts of crimes against humanity.

Copies of the statements of several witnesses and copies of the statements of the accused themselves were attached to the indictment. Reports of forensic medical examination of victims, reports of anthropological examination of the remains of victims and ancillary documents were also attached. Reports of Indonesian and international bodies and institutions relating to the events of 1999 in the territory of East Timor were also attached.

The Court clerk provided notification of the receipt of the indictment to the accused and to the parties pursuant to Sect. 26.1 and 26.2 of UNTAET Reg. 2000/30 (as amended).

After the preliminary hearing, the trial started on the 24th January 2005.

At the opening of the trial, the Prosecutor requested the Court to permit the amendment of the indictment for the alleged purpose of making it easier to read, giving a better description of the facts in the charge, primarily in order to limit the responsibility of Januario Da Costa only as a direct perpetrator of (a part of) the facts and not, as in the original indictment, as a leader of the militia.

In the course of the trial several witnesses were heard and at the end of the trial closing statements were made.

After the closing statements, the hearing was postponed for the disposition (13.4.2005) and then to the present date for the final written decision.

Interpreters for English, Portuguese, Tetum and Baikeno assisted every act before the Court, where needed.

FACTS OF THE CASE

In the indictment, the Prosecution alleges that, in the context of the events that disrupted the country of Timor in 1999, the presence of organized militia in the District of Oecussi, and in Passabe specifically, involved a group called Sakunar, to which both accused belonged.

In the indictment, the defendants are accused of having taken part in the illegal activities of the Sakunar group including the persecution of CNRT members, of the repression of pro-independence supporters and their activities and of the intimidation of the population to induce it to choose for autonomy in the popular consultation of the end of August 1999; after the result of the poll were known, the Passabe section of the Sakunar militia group is said to have unleashed violent reprisals on the villages that were believed to have supported independence fighters during the course of the campaign or rejected the presence of pro-autonomy campaigners.

In this general context, the counts are focused on one main episode which happened after the popular consultation.

The episode refers to a cluster of events which unfolded immediately after the outcome of the popular consultation and are described, in the indictment, as reprisals against the communities which had supported independence.

In the Prosecutor's allegation it is stated that a large-scale operation run by the Sakunar militia took place in the area of Passabe between the 8th and the 10th September 1999.

The operation began with raids against the villages of Nibin, Tumin and Kiubiselo (in the course of which many people were allegedly killed and others injured: counts 1 and 2 respectively) and it continued with the deportation of large part of the population of the three villages to West Timor (count 3) on the 9th September; however, the most relevant part of the operation, in the accusatorial perspective, was still to come and it happened on the following day (the 10th September) when a group of the displaced people (the male youth of the villages) were allegedly concentrated in Imbate, tied up and lead to Teolassi (close to Passabe) where they were murdered or severely injured by the militia members (counts 4 and 5).

It must be noticed that the Prosecutor is of the opinion that while Januario Da Costa participated in all the events described in counts 1 to 5 of the indictment, Mateus Punef is alleged to have participated only to the events listed in counts 3 to 5.

The last count (6) is one of persecution, a charge levied against both defendants. No new fact are described as the basis of the count but all the events listed in counts 1 to 5 are re-read and re-qualified, cumulatively, as severe infringements of fundamental rights in prejudice and discrimination of supporters of independence of East Timor.

All the facts listed in the indictment and summarized in the counts are said to be part of a wide scenario of widespread and/or systematic attack against the civilian population. This element is the basis for the identification of the accused' acts as crimes against humanity and, as per the Prosecutor's presentation, can be recognized, both in the inherent nature of the illicit conduct (targeting CNRT members and indistinct elements of the population of villages supporting pro-independence) and in the linkages, structure and functioning of the Sakunar and the Indonesian military and other Indonesian institutions.

The two accused are charged as follows for crimes against humanity:

count 1) Murder: by his acts or omissions Januario Da Costa is responsible for the murders of eighteen people in the course of the attack to the villages of Nibin, Tumin and Kiubiselo, Oecussi district, on 8th September 1999 (Section 5.1(a) and 14/16 of UNATET Regulation 2000/15);

count 2) Inhuman acts causing great suffering or serious injury: by his acts or omissions Januario Da Costa is responsible with others for intentionally causing great suffering or serious injury to body or mental or physical health of Laurencio Leo Mali in Tumin village, Nitibe sub district, Oecussi district, and on Mateus Sufa and Josefino Bose, Kiobiselo village, Nitibe sub district, Oecussi district on 8th September 1999 (Section 5.1(k) and 14/16 UNATET Regulation 2000/15);

count 3) Deportation or forcible transfer of population: by his acts or omissions Januario Da Costa is responsible with others for the deportation or forcible transfer of population from the villages of Nibin, Tumin and Kiobiselo, Nitibe sub district, Oecussi district, to Imbate in West Timor on 9th September 1999 (Section 5.1(d) and 14/15 of UNTAET Regulation 2000/15).

count 4) Extermination: by their acts or omissions Januario Da Costa and Mateus Punef are responsible with others for the extermination of forty-seven men from the villages of Tumin and Kiobiselo, Nitibe sub district, in Nifu Panef, Passabe sub district, Oecussi district, on 10th September 1999 (Section 5.1(b) and 14/16 of UNTAET Regulation 2000/15 and 14/16).

count 5) Inhuman acts causing great suffering or serious injury: by thier acts or omissions, Januario Da Costa and Mateus Punef are responsible with others for intentionally causing great suffering or serious injury to body or mental or physical health of Marcus Baquen, Josefino Ulan, Pedro Cono, Crispiano Bobo, Sebastiano Sunef (Ulan Sufa), Augustino Ase (Afoan Ase) and Mateus Kusi on 10th September 1999 at Nifu Panef, near Passabe village, Oecussi district (Section 5.1(k) and 14/16 of UNTAET Regulation 2000/15).

count 6) Persecution: by their acts and omissions Januario Da Costa and Mateus Punef are responsible with others for the persecution of members of CNRT and/or his supporters of independence of East Timor in Oecussi district (Section 5.1(h) and 14/16 of UNTAET Regulation 2000/15).

FACTUAL AND LEGAL FINDING

The Court thinks it appropriate to consider that the condition of the two accused in relation to the evidence, is markedly different.

The Court will deal with each of the two accused separately and will deal initially with crimes in counts 1 to 5 and later on the crime of persecution.

Mateus Punef made a confession in the course of the inquiry and substantially confirmed his words at the end of the trial when he freely addressed the Court pursuant to Section 30.7 UNTAET Regulation 2000/30 (Transitional Rules of Criminal Procedure – TRCP). In both occasions he admitted killing a prisoner in Teolassi if also he added in both occasions that he was forced to do that and that if he had refused, he would have been killed.

If this were not sufficient, eye-witnesses confirmed the murder of at least one man by the hand of Mateus Punef.

Let's see the various statements in detail.

In the course of one of the last hearings, before the final statements of the parties, the accused addressed the Court about his recruitment by the militia in Passabe, about the training and the assignation of duties and errands of various nature within the activity of the militia unit in the sub-district. He mentioned the events that happened in Teonlassi, the only episode to which he declared he participated. He admitted killing one (and only one) individual, a person whom he didn't know, using his machete to chop and slash the body of the prisoner in the neck and then in the back. He affirmed that had he refused to kill one of the prisoners, he would have been killed by the leaders of the militia. He showed repentance if also in generic terms and expressing words which appeared suited to the occasion.

By telling this story, he substantially repeated what said before the investigators on the 2nd June 2003. There's no need, nor purpose to use the pre-trial declaration of the accused, which couldn't add much to the reconstruction of the facts. The declaration has not been used in Court to contrast or to challenge the speech of the accused who didn't change his previous version in Court.

The account of the facts made by the accused had been preceded by the testimonies of some witnesses who had depicted an analogous picture of the facts happened in Teolassi and of the role played by Mateus Punef.

The first mention is for the testimony of Agostino Afu, who, after detailing at length the whole unfolding of the expedition from Inbate to Teolassi, concentrated on the description of the massacre and on the role of Mateus Punef in it. The witness identified the accused in Court and unhesitatingly confirmed the responsibility of the accused in chopping to death the prisoner whom the witness was holding together with another guard called PotoTimo. The Court finds the witness fully reliable.

The second relevant witness to speak on the role of the accused Mateus Punef was Jamairus Lafu, heard in Court on the 28th January 2005: as the witness mentioned before, he gave information on the leadership of the militia in Passabe and referred in details on the march of the long queue of prisoners and guards, in the night, in the direction of Passabe. With few but incisive words illustrated the actions of Mateus Punef in the occasion:

JL.: We walked to Sunkai, we asked for another lamp so we had three lamps. When we arrived there we were walking along the river. And we arrived at Teolasi. When we arrived at Teolasi, Andre Ulan started to shoot and those people died right there. When we arrived at Teolasi I was holding to my prisoners back, **whilst I was holding mine Mateus came and stabbed him, he stabbed him and said to me: "Why are you holding him... you wait here". Then Gabriel Kolo came and also stabbed him.** That person started lining towards me. He said I'm going to slap you why are you holding this person. I was so scared and I passed urine in my pants. After that they ordered us to go down to the river. When we arrived at the river, and sent one person in darkness without light to Keo Takaqui. His baptised name is Carlos Takaqui. And then they say to us who chop the people stand on one side, who didn't chop stand on the other side

The Court acknowledges that some questions may arise as to the credibility of the witness due to the fact that he did not mention the accused Mateus Punef in the statement he had given to investigators. However it is important to emphasize that the witness is a close relative of the accused, he is his cousin. In the following passage the witness discusses his relationship with the defendant:

JFF: "Did you know him before September 1999?"

JL: Mateus is now brother in law why wouldn't I know him

DW: So that means he is married to a sister of Mr Lafu?

JL: Mateus' mum is my father's elder sister

DW: So you are cousins?

JL: We have the same surname.

It's frankly difficult to believe that such an explicit accusation would come from a relative who lives close to the accused, if the foundation of the accusation is not true.

A third relevant witness was Domingos Metan, heard as the last witness in the hearing of the 4th February 2005.

Mr. Metan identified the accused (known to him by his nickname, Neno Ulan) in Court and declared he has known him for a long time, since they live in the same village. On the events happened in Teolassi, the witness confirmed undoubtedly the declaration of the responsibility of (Neno Ulan) Mateus Punef that he had made to the investigators on 23rd January 2003. In Court the statement appeared even more credible, because much more detailed and more vivid than the one made in the course of the investigation. Furthermore, the witness was questioned at length by Judge Oscar and by other members of the panels and by the Parties, without showing any sign of contradiction or insecurity. He blamed the accused for killing the two prisoners whom the witness had been ordered to bring. As previous witnesses, he said that Mateus Punef acted against the witness's own inaction and lack of determination to kill. He said Neno Ulan approached them and hacked them from behind, killing one with a single strike on the neck. About the fate of the other prisoner, bound to the first, the witness said he didn't have the time to see what happened, since he ran away in panic.

Eventually, the last relevant testimony is that of Lorenzo Lafu who spoke at length on the method of the attack on a prisoner by Mateus Punef. Also in this case, the witness showed a relevant degree of security and offered reasonable answers to the many questions asked by the Parties and by the Court. At no point in the course of his declaration has the witness shown fragility, contradictions or weakness or lack of memory. His capacity to transmit in frank and honest terms the scene to which he participated is the basis for his credibility.

Other witnesses noticed the presence of the accused Mateus Punef at the crime scene. However, their knowledge of the facts doesn't go beyond that and accordingly their relevance in the collection of evidence is obviously scarce, being a given that the mere presence of a militia member at the crime scene it's not enough to ground a criminal responsibility.

In the end, the evidence collected and illustrated fulfils the prosecutor's burden to prove the case he has initiated. The same Defense Counsel for the accused, in her closing statement, did not contest the testimonies in themselves. The Defense Counsel has tried to elevate the arguments, introducing in the context of the trial elements of consideration which range from the unfairness of the prosecution, pursuit of the 'small fishes' and disregard for the big ones, to various claims about the assumed general unfairness of the trials dealt with by the Special Panels. On the last issue, Ms. Brito observed that before this Court the accused have a limited ability to defend themselves against a wall of testimonies that, in various trials and sometimes in the same trial, appear to be too homogeneous and too choral to be credible. In other words, the accused, could just as easily be randomly chosen, regardless of the fact there were other militia leaders available in Passabe at the time when the indictment was filed. Following their indictment, the accused are seen by their community as people to blame, as scapegoats who have to bear the blame (also) for others who were not retrieved and not brought before the Court.

While these arguments are reasonable to a degree, as this same Panel has had the opportunity to consider in a previous decision (Prosecutor against Florencio Tacaqui, pgs.47 and 48 of the decision), this is not enough to disqualify the witnesses. Each single testimony should be contested and its credibility challenged and eventually demolished (as this Panel did in the mentioned Tacaqui case). This process did not take place in this case. As such, the argument purported by the Defense is, accordingly, not justified.

On the contrary, the Court holds that the witnesses, with regard to the accused Mateus Punef, appeared credible. The Court takes an opposite view to that expressed by the Defense. Witnesses were questioned extensively; While some contradictions and uncertainties arose during the testimony, the general outcome was a satisfactory confirmation of what the accused eventually re-confessed in Court. The Panel does not have any reluctance or hesitation in accepting the confession in light of the weigh of accusatory evidence, confirming the responsibility of the accused as based on the facts.

In relation to the murders, the various testimonies confirm that probably, as stated by the Prosecutor in his written closing statement, Mateus Punef committed a number of murders and not only one, as confessed by him. Different witnesses spoke of different murderous actions with versions varying according to each testimony. However, the Court is not ready to blame Mateus Punef for more than one murder, though naturally he is responsible for all acts which took place during that time as a consequence of joining a group action.

The responsibility of the accused for the murders and for the injuries caused to the victims of the brutalities happened in Teolassi is out of question in the opinion of the Court. His guilt is not excluded by a justification put forward by his defence lawyer, who claimed duress as the main defensive argument. She favoured a reconstruction of the events in which Mateus Punef is more a victim than a murderer or, at least, a person who was forced to act criminally (killing at least one individual) against his own will. In this reconstruction, the accused, a simple militia member, had not the authority or the moral and intellectual stature to resist the orders received by his leaders to kill the prisoners.

The Court is not inclined to accept the interpretation of the facts as suggested by the Defense Counsel.

In the first place because there is the counterargument that many other militia members or those forced to follow that night did not subjected themselves to murderous orders and did not kill or injure anybody. Amongst the same witnesses there have been several cases of people who were forced to join the criminal enterprise but were reluctant or refused to bring it to the extreme consequence. There is no specific reason to justify the accused for acting differently.

In second place, the testimonies of the witnesses say something more, they tell us that the accused didn't simply accepted *oborto collo* the imposition of the order to kill, rather that he was active in the search of the prisoners of those escorts who really refused to act: Agostino Afu told the Court: "Mateus Punef, he chopped the one I was holding (together with a colleague named Poto Timo) and I cried". Jamairus Lafu, as already reported, said: "When we arrived at Teolasi I was holding my prisoner, whilst I was holding mine Mateus came and stabbed him, he stabbed him and said to me: "Why are you holding him... you wait here". In other words, the accused was not a passive spectator, he was an active one, keen to share the aims of the leaders.

What happened in Teolassi was an enterprise which deserves a different qualification, in the opinion of the Court, than that chosen by the Prosecutor: the charge of extermination appears to be an excessive label for the criminal activity committed by the militia on the 10th September 1999. Of course, it's not intention of the Court to downsize the responsibility of the accused or negate that the crime was of a magnitude that does not allow parallels with ordinary criminal activity; however, keeping in mind that the accused can only be blamed in part in relation to criminal activity, the Court thinks that it is more appropriate to maintain it in within more modest and traditional boundaries.

As said before, the count of persecution will be addressed at the end, after analysis of the case of Januario Da Costa.

As far as the last mentioned accused is concerned, the Court notices that in first place there has not been a broad confession in the course of the trial, as in the case of the co-accused. If it's true that Januario Da Costa gave a statement before the trial during the course of which profiles of his responsibility emerged at least in relation to the facts described in counts 1 to 3 (i.e. the alleged attack of the Sakunar militia of Passabe on the villages of Nibin Tumin and Kiubiselo) the Court, following one of the two interpretations that have emerged on the issue, is not inclined to make any use of it, since the accused has chosen to adopt strict silence in the course of the trial.

Januario Da Costa is accused of participating in the attack on the three above mentioned villages and of deporting the population of the villages afterwards in order to concentrate them in Imbate; finally, he is accused of concurring in the infamous Teolassi mass murders in the course of which at least 47 people were killed and many others were left injured.

Both the Defense Counsel and the Prosecutor have referred to the Tacaqui decision, which dealt with the same criminal events which are debated here. The Panel, has taken practical advantage from the fact of knowing the general scenario in which the facts unfolded.

However, the facts that the two trials had to examine the same events, often hearing the same witnesses for the second (or the third) time, does not bind the Court on the factual findings

which relates to one of the accused and only to him. The Court is ready to confirm its previous legal findings (unless new arguments are brought or a development of the law is introduced that imposes to the Court a new line of reasoning) or even those factual findings which relate to the general events or to parts of them which saw all people involved in them acting in the same context and in the same manner. What the Court cannot do is to extract single elements attributed to the accused in the previous case and make a generalization out of it, in order to use it in the present trial.

For example, in relation to the events which took place in Nibin Tumin and Kiubiselo, the Court is ready to accept that killings took place in those villages. While not a single direct testimony has been heard in this trial in relation to the murders described in count 1 of the indictment, the Court finds that it can be agreed that these events have happened for the following reasons:

In the first instance at least two witnesses have made an indirect reference to these murders, the first one saying that Gabriel Colo (the head of the Sakunar in Passabe) stated that himself killed a person in Kiubiselo and the second one generically stating that murders, as well as the burning of houses and stealing of animals had taken place during that time.

In the second instance the Court cannot ignore that this episode is the basis from which all the counts of this indictment originate. It is the single most severe criminal event in the history of East Timor. Ceremonies are held each year to commemorate the events. National and international authorities annually visit Passebe to pay tribute to the victims. The Tacaqui case dealt with the facts in general. It would unduly limit the Court to ignore these events and their relevance to this case. Based on the stated magnitude of the facts the Court finds it impossible to not take them into consideration.

On the contrary, the Court is not ready to use an argument that was at the basis of the whole interpretation of the facts in the Tacaqui case and that stemmed from the specific fashion in which the inquiry in that case unfolded: all the accusatory statements about the actions performed by the accused in the so-called Tacaqui case were taken in a short snap, after the arrest of the accused, in an inquiry that had been completed without a single mention of Lorenzo Tacaqui. This circumstance was held by the Court as highly meaningful of a possible self-suggestion by the community battered by the attacks of the militia with heavy consequences on the reliability of the witnesses. The same pattern of development of the inquiry has not happened in the present case in relation to Januario Da Costa.

On the role of Januario Da Costa as a militia commander, few doubts can be raised, after a long list of witnesses clearly indicated, his function as superior in the ranks of the Sakunar in Passabe. What's more, his supremacy on the rank and file of the militia is confirmed by a document written by the same supreme head of the paramilitary group in Passabe, i.e. Gabriel Colo, generally indicated as the most ferocious and brutal of the heads of Sakunar. The document is the list of those affiliated to the Militia in the *aldeia* (sub-village) of Abani, the central and main sub-village of Passabe, of which the mentioned Gabriel Colo was the administrative head. It's easy to understand from the document that Januario Da Costa was a middle level commander, a sort of interface between the real leaders and the generality of the lay members. An executive figure, lacking charisma and real qualities of leadership, but nonetheless a fundamental contributor to the general aims of Sakunar. It cannot pass without mention that in fact many witnesses confirmed being gathered and receiving instructions by

the accused Januario, who appeared, from the testimony, as a zealous executor of the will of the superiors (witnesses Armando Nesi, Augustino Mesac, Domingos Ulan, Baptista Poto and Jose' Lafu). Take for example the words of Armando Nesi, in the course of the hearing 28th January 2005:

DB: Mr. Armadio when did you started working with the militia?

AN: We start from April till September

DB: Who were your commanders?

AN: Our leader was like Januario da Costa he was our commander

DB: Was Januario da Costa your immediate superior

AN: He was our commander but he has superiors like Andre Ulan and Gabriel Kolo

DB: The question is: "did you receive direct orders from Januario da Costa?"

AN: The orders came from the superiors like Andre Ulan and Gabriel Kolo; they would give the orders to Januario da Costa and he will pass the orders to us.

What was the real degree of participation, if any, of Januario Da Costa in the events?

The Court thinks that from many excerpts of the testimonies, properly gathered and put in a sort of order, it comes the image of the presence of the accused through all the unfolding of the events, i.e. from the attack to the villages up to the carnage that took place in Teolassi. It must be understood that these facts are split in six counts but represent a single, unitary criminal activity, whose plan of execution embraces and covers a large span of time and a wide territory. It is clear that the execution of an action like the one undertaken by the leaders of the militia in the aftermath of the result of the consultation of the end of August 1999 can not be conceived as an action in progress in which successive deliberations provoke the prosecution of the activity initiated with a more modest horizon and then escalated into a bloodshed of colossal proportions. On the opposite the movement and the organization of numbers of militia members amounting to many hundreds, their disposal for three days, the decision to make a march at night time, are all elements that involve a resolution that can not be thought to come from a single individual or to be fortuitous. Januario Da Costa was aware of the plan and he participated in it as a leader and as an executor.

Let's now see the testimonies.

On the presence of the accused at the house of Gabriel Colo and on his activity in recruiting or gathering people for the purpose of bringing them to the villages which were attacked, there are the depositions of Augustino Mesac and Micael Oki and Armando Nesi.

The first witness, in the course of the hearing 25.1.2005, referred to the orders given by Januario Da Costa before leading expedition into the villages of Kiubiselo, Nibin and Tumin. He gathered people and told them to wait at the house of the *chef do suco* (Gabriel Colo) in Abani, central Passabe, for the arrival of Simao Lopes. On page 15 of the transcript this passage is illustrated:

PB: He said that Simao Lopes was carrying many people from Indonesia. So, these people he was referring to, could you elaborate this point, what you are trying to say, what you are going to say?

- AM: I was in that location and there was also Gabriel Colo.
- JFF: Yes, why were those people coming, who those people were, this is what the Prosecutor wants to know. What they are going to do if you know?
- AM: They are going to carry on an attack in Kiubesele, Tumin and Nibin, to burn the houses.
- JFF: Who said that please?
- AM: Simao Lopes, Januario Da Costa and Andre Ulan are the ones who said to the people to wait at the post, where the chief of suco lives or resides.

Micael Oki (heard on the 4th February) on the other hand, speaks of the attack to the villages and of the presence of Januario Da Costa as a commander. It must be acknowledged that in the closing of his testimony this witness changed his version of events and refused to admit (what he had said before in the hearing and in the course of the investigation) that he had seen the accused.

Armando Nesi confirms the role of leaders of Januario Da Costa in the Sakunar militia in Passabe and specifies his function as a mid-ranking member of the hierarchy. He confirmed the presence of Januario Da Costa on the 9th and the 10th of September, it's only after the refreshment of the memory of the witness through the reading of the statement he had given to the investigators on the 7th February 2001, that Armando Nesi confirmed the original version and in particular the accused's participation in the rally during which villages were attacked and many houses destroyed. Analogously, it's only after reading of the statement that it emerged that the accused Januario Da Costa was present at a gathering of people that took place before the expedition. It emerged quite clearly that the new version given in Court was primarily devised to protect the witness himself. When confronted with the statement he had given to the investigators the witness clearly attempted to remove his own responsibility specifying that he didn't reach Nibin when the burning started, because he stopped at a locality called Tuakba: but then specifically asked, he said that Tuakba nothing else is than a part of the village of Nibin and that he was in the back of the group of militia members and that by the time he got to the village, the house were already smoking and burning. He then added that they all moved from Nibin to Tumin. The revised version was set aside by the witness. On the participation of Januario Da Costa the witness was no less ambiguous: he attributed the responsibility for the destruction to the leaders, to the commanders but when asked what he knew of Januario Da Costa actions, he said that he did not specifically know that Januario was one of the commanders.

Other witnesses spoke about the presence and the activity of the accused Januario Da Costa on the day following the attack to the villages (i.e. the 9th of September) and about his presence in Teolassi and afterwards.

Agustino Afu, Amadeo Nesi, Jamarius Lafu, Alfredo Pacu, Mateus Colo confirmed that they gathered at the football field in Passabe before receiving directions to go to Imbate. They all said that Januario Da Costa was the one who compelled them to go. They said they were split in two groups. Their accounts vary; Agustino Afu said that Januario Da Costa joined the group which stayed in Naituna, whereas others, Amadeo Nesi amongst them, said that he was told that both groups met in Sunkae (a locality on the way to Teolassi).

On the role of Januario Da Costa in Teolassi, one of the most relevant witnesses was Jamarius Lafu, who, on the specific point, was confronted with the declaration he gave to the

investigators at the beginning of 2001. The statement was read in Court for the purpose of refreshing the memory of the witness when it emerged that, in the presence of the accused himself, he was going to abjure his own words. In the statement, Jamarius Lafu clearly stated that Januario Da Costa had murdered a man at a close distance to the witness himself. In response to hearing the testimony the witness said that he had narrated another version, that he had not accused Januario Da Costa, that he was a simple, illiterate, individual, that he was a son of God and therefore he had to say the truth and that if he had seen, he would have said he had seen, and so on so forth. All these are excuses that the Court has heard too many times, repeated in the same pattern and in identical terms. Excuses that are not credible since it is not credible or rational to believe that in early February 2001 (i.e. almost two years before the opening of the inquiry against Januario Da Costa and while collecting evidence against another accused, Florenco Tacaqui) the investigators at the Serious Crimes Unit invented the presence and the role of the accused.

Alfredo Paku was the next witness: he confirmed his statement made to investigators in 2003. He remembered in detail that he was called by Januario Da Costa to come to the house of Gabriel Colo, the *chef do suco* of Abani, the main *suco* of Passabe. He said that they went to Imbate and that in Imbate the accused together with Gabriel Colo tied up people who were entrusted to the militia members and forced people to Passabe. The witness went on to explain the details of the march from Imbate towards Passabe and of the massacre at Teolassi. On the role played by the accused, the witness unhesitatingly asserted his participation in the murders by stabbing a man.

The Court does not have and cannot find any argument which could disqualify this witness. Possible variations in the testimony respect to previous statements are minor and can easily find justification in the time elapsed from the events or in the trial context, which can be unsettling for witnesses not accustomed to it.

The accused was seen by Agustino Mesac (called to Teolassi to bury the bodies) at the crime scene some hours after the multiple murders had taken place. Witnesses noticed him at the football field of Passabe on the same day of the massacre. On that occasion, he stood on the stage, with the other leaders of the Sakunar militia of Passabe, who harangued the people on the fight against independence and warned listeners from speaking about what had happened the night before.

Two witnesses were heard on request of the Defense Counsel of Januario Da Costa. Their contribution to the trial was very modest and contradictory.

Aleixo Elu confirmed the presence of Januario Da Costa in the course of the attack against the villages of Tumin, Nibin and Kiubiselo, he was not able to say what the accused was doing. :

JFF: And Januario participated of what happened in Tumin, Nibin and Kuibeselo?
 AE: Yes he participated.

JFF: And what did he see Januario da Costa doing in Tumin, Nibin and Kuibeselo?
 AE: I didn't see him doing anything because there were lots of people at that time.

The witness testimony was substantially irrelevant, as he said nothing in favour of the accused.

The other witness was Jacinto Bubun, a man who came to Court in an attempt to give the accused an *alibi* for one of the days of the beginning of September 1999. He spoke about visiting the house of the accused on an early morning of early September, at around 8 or 9 o'clock, when coming back from the village clinic where he had gone to get some medicine for headache. On the way back he stopped at the house of Januario Da Costa and stayed there with the accused until the afternoon. The witness was not able to say the exact day of September when this happened though from his own words a strong time reference comes out.

Indeed, he said:

- DS: Mr. Jacinto, when you heard that people were killed in Teolasi, do you know where Januario da Costa was at that time?
 JB: We were at his house.
- DS: You said that Januario was in his house, in Januario's house?
 JB: Yes.
- DS: Mr. Jacinto, why were you in the house of Januario at that time?
 JB: At that time, I had a headache. I went to the clinic to get a medicine and when I returned, I went to his house.
- DS: More or less what time was it, what time of the day was it?
 JB: It was in the morning, may be 8:00 or 9:00 o'clock.
- JFF: Which day, at 8:00, 9:00 o'clock in the morning, of which day?
 JB: I don't know about which day.
- JFF: So, how can you state that that one was the day in which the massacre in Teolasi took place?
 JB:
- DS: How do you know that it was the day when the Teolasi Case in Passabe?
 JB: Upon returning from the hospital, I went to his house and he said that: "Come in, I want to let you know that today there are people brought in an operation in Nibin".
- DS: And then?
 JB: That is all.

The confusion is clear, questions by Counsel for the Defense were based on the assumption that the witness knew how the accused spent the day in which the 'massacre' of Teolasi took place (i.e. the 10th September). However, the witness said that Januario Da Costa made clear reference to two days before ("Come in, I want to let you know that today there are people brought in an operation in Nibin" –operation that took place on the 8th September). In other words, the *alibi* for the day of the massacre failed.

One may argue that the witness could still retain some strength to furnish an alibi for the other day, the 8th September; however, after the poor result, not even the Defense Counsel has tried to state it.

The full representation of the facts involves the constant presence of the accused through three days of killing spree: the Court feels that there is a strong connection between his role

and his constant presence at the various crime scenes. It can be believed that only for reasons of his duties as commander he was noticed repeatedly in the various locations through those days. From time to time, he was seen giving orders, menacing, killing, accompanying the prisoners or tiding them up. The presence of the accused, in other words, was not occasional or episodic but was a constant determined by his role as interface between the leadership and the subordinates. But then, one more point must be stated: if also it cannot be admitted that any witness saw him setting ablaze huts or killing people in Kiubiselo, Nibin and Tumin, nonetheless his criminal responsibility for the facts that happened in those villages derives directly from his participation as commander. In the end, he must bear responsibility for the actions made by his subordinates or by the leaders for whom he was acting. The aggression in the villages was a collective action of which all those who significantly contributed must be held responsible. In many decisions (*Prosecutor against Anastacio Martins and Domingo Goncalves; Prosecutor against Tacaqui*) this Court has stated that while the mere presence of the single militia member, to the crime scene is not enough to blame him for what happened in his presence. However the accused has to be held accountable when he/she directly commits a crime or has some status in the ranks of the paramilitary hierarchy, and in that capacity participates to the chain of command which permitted the execution of actions of great size, giving orders or simply supporting his subordinates with his encouraging or threatening presence.

The Court is conscious that this affirmation may raise perplexities and complaints by the Defense Counsel for the reason that the Prosecutor at the opening of the trial requested a modification of the indictment in order to introduce a pretended limitation of the responsibility of the accused to his direct intervention in the execution of the criminal acts and not as a commandant. The Prosecutor intended to restrict the responsibility of the accused to the direct commission of criminal acts by indicating in the indictment Section 14.3 letters a, c and d (a direct responsibility) and excluding Section 14.3 letter b and Section 16 of UNTAET Regulation 2000/15 (which were indicated as alternative sources in the first indictment). By doing so the Prosecutor meant to exclude any profile of responsibility of the accused for the issue of orders or for his role as commandant of a group of militia affiliates.

The Court allowed the modification but did not agree to ignore Januario Da Costa's mid-level leadership activities.

It must be noticed that the duties of the Prosecutor in writing the indictment, as specified in Section 24.1 TRCP (or UNTAET Reg.2000/30, as amended by UNTAET Reg.2001/25), include, *inter alia*:

- “(b) a complete and accurate description of the crime imputed to the accused;
- (c) a concise statement of the facts upon which the accusation is made;
- (d) a statement identifying the provisions of law alleged to have been violated by the accused:

What is required by the Prosecutor, in other words, is a description of the facts and an identification of the violation alleged to have occurred (i.e. of the legal provision forbidding the criminal behaviour). The indication of the source of the criminal responsibility (practically speaking, of the point in Section 14 or 16 UNTAET Reg.2000/15 which says why the accused is to be held responsible) is not required and has always been added *ad abundantiam* in the indictments. In fact, one thing is the provision violated (e.g., for an

ordinary murder Section 338 Indonesian Penal Code), which is a source of substantive law stating the behaviour that must be avoided (e.g. don't kill a person) and furnishing the sanction in case of violation of the behavior (e.g., in section 338 ICP the maximum sanction of fifteen years in jail is provided). Another thing is the source of the criminal responsibility, i.e. the reason for which the violation of the substantive norm is relevant and appreciable in Court. The first indication is the one that is required by the Prosecutor and to this indication (as well as to the description of facts) the rules of Section 32 TRCP apply: the function of which is to make the accused aware of the possible consequences of his/her alleged behaviour in order to better prepare his/her defense. In relation to the source of the responsibility, the same need does not arise since the factual description must be *per se* enough to exhaust the defensive need of the accused (indicating, for example, if the fact to him/her attributed saw him/her act giving orders or directly stabbing the victim). Accordingly, the Prosecutor is not burdened with the need to provide legal specifications in the indictment.

In the present case, it is possible to find an exhaustive factual description in the indictment where the alleged criminal behaviour of Januario Da Costa is precisely defined, in a fashion which is analogous to that found in many other cases and that has not been contested by the accused or his Defense Counsel before the beginning or in the course of the trial. That account of the facts and the juridical qualification of it made by the Prosecutor (in the given case, by charging for crimes against humanity for murder, injuries, deportation, extermination and persecution, with reference to the relevant legal provisions) is what Januario Da Costa was entitled to and needed in order to be put in the condition to develop a complete defense.

The Court can now shortly turn to the two remaining counts of crime against humanity, one for deportation and the other for persecution (Section 5.1 letters d and h of UNTAET Reg. 2000/15 respectively).

in relation to the matter of deportation, the facts were confirmed by the evidence collected in the course of the hearings that the people gathered by the militia in Imbate (and later tied up and forced to march in the direction of Passabe) came from the villages of Kiubiselo, Nibin and Tumin. Consequently, a direct link between the aggression in the villages and the following mass murder can be established.

Nevertheless it can hardly be admitted that a deportation took place for the following reasons. Firstly, the statements of Pedro Cono and Sebastiao Sufa (the only two witnesses) are not enough to establish that a forcible movement of people took place between the area of the villages and Imbate. By which means and with which modalities this would have happened, it remains unknown. It is presumable that there was a previous orchestration but to base a positive finding of responsibility on this mere assumption appears to be too vague.

Secondly, if it were proved that the flow of people from the villages target of the attack had been a forced one, we shouldn't run to the conclusion that it constituted an autonomous crime. If, as stated before, the murders which took place in Teolassi were the epilogue of a program which had been planned in advance, it should rather be concluded that the forced movement of population from the villages was a step in the execution of the final crime. The beating of the prisoners in Imbate or their tying up or their forced march do not amount to autonomous sources of criminalization (respectively for maltreatments and deprivations of liberty)

because these crimes are lost in the murder which ultimately finished the act. As such, in relation to the forcible transfer of people from one place to the other, the violation vanishes in the greater evil of the murders, which followed. The alleged deportation was not such an extreme and barbaric factor and didn't last so long to amount to a further violation of criminal law.

For this reason Januario Da Costa must be acquitted from the charge of count 3.

In relation to persecution the Court observes that no new factual element or legal argument has been offered to the Panel to reconsider the decision on the same, identical facts, taken in the case of the Prosecutor against Florenco Tacaqui. In that trial the accused had been found guilty of several violations both before and after the result of the popular consultation of the end of August 1999. The Court thought that, for the modalities of the various actions and for the time in which they were carried out, it was possible to recognize the features of the persecution only for those acts that had taken place before September 1999.

The trial against Florenco Tacaqui dealt with the same episodes mentioned in the present case. Only counts 1 and 2 related to different acts, committed before the referendum.

For this reason it is worth to read, on the point of persecution, the mentioned decision:

"The last count (the eighth) is of persecution.

By writing the count, the Prosecutor alleges that all the events described in counts 1 to 7 are not only the source of specific, autonomous counts, but they also should be seen, in the whole, as examples of persecution.

This would be mandated by the interpretation of Section 5 Regulation 2000/15 where persecution is qualified as a crime against a group or collectivity, on certain grounds, in relation to another crime included in the jurisdiction of the Special Panels.

Specifically, the mentioned legal provision is as follows:

"... crime against humanity means...: (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Section 5.3 of the present regulation, or other grounds that 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".

This provision of course doesn't say what a persecution is, but a rough definition is offered by the following Section 5.3 that, indeed, details: "(f) Persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".

The provision creates a strong link between the severe deprivation of fundamental rights and the reason for which the deprivation is caused: the deprivation of fundamental rights only becomes persecution if it is based on a discriminatory cause against the identity of a group or collectivity. It could be said that introducing the clause "by reason of the identity of the group..." an emphasis is put on the essence of the persecution, i.e., the discrimination.

Apart from persecution, a discriminatory element has been recognized as not being necessary for the concept of crime against humanity: if it is true that common experience teaches that the majority of the crimes against humanity are indeed sparked by (and based on some ground of) discriminations, since actions of such scale ordinarily find their origin in some political, racial or religious motivation, but this does not imply that the sources of this kind of criminalization (either at the international or domestic level) require discriminatory elements in the representation of the crime. With the exception of the Statute for the ICTR (in which the expression "on national, political, ethnic, racial or religious grounds" is used to describe the widespread and

systematic attack against the civilian population which denotes all crimes against humanity), international and domestic instruments of criminalization of c.a.h. don't require explicitly (and have constantly been interpreted accordingly) discrimination to be present for whichever crimes against humanity, in general.

However, when crimes against humanity are used, like in the present case, as factual elements of persecution, then it appears to be necessary that the single constitutive element, the single crime against humanity is supported by such discriminatory intent. If, as stated, discrimination is the essence of the persecution, it must be present in each single episode that is purported to represent a part of the persecution itself; otherwise the single crime a.h. could be punishable in itself but would be extraneous to the planned persecution.

This must be evident in the present case, where each single count, already a crime by itself, is "coated" by the Prosecutor with a second layer of illegality.

Having said that, the Court observes that the representation of the Prosecutor may be accepted only in part. In the list of seven crimes in the indictment, before the count of persecution, some differences may, under this respect, be noticed.

Specifically, the seven charges relate to facts happened in two clearly distinct times and, correspondently, have different causes.

Counts 1 and 2 refer to facts happened before the popular consultation, in the course of the campaign: both of them can easily be interpreted as facts of persecution and, indeed what else is the deprivation of liberty of the 43 CNRT members in Passabe, if not the attempt to prevent those people from pursuing a political activity in favor of independence, so depriving them of their most basic political right? And the aggression displayed against Jose' Bubun and other CNRT supporters or organizers holding a meeting in the last days of the campaign for independence shouldn't be interpreted as the intent to persecute the opposing side for their political activity? In this respect, the Prosecutor's perspective appears to be correct in that the facts described above were persecutorial, in their essence, since based on the discriminatory determination to deprive the opposing party (or its supporters) of the fundamental political right to campaign in support of its believes.

But when it comes to the interpretation of counts 3 to 7, things change because it is credible that what prompted the furious acts which took place after the popular consultation was another kind of resolution, specifically revenge. Having lost the battle, the discriminatory intent didn't make sense any more: the motivation of the Indonesia-fed militia become to quash the population of those villages which had supported the fighters or had oppose the campaign by the integrationists. The will to punish, rather than discriminate, was then the motive for the cluster of crimes which occurred between the 8th and the 10th September 1999 and are summarized in count 4/7.

In this line of argument, it is easy to draw the conclusion that only counts 1 and 2 can be pictured as episodes of discrimination on political grounds, i.e. persecution. The other two counts for which Tacaqui is held responsible can't be requalified in such manner."

The Court doesn't see any reason to change its own opinion and accordingly acquits Januario Da Costa and Mateus Punef from the last count.

SENTENCING POLICY

The accused Januario Da Costa has been found guilty of the crimes described in counts 1, 2 4 and 5.

The accused Mateus Punef has been found guilty of the crimes described in counts 4 and 5.

Undoubtedly, the most severe violation of all is the participation to the murders committed in Teolassi, for which both accused bear responsibility. The magnitude of the event is such that it cannot be compared with analogous crimes judged by the Special Panels.

According to Sec. 10.1 (a) of UNTAET Reg.2000/15, for the crimes referred to in Sect. 5 of the same 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 Timor Leste and under the international tribunals. Moreover, 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 relevant discretion left to the judge in imposing the sentences (ranging from the minimum to 25 years of imprisonment) is tempered by the need to follow the general practice of the courts in Timor Leste and under the international tribunals.

For the commission of one of the murders listed in count 4, the Panel thinks appropriate to impose a penalty of fourteen years, in line with previous decisions in similar cases. However, in this case, given the conditions in which the murders happened and in particular the presence of a multitude of militia members and leaders, it is possible to give some weight to the idea that a loss of inhibitors took place, accompanied by a loss of individuality. It's common knowledge that a crowd does not think as an individual and does not act as such. In mass events the single individuals hides himself behind the shield of impunity and anonymity, renouncing to hold to his own inhibitors and sense of responsibility. A vicious circle of self-referentiality and unaccountability sets in and the single participant loses the sense of measure and of the limits.

For this reason the Court think that a diminishing circumstance can be recognized to bring the penalty to a fairer measure. The diminishment may be correctly assessed in almost one third of the penalty previously imposed, bringing the final penalty for the crime of count 4 to nine years of jail for each accused.

To this penalty, one extra year is added for the crime of count 5 bringing the penalty for Mateus Punef to the final measure of ten years in jail.

For Januario Da Costa, further criminal acts attributed to the accused (counts 1 and 2) will be punished in terms which are analogous to those used for counts 4 and 5, for the identity or strong analogy of the violations: indeed, looking at the episode in a broader perspective, they can be described as a single criminal act or activity which took place in two different places and at the distance of two days. But the criminal deliberation was unique. In the end, for the crimes of count 1 the penalty of nine years is imposed, while for the crimes of count 2 the penalty of one year is imposed.

The sum of the terms of imprisonment imposed to the accused Januario Da Costa amounts virtually to 20 years in jail (9 + 1 + 9 + 1). However, the application of the rule of limitation of Section 65 Indonesian Penal Code imposes a reduction of the sanction.

It is appropriate to underline that the determination of the duration of the prison terms is based on the discretion of the Court; while this doesn't mean arbitrary power, it is obvious that the terms so imposed are only virtually determined by the Panel, since the application of Section 65 of the Indonesian Penal Code, in this case as in the majority of the other cases tried by the Special Panel, imposes the application of the limitation established in that norm. In other words, once the Panel has agreed upon the application of the conjunction of

punishable acts, the rule of limitation of the sum of the terms to one third above the sentence imposed for the most severe of the crimes will follow.

In the present case, naturally, there are good arguments to state the unity of the crimes. The reason for the conjunction (this term is used in the KUHP – the criminal code of Indonesia) is to be found in the uniqueness of the ends for which the crimes were committed, and the identity of the targets. As said before, the plan for the execution of the reprisal on the villages that had supported independence embraces and encompasses all the crimes committed from the 8th to the 10th of September 1999.

In the end, in application of section 65 of the Indonesian criminal code, the maximum sentence for the most severe crime (one of the murders of count 4) is 9 years. The Panel accordingly, cannot impose on Januario Da Costa a term heavier than 12 years.

The time spent in pre-trial detention must be deducted from the sentence imposed.

Mateus Punef was arrested on the 1st June 2003 and release from pre-trial detention on the 9th September 2004. He stayed in jail for one year, three months and eight days.

Given the poor economic conditions of the accused and of his family, the Court renounces to issue an order for the cost of the proceedings (Section 53 Reg.2000/30), since it would simply aggravate the Administration with no hope of getting any economic benefit.

Having considered all the evidence, and the arguments of the parties, the Special Panel for Serious Crimes issues the following decision:

1.

With respect to the defendant Januario Da Costa, in relation to the charges, as listed in the indictment the Court establishes as follows:

Count 1) The accused is found guilty of crimes against humanity for the murders of 18 individuals in the subdistrict of Nitabe, Oecussi District, as a consequence of the attack that took place on the 8th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (a) UNTAET Reg.2000/15;

Count 2) The accused is found guilty of crimes against humanity for the inhuman acts causing serious injuries to the bodies of Laurencio Leo Mali, Mateus Sufa and Josefino Bose in the villages of Tumin and of Kiubiselo, Oecussi district, crimes committed on the 8th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (k) UNTAET Reg.2000/15;

Count 3) The accused is found not guilty;

Count 4) Subject to the re-qualification of the criminal acts as murders and not extermination, the accused is found guilty of crimes against humanity for the murders of forty seven men in Teolassi, Passabe sub-district, Oecussi district, on 10th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (a) UNTAET Reg.2000/15;

Count 5) The accused is found guilty of crimes against humanity for the inhuman acts causing serious injuries to the bodies of seven men from the villages of Tumin and Kiobiselo; a crime committed in Teolassi, Passabe sub-district, Oecussi district, on 10th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (k) UNTAET Reg.2000/15;

Count 6) The accused is found not guilty.

2.

In punishment of those crimes, the Special Panel sentences Januario Da Costa to an imprisonment of twelve years, considering all the crimes in conjunction, applying Section 10 UNTAET Reg.2000/15 and Section 65 of Indonesian Penal Code.

3.

With respect to the defendant Mateus Punef, in relation to the charges, as listed in the indictment, the Court establishes as follows:

Count 4) Subject to the re-qualification of the criminal acts as murders and not extermination, the accused is found guilty of crimes against humanity for the murders of forty seven men in Teolassi, Passabe sub-district, Oecussi district, on 10th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (a) UNTAET Reg.2000/15;

Count 5) The accused is found guilty of crimes against humanity for the inhuman acts causing serious injuries to the bodies of seven men from the villages of Tumin and Kiobiselo; crime committed in Teolassi, Passabe sub-district, Oecussi District, on 10th September 1999, as a part of a widespread and systematic attack against a civilian population with knowledge of the attack, pursuant to Section 5.1 letter (k) UNTAET Reg.2000/15;

Count 6) The accused is found not guilty.

4.

In punishment of those crimes, the Special Panel sentences Mateus Punef to an imprisonment of ten years considering all the crimes conjuncted, applying Section 10 UNTAET Reg.2000/15 and Section 65 of Indonesian Penal Code.

5.

According to Section 10.3 U.R. 15/2000, section 42.5 UR-30/2000 and Article 33 of Indonesian Penal Code, the deduction of the time spent in pretrial detention by the accused due to an order of an East Timorese Court will be deducted from the term that must be served in jail.

The pretrial custody of the accused Mateus Punef started on the 1st June 2003 and ended on the 9th of September 2004. He stayed in jail in pretrial detention for one year, three months and eight days.

6.

Pursuant to Sections 42.1 and 42.5 of UR-2000/30, the two 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.

Since the decision was executed immediately, on the day of the issue of the disposition, the 13th April 2005, the penalty for Januario Da Costa will expire on the 13th April 2017.

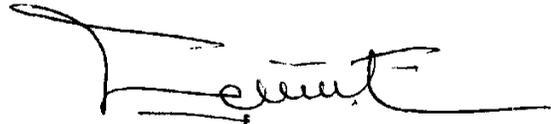
After the deduction of the pretrial detention, the penalty for Mateus Punef will expire on the 5th January 2014.

The final written decision will be provided in one copy to the defendants and their legal representatives, public prosecutor and to the prison manager.

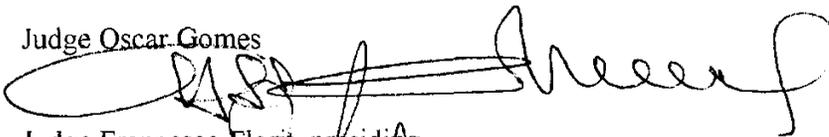
The Defense Counsels will have the right to file a notice of appeal within 10 days from the day of the notification to them of the final written decision and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This decision was rendered and delivered on the 27.4.2005 in the building of the Court of Appeal of Dili by

Judge Antonio Helder Viana do Carmo



Judge Oscar Gomes



Judge Francesco Florit, presiding

