



**Office of the
Deputy General Prosecutor
for Serious Crimes**

Case No 10/2003

The Prosecutor

v

Mateus Lao aka Ena Poto

Response to Defense Motion for Further Discovery of a series of documents

For the Prosecution:

Charles Nsabimana

For the Defense:

Sebastian Appenah

(Handwritten signature and date: 27/10/04)

A. Background.

1. On 7th October 2004 the Defense Lawyer of Mateus Lao filed a Motion for Further Discovery of a series of documents;

B. Response

General Request

2. In this motion the Defense formulates a **General Request** for delivery of documents, statements and information that could be in the possession of the Prosecution and had not been, to date, delivered to the Defense.

3. The Prosecutor would like to make it clear that he served all documents he intended to use during trial to the Defense by his transfers of material when he filed the indictment and later on.

Furthermore, the Prosecutor would like to recall the Defense that during the preliminary hearing held on 13 September 2004, he listed the evidence he intended to present during the trial.

4. This was done in perfect compliance with the requirements of Sections 24.4 and 24.7 of UNTAET REGULATION 2000/25, as amended, herewith referred to as TRCP.

Paragraphs (a) and (b) of Section 24.4 prescribes an obligation to the Prosecutor to make available to the Defense copies of **all documentary evidence intended to be offered** by the Prosecution at trial; and **all statements** in the possession of the Prosecution of **any witness whose testimony is intended to be offered** by the Prosecution at trial. By his different transfers of material and his statement during the last preliminary hearing, the Prosecutor did nothing less than what the Defense is requesting in the present motion.

5. With regard to the obligation for delivery of **all information, which tends to negate the guilt or to mitigate the gravity of the offence** charged set up in Paragraph (c) of the same Section, the Prosecutor states that he would not had indicted Mateus Lao if, on his point of view, there was any element of the nature of negating his involvement and responsibility in the offence he is charged of.

Similarly, the Prosecutor deemed that there was ^{any} mitigating element that could be used in favor of the Accused. In any case, this is an issue to be discussed or developed probably during the closing statement of the Defense. Whether the opinion and allegations of the Prosecutor were grounded or not will constitute the substantive matter of the trial, where both parties will have to present their case before the Court in open hearing.

Specific Request

6. Defense formulates also a **Specific Request** for delivery of some documents and information, which can be divided into the following three groups:

- All Information related to the investigation of the case of the Accused, including Initial Report to the Police regarding the commission of this specific offence and the notification of the death of the victim to the Police, Tape recorded Interviews and Statements, Statements by persons whom the Prosecutor does or does not intend to call as witnesses, Notes and Memoranda reported to the Prosecutor's office in relation to the investigation; All Information regarding the Suspect **Agostinho Sufa aka Sufa Taci**. Any other Information related to this prosecution or that may affect the credibility of Prosecution evidence;
- Complete Report of the Indonesian Commission On Human Rights Violations in East Timor, January 2000;
- Documents related to the exhumation of victim **Jose Maknaun**, including photographs, reports, etc.;

First group of documents and information

7. With regard to the first group of documents and information, it should be recalled the prescription of Sections 24.4 and 24.7 of UNTAET REGULATION 2000/30, as amended; The Prosecutor has, as said above, complied with the obligation to make available to the Defense all material he intended to present as evidence, including statements of Accused himself and Witnesses, **Agostinho Sufa aka Sufa Taci** being one of them, documentary evidence, including Forensic Report, Minutes of the Review Hearing of the Detention of the Accused, Reports on Human Rights Violation in East Timor, and Report on Human Right Violations During 1999 in Occussi District dated November 2001.

8. It should also be stressed here that the Prosecution Office, when performing its legal duties, acts in a professional and ethical manner, and more particularly directs investigations in order to establish the truth of the facts under investigation, in such a way that it investigates incriminating and exonerating circumstances equally.

It is only when the Prosecutor, after evaluating the material gathered during such an investigation, deems that elements to charge are legally met that an indictment is filed; when on the point of view of the Prosecutor, evidence gathered during such investigation is not sufficient or is weak, the case is simply dropped and no indictment is filed.

In the case under review by the Honorable Panel the Prosecutor contends that an indictment had to be filed against the Accused because there was enough evidence to charge him.

Complete Report of the Indonesian Commission On Human Rights Violations in East Timor, January 2000

9. The objective of filing this document with the three other International Reports was to support the Prosecution general allegation on the widespread and systematic character of the massive violations of Human Rights occurred in East Timor in 1999.

To that regard, the Executive Summary of the Report of the Indonesian Commission On Human Rights Violations in East Timor dated January 2000 is so self explanatory and so clear and precise on the said subject that there is no need for further comments.

10. Special Panels for Serious Crimes have always admitted that documentary evidence into evidence of all cases of crimes against humanity tried by them; that fact constitutes a jurisprudence of the Special Panels for Serious Crimes and cannot be challenged by the Defense.

11. Furthermore, the content of that document is in reality an historical fact and a commonly known fact for which the Court is invited to take judicial notice for.

Documents related to the exhumation of victim Josep Maknaun, including photographs, reports, etc...

12. The recovery of the remains of victim Josep Maknaun took place sometime in October 1999. The exhumation of the remains of victim Josep Maknaun took place during the period of 5 to 12 April 2000 and the autopsy was performed on 19 April 2000; after what the remains were returned to the family.

13. During the said period, SCU forensic team was not yet established and forensic work was done by military. It is unfortunate that most of the items related to that period were not properly handed over to SCU forensic team, which was started late in 2000.

For that reason the Prosecution is not able to discover the documents requested by the Defense.

14. But, if the request made by the Defense is connected to the issue of the identity of the victim, the Prosecution submits that there are many other ways of identifying a dead victim. It is submitted that the Prosecution has provided more than enough material in that regard. The issue of identity of the victim is one of the substantive issues to be examined by the Honorable Panel.

C. CONCLUSION

In light of the above submissions, the Prosecutor here requests the Honorable Court to disregard the Defense Motion for further discovery submitted on 7th October 2004

Dated the 20th day of October 2004

Respectfully submitted,

Charles Nsabimana
Prosecutor for Serious Crimes

