



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 to Exclude Report on Human Right Violations
During 1999 in Oecussi District dated November 2001.**

For the Prosecution:

Charles Nsabimana

For the Defense:

Sebastian Appenah

(R) 2/10/03

A. Background.

1. On 11th October 2004 the Defense Lawyer of Mateus Lao filed a Motion to Exclude the Report on Human Right Violations During 1999 in Oecussi District dated November 2001.

2. The Defense invokes its belief that the Report was in possession, custody or control of the Prosecution prior the presentation of the indictment and concludes that the Prosecution failed to place the said document timeously before the Court.

3. The Defense justifies also its motion in challenging the reliability and authenticity of the document on the ground that, inter alia, it is, on the view of the Defense, a simple unsigned working document for the use of UNTAET Human Rights Office by a person who was not a contemporaneous witness for the issues reported upon, and not a document contemplated for use in judicial proceedings.

B. Response

Belief that the Report was in possession, custody or control of the Prosecution prior the presentation of the indictment

4. This belief amounts to nothing less than pure speculation, and is contradicted by objective facts. On the contrary the Defense is perfectly aware that this report was not, as pretended by the Defense, in possession, custody or control of the Prosecution prior the presentation of the indictment on 28/02/2003 as it appears from the chronology of facts hereunder.

5. In their response to the Prosecution motion to admit the same report in Umbertus Ena and Carlos Ena case Nr 05/2002 dated 05/02/2004, Defense Lawyers Alan Gutman and Ana Beatriz Sanchez Lara opposed the admission of the said report on, inter alia, the same ground.

6. At the same time, on 12/02/2004, Defense Lawyer Alan Gutman sent an email to Mr. Wayne Fee, one of SCU Investigators in charge of National Investigations, asking him "when approximately the Oecussi Human Rights Report by Carolyn Graydon was received by the SCU" (See Annex I).

7. In his response on the same date, Mr. Wayne Fee informed him "all District Human Rights Reports, including the one (you) mentioned were received by (him) on the 14/01/2004".

8. Mr. Wayne Fee added to Defense Lawyer Alan Gutman that "Human Rights Unit will be happy to corroborate the date of receipt" (See Annex II).

9. Having received these information and clarification, Defense Lawyers Alan Gutman and Ana Beatriz Sanchez Lara did not insist and their motion was logically dismissed.

10. The Indictment against Mateus Lao was filed on 28/02/2003, almost one year before the challenged document reached the Prosecution Office, and, pursuant to the requirements of Section 24.7 of TRCP, the Prosecutor had an obligation to bring the report to the knowledge of the Court and the Defense when he received it.

11. This legal obligation has no time limitation; this obligation is a continuing duty. In fact, when lodging motions for further discovery, as it is the case in the very motion dated 7th October 2004 in which the same Defense Lawyer requests the Honorable Panel to compel the Prosecution for further discovery of a series of documents and information of any form and nature, the Defense its self is doing nothing less than confirming our submission.

*only if report
is a copy of
original*

Reliability and Authenticity of the Report.

12. It cannot be contested that the Report on Human Right Violations During 1999 in Oecussi District dated November 2001 is an UNTAET official document for the following reasons:

- it emanates from Mrs. Carolyn Graydon, an UNTAET Human Rights Officer in charge of Oecussi District at the period the report was issued;
- it constitutes an account of her findings pursuant his official mandate in Oecussi District. The fact that Mrs. Graydon was not a contemporaneous witness for the issues reported upon does not change anything to its reliability; most of reports in similar situations are not drafted by eyewitnesses; but this kind of document is officially used, even for judicial purpose.
- it has been endorsed by the legal authorities of UNTAET and officially circulated as an official document for official use; this contradicts the assertion of the Defense that the report is a simple unsigned working document for the use of UNTAET Human Rights Office.

Foundation for Admission

13. The request of the Prosecutor to admit that documentary evidence is merely to support the general allegations of the widespread or systematic attacks against civilian population that occurred in Oecussi District, East Timor in 1999.

To that regard this documentary evidence is both relevant and of probative value to this case. It gives a clear picture of the massive human rights violations throughout the enclave; the Prosecutor alleges that the offence charged against the Accused took place in that context.

14. In Umbertus Ena and Carlos Ena case (Nr. 05/2002) and Florencio Tacaqui case (Nr.20/2001), both cases of Crimes against Humanity occurred in Oecussi District and

similar to the present case, this Honorable Court has admitted the same report (See Written Decision Umberto Ena and Carlos Ena case dated 12/02/2004).

15. In Para. 28 of its decision the Honorable Court stated that " *the Special Panels, in previous cases, have already shown that a certain degree of flexibility is allowed in admission of documentary evidence. The Court considers that often documents are sought to be admitted into evidence not as ultimate proof of guilt or innocence, but to provide a context. The Court can accept this kind of documents, with an eminently non-legal nature, but by their very same nature, their probative value can be questioned and therefore it will be carefully weighted by the Court.* "

16. The Prosecutor invites the Honorable Court to confirm its own jurisprudence and apply the same principles to similar situations as it is in the present case of Mateus Léo.

17. As for the oral evidence pretended to be the only avenue for authenticity and probative value of the document, the Prosecutor submits that Section 36.3 of the TRCP authorizes admission of documentary evidence when, inter alia, direct interrogation of the witness or the expert cannot be expected due to the inaccessibility of that person or due to the distance of the domicile of that person or place of current residence from the place of the hearing.

While the Prosecutor would be happy to call Mrs. Graydon before this Honorable Court as his witness, he unfortunately is in the impossibility to do so since she has left the mission and is out of his reach.


C. CONCLUSION

In light of the above submissions, the Prosecutor here requests the Honorable Court to disregard the Defense Motion to Exclude the Report on Human Right Violations During 1999 in Occussi District dated November 2001 lodged on 11th October 2004 and admit this important document into evidence in the present case.

Dated the 20th day of October 2004

Respectfully submitted,

Charles Nsabimana
Prosecutor for Serious Crimes



Annex I



Alan GUTMAN

12/02/2004 03:55 PM

To: fee@un.org

cc:

Subject: Oecussi Human Rights Report

Dear Mr. Fee:

Thank you for assisting with my inquiry regarding the human reports. I have one additional question. Would you know when approximately the Oecussi Human Rights report by Carolyn Graydon was received by the SCU?

I appreciate your assistance.

-Alan

Alan Michael Gutman
Defense Lawyers Unit for Serious Crimes, UNMISSET
Extension: 6599 or 5407
Mobile: +670 7232042

ANNEX 4



Wayne FEE
02/12/2004 12:11 AM

To: Alan GUTMAN/INTL/UNMISET@UNMISET
cc: Nsabimana CHARLES/INTL/UNMISET@UNMISET, Aminata
KPEWA/INTL/UNMISET@UNMISET
Subject: Re: Oecussi Human Rights Report

Alan,

Hi, as I think I explained on the phone, I am not responsible for receiving or registering items at the unit. I can however answer your question on this occasion because the file in question (actually all District Human Rights Reports, including the one you have mentioned) were received by me on the 14th January 2004. I believe on this day or the day after I transferred them to our evidence custodian Aminata Kpewa. I am sure the Human Rights Unit will be happy to cooperate the date of receipt if required.

Regards,

Wayne Fee
Senior Investigator
Chairperson Field Staff Union
UNMISET
Serious Crimes Unit

Phone/fax: 0061 8 8946 6397
Mobile: 670 7234069

Email: fee@un.org
Private email: wayne@waynefee.com

[Handwritten signature]