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DILI DISTRICT COURT

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

THE GENERAL PROSECUTOR

V

**JANUARIO DA COSTA
MATEUS PUNEF aka NENO ULAN**

Case No: 22/2003
SC Case No: OE-12-SC

AMENDED INDICTMENT

I: INDICTMENT

The Deputy General Prosecutor for Serious Crimes, pursuant to his authority under UNTAET Regulation 2000/16 and 2000/30 as amended by Regulation 2001/25, charges **JANUARIO DA COSTA and MATEUS PUNEF aka NENO ULAN (2)** with **CRIMES AGAINST HUMANITY: MURDER INHUMANE ACTS, EXTERMINATION, DEPORTATION OR FORCIBLE TRANSFER OF POPULATION AND PERSECUTION** as set forth in this amended indictment.

II. NAMES AND PARTICULARS OF THE ACCUSED

1. Name: **JANUARIO DA COSTA aka QUELO MENE**
 Place of Birth: Passabe, Oecussi, East Timor
 Date of Birth/Age: 27 years old
 Sex: Male
 Nationality: East Timorese
 Address: Passabe, Oecussi, East Timor
 Occupation at the time: Sakunar militia commander in Passabe Sub-district

2. Name: **MATEUS PUNEF aka NENO ULAN**
 Place of Birth: Haemnanu, Abani, Passabe, Oecussi, East Timor
 Date of Birth/Age: 1970
 Sex: Male
 Nationality: East Timorese
 Address: Haemnanu, Abani, Passabe, Oecussi, East Timor
 (Conditionally released)
 Occupation at the time: Sakunar militia member

III. INTRODUCTORY STATEMENT OF FACTS

1. Military, police and militia forces carried out a widespread and systematic attack on the civilian population of East Timor in 1999. The attack began following 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. It intensified after the announcement on 4 September 1999 of the result of the popular consultation in which 78.5 per cent voted against the autonomy proposal.

2. The widespread and systematic attack was part of a coordinated campaign 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. The attack was directed against civilians of all ages, but predominantly against individuals who were believed to be independence supporters. The attack resulted in massive and widespread destruction of property, the internal displacement or forcible transfer outside of East Timor of thousands of persons and the infliction of serious injury or death on thousands of victims

IV. SPECIFIC STATEMENT OF FACTS

3. The district of Oecussi is an enclave of East Timor and is about 43 km away from the rest of East Timor. It is landlocked on three sides by Indonesian territory of West Timor. The Selat Ombai Sea is to the north.

4. The district of Oecussi is divided into four (4) Sub districts, Pantemakassar A and B, Nitibe, Oessilo and Passabe.

5. The Sakunar militia operated within the district of Oecussi.

6. Simao Lopes was the supreme commander of Sakunar militia and Laurentino Soares alias Moko was the de facto deputy commander of the Sakunar militiaman throughout Oecussi. **JANUARIO DA COSTA** was a Sakunar militia commander in Passabe Sub-district while **MATEUS PUNEF** was a member of the Sakunar militia in Passabe.

7. In each village there was a Sakunar commander who reported to Simao Lopes. In Passabe village, Gabriel Kolo, a police officer and also chief of the village, was the commander.

8th and 9th September 1999: Murder of Eighteen men from the villages of Tumin, Nibin and Kiobiselo; Inhumane Acts and Forcible Transfer of the Population.

8. Within the district of Oecussi, in the sub-district of Nitibe are the villages of Nibin, Kiobiselo and Tumin. All those villages are situated on the main north-south road through the enclave. Passabe lies to the south of the enclave some 45 kilometers from the main town of Oecussi on the north coast. Kiobiselo is approximately 10 kilometers north of Passabe and Tumin a further 7 kilometers north from Kiobiselo.

9. The people in the villages of Tumin, Nibin and Kiobiselo were predominantly supporters of independence.

10. On 7th September 1999 about 30 Sakunar militia met at the TNI District Military Command at Padimaw. Simao Lopes, the supreme Commander of Sakunar militia, addressed the group. A plan was discussed and orders given. Simao Lopes was to lead one group and Laurentino Soares alias Moko was to lead another group. Simao Lopes group was ordered to attack the villages around Passabe. Laurentino Soares

group was ordered to attack the villages around Oesilo. The two groups were to meet at the village of Kiobiselo.

11. On 8th September 1999, a large group of members and supporters of Sakunar militia gathered at the house of Gabriel Kolo in Passabe village. **JANUARIO DA COSTA** was part of that group. Simao Lopes and Gabriel Colo addressed the group. The villages of Nibin, Kiobiselo and Tumin were identified as being targets for attack. Simao Lopes ordered to burn houses and to kill anyone who resisted them. Gabriel Kolo also addressed the group and ordered that animals were to be stolen and the houses burnt. There were four TNI soldiers with the group.

12. **JANUARIO DA COSTA** was in the group led by Simao Lopes, which walked to the village of Nibin. At Nibin they set fire to houses and killed people and animals. Many inhabitants of the village fled into the surrounding area.

13. Armando Sani was the chief of the Nibin village and was a pro- independence supporter. Armando Sani was in Nibin at the time of the militia attack. During the attack the militia killed Armando Sani.

14. From Nibin, **JANUARIO DA COSTA** and the rest of the group walked on to the village of Kiobiselo. At Kiobiselo they set fire to houses and killed people and animals. Many inhabitants of the village fled into the surrounding area. At Kiobiselo the militia burnt and destroyed houses in the village and killed livestock belonging to the villagers.

15. Victor Punef, Yacobus Sici, Jose Noni Maknaun, Augustino Ulan, Zacharias Ena, Mikhael Sasi, Yacobus Oki, Jose Sici were inhabitants of Kiobiselo village and were killed during the militia attack.

16. Mateus Sufa and Josefino Bose were inhabitants of Kiobiselo village. They escaped from being killed by the same militiamen but were severely injured during the attack.

17. From Kiobiselo, **JANUARIO DA COSTA** and the rest of the group walked on to the village of Tumin and joined the group lead by Laurentino Soares, alias Moko. Many inhabitants of the village fled into the surrounding area. At Tumin the militia set fire to and destroyed the houses in the village and killed livestock belonging to the villagers.

18. Marcos Sufa Afoan, Filippus Tualaka, Laurentino Ulan Cono, Augustino Neno, Naub Lape, Alberto Afoan, Nenu Catu, Ciprianus Anin and Francisco Elu were inhabitants of Tumin village and were killed during the militia attack.

19. Laurencio Leo Mali was an inhabitant of Tumin village. He escaped from being killed by the same militiamen but was severely injured during the attack.

20. Sukunar militia killed eighteen people during the attacks in the villages of Nibin, Kiobiselo and Tumin. **JANUARIO DA COSTA** participated in the attacks and the killing of Armando Sani, Victor Punef, Yacobus Sici, Jose Noni Maknaun, Augustino Ulan, Zacharias Ena, Mikhael Sasi, Yacobus Oki, Jose Sici, Marcos Sufa Afoan, Filippus Tualaka, Laurentino Ulan Cono, Augustino Neno, Naub Lape, Alberto Afoan, Nenu Catu, Ciprianus Anin and Francisco Elu

21. On 9 September 1999, a group of Sakunar militia members including **JANUARIO DA COSTA** returned to the villages of Nibin, Kiobiselo and Tumin. The militia forcibly transferred people from the villages to Imbate in West Timor.

10 September 1999 – Extermination of forty-seven men from the villages of Tumin and Kiobiselo – Deportation and Forcible Transfer of the Population of the same villages.

22. At Imbate, many people including the villagers from Nibin, Tumin and Kiobiselo and members of the Sakunar militia had gathered. The villagers were forced to register at the sub-district office by militia including **JANUARIO DA COSTA** and **MATEUS PUNEF**. The villagers were also segregated into groups according to age and education.

23. About sixty-seven young men including Marcus Baquen, Josefino Ulan, Pedro Cono, Cipriano Bobo, Sebastiano Sunef (Ulan Sufa), Augustino Ase (Afoan Ase) and Mateus Kusi were separated from the other people. The men were all from the villages of Tumin and Kiobiselo. The young men were put into pairs and tied together using bindings.

24. At or around midnight, the men were forced to leave Imbate on foot. A large group of militia including **JANUARIO DA COSTA** and **MATEUS PUNEF** escorted the men. The men were taken back from Imbate in West Timor towards Passabe in East Timor.

25. At or around 3 a.m. on 10 September 1999, the group reached the border between East and West Timor at Tionlasi. Here the group crossed the Noel Passabe River into East Timor.

26. Once the group had crossed the river, at a place called Nifu Panef, the militia including **JANUARIO DA COSTA** and **MATEUS PUNEF** commenced the killing of the young men who were still tied together by bindings. The victims were either shot or hacked with machetes or swords. In total, more than forty-seven were killed.

27. **JANUARIO DA COSTA** and **MATEUS PUNEF** participated in the killing of the young men. **JANUARIO DA COSTA** and **MATEUS PUNEF** were armed with machetes, which they used to strike the men. Some men were struck, as they were

unable to escape because of their bindings. Others had been shot, but not killed, and had fallen to the ground. Those men were struck as they lay on the ground.

28. At or around 6am the same morning of the 10th September 1999, the same militia including **JANUARIO DA COSTA** and **MATEUS PUNEF** ordered about one hundred inhabitants of Passabe village and surrounding area to collect tools such as hoes and shovels to go to the area where the killings had taken place. The villagers were forced to bury in single and multiple graves the bodies of those men who had been killed

V. GENERAL ALLEGATIONS

29. The acts or omissions by the accused, described in this indictment, were undertaken as part of a widespread and systematic attack directed against the civilian population, with knowledge of the attack, and especially targeting those who were believed to be linked to or sympathetic with the independence cause in East Timor.

VI. INDIVIDUAL CRIMINAL RESPONSIBILITY

30. The accused are individually responsible for the crimes alleged against them in this indictment pursuant to Section 14 UNTAET Regulation 2000/15. Under Section 14 individual responsibility results if the individual:

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

(b) Orders, solicits or induces the commission of such a crime, which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the panels; or

(ii) be made in the knowledge of the intention of the group to commit the crime;”

VII. CHARGES

31. Pursuant to the above the General Prosecutor charges **JANUARIO DA COSTA** and **MATEUS PUNEF** with the following:

COUNT 1: CRIME AGAINST HUMANITY: MURDER

By his acts or omissions in relation to the events described in paragraphs 11 to 15, 17 to 18, and 20, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** is responsible as an individual pursuant to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for the murders of the following individuals on 8 September 1999 in the sub-district of Nitabe, Oecussi district:

- a) Armando Sani in the village of Nibin;
- b) Marcos Sufa Afoan, in the village of Tumin;
- c) Filipus Tualaka, in the village of Tumin;
- d) Laurentino Ulan Cono, in the village of Tumin;
- e) Augustino Neno, in the village of Tumin;
- f) Naub Lape, from the village of Tumin;
- g) Alberto Afoan, in the village of Tumin;
- h) Nenu Catu, in the village of Tumin;
- i) Ciprianus Anin, in the village of Tumin;
- j) Francisco Elu, in the village of Tumin;
- k) Victor Punef, in the village of Kiobiselo village;
- l) Yacobus Sici in the village of Kiobiselo village;
- m) Jose Noni in the village of Kiobiselo village;
- n) Augustino Ulan in the village of Kiobiselo village;
- o) Zacharias Ena in the village of Kiobiselo village;
- p) Mikhael Sasi in the village of Kiobiselo village;
- q) Yacobus Oki in the village of Kiobiselo village;
- r) Jose Sici in the village of Kiobiselo village;

and thereby committed a **CRIME AGAINST HUMANITY, MURDER**, a crime stipulated under Section 5.1(a) of UNTAET Regulation 2000/15.

COUNT 2: CRIME AGAINST HUMANITY: OTHER INHUMANE ACTS OF SIMILAR CHARACTER - INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH

By his acts or omissions in relation to the events described in paragraphs 16 and 19, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** is responsible as an individual pursuant

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to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for intentionally causing great suffering or serious injury to body or mental or physical health of the following victims in Nitabe sub district, Oecussi district on 8 September 1999:

- a) Laurencio Leo Mali in Tumin village;
- b) Mateus Sufa in Kiobiselo village; and
- c) Josefino Bose, in Kiobiselo village,

and committed a **CRIME AGAINST HUMANITY, INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH**, a crime stipulated under Section 5.1(k) of UNTAET Regulation 2000/15.

COUNT 3: CRIME AGAINST HUMANITY: DEPORTATION OR FORCIBLE TRANSFER OF POPULATION

By his acts or omissions in relation to the events described in paragraph 21, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** is responsible as an individual pursuant to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for the deportation or forcible transfer of population from the villages of Nibin, Tumin and Kiobiselo villages, in Nitibe sub-district, Oecussi district, to Imbate in West Timor on 9th September 1999 and thereby committed a **CRIME AGAINST HUMANITY, DEPORTATION OR FORCIBLE TRANSFER OF POPULATION**, a crime stipulated under Section 5.1(d) of UNTAET Regulation 2000/15.

COUNT 4: CRIME AGAINST HUMANITY: EXTERMINATION

By their acts or omissions in relation to the events described in paragraphs 22 to 27, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** and **MATEUS PUNEF** are responsible as individuals pursuant to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for the extermination of forty-seven men from the villages of Tumin and Kiobiselo, Nitibe sub district, Oecussi district, on 10th September 1999, thereby committed a **CRIME AGAINST HUMANITY, EXTERMINATION**, a crime stipulated under Section 5.1(b) of UNTAET Regulation 2000/15.

COUNT 5: CRIME AGAINST HUMANITY: OTHER INHUMANE ACTS OF SIMILAR CHARACTER INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH

By their acts or omissions in relation to the events described in paragraphs 22 to 27, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** and **MATEUS PUNEF** are responsible as individuals pursuant to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for intentionally causing great suffering or serious injury to body or mental or physical health of the following individuals on 10 September 1999 at Nifu Panef, near Passabe village, Oecussi district:

- a) Marcus Baquen;
- b) Josefino Ulan;
- c) Pedro Cono;
- d) Crispiano Bobo;
- e) Sebastiano Sunef (Ulan Sufa);
- f) Augustino Ase (Afoan Ase); and
- g) Mateus Kusi.

They thereby committed a **CRIME AGAINST HUMANITY, INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH**, a crime stipulated under Section 5.1(k) of UNTAET Regulation 2000/15.

COUNT 6: CRIME AGAINST HUMANITY: PERSECUTION

By their acts and omissions in relation to the events described in paragraphs 11 to 27, and with knowledge that the crime was part of a widespread and systematic attack on a civilian population, **JANUARIO DA COSTA** and **MATEUS PUNEF** are responsible as individuals pursuant to Article 14.3 (a), (c) and (d) of UNTAET Regulation 2000/15 for the persecution of members of CNRT and/or supporters of independence of East Timor in Oecussi district, through the commission of murders, infliction of bodily injury, destruction of property and deportation or forcible transfer to West Timor and thereby committed a **CRIME AGAINST HUMANITY, PERSECUTION**, a crime stipulated under Section 5.1(h) of UNTAET Regulation 2000/15 and for which they are individually responsible under Section 14 of UNTAET Regulation 2000/15 .

VIII. WITNESSES AND EVIDENCE

32. The list of witnesses and evidence that supports this indictment is contained in Annex A, which forms an integral part of this Indictment.

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IX. LIST OF VICTIMS

33. The list of victims is contained in Annex B

X. REQUEST FOR TRIAL

34. The Deputy General Prosecutor for Serious Crimes hereby requests the Special Panel for Serious Crimes of the District Court of Dili to try this case.

Dated, this, th 7 day of January 2005



Nicholas KOUMJIAN
Deputy Prosecutor General For Serious Crimes