



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

**TRIBUNAL DISTRITAL de DILI
SECÇÃO CRIMES GRAVES**

**DISTRICT COURT of DILI
SPECIAL PANEL for SERIOUS CRIMES**

Case No 2 a / 2004

Date: ^e 10 April 2005

Before :

Judge Brigitte Schmid, presiding

Judge Samith de Silva

Judge Maria Pereira

**PROSECUTOR
V.**

Domingos DE DEUS

J U D G M E N T

Public Prosecutor: Mr. Anton Girginov

Defence counsel: Ms. Maria Rochetau

A. THE SPECIAL PANELS

1. The Special Panels for Serious Crimes within the District Court of Dili in East Timor (hereinafter: Special Panel) were established within the District Court of Dili pursuant to Sec. 10 UNTAET Regulation (hereafter: Reg.) 2000/11 as amended by Reg.2001/25, in order to exercise jurisdiction over the criminal offences (inter alia) of Crimes against Humanity, as specified in Sec. 5 Reg.2000/15.

All Reg. referred to in this judgment, have been upheld, after East Timor was recognized as independent on 20 May 2002, by Section 165 of the Constitution of the Democratic Republic of East Timor, which came into force the same day.

2. According to Sec. 3 Reg.2000/15 the Special Panel shall apply foremost

- the law of East Timor as promulgated by Sec.Reg. 1999/1, which are “the laws applied in East Timor prior to October 1999”,
- subsequent UNTAET Regulations,
- subsequent laws of democratically established institutions of East Timor.

3. The Special Panel has held that “the laws applied in East Timor prior to 25 October 1999” are Indonesian laws (Prosecutor v. Joao Sarmento and Domingos Mendonca, Decision, 24 July 2003). This opinion was confirmed by Law No.10/2003 published on 10 December 2003.

B. PROCEDURAL BACKGROUND

4. On 29 October 2004 the Public Prosecutor before the Special Panel filed a written indictment (in English) against the accused Domingos DE DEUS, Mohamad RONI and Joao DA COSTA.

5. The accused Domingos DE DEUS was charged in three Counts with Crimes against Humanity : two counts of accomplished murder (counts 1,2) and one count of attempted murder as a Crime against Humanity of Murder (count 3), according to Sec. 5.1 (a) and 10 of UNTAET Reg. 2000/15.

6. The Court Clerk provided notification of the receipt of the indictment to the accused Domingos DE DEUS and to his legal representative , on 5 December 2004, pursuant to Sec. 26.1 and 26.2 Reg. 2000/30.

7. On 18 May 2004 an arrest warrant was issued by Investigating Judge Sergio Dias Quintas. Domingos DE DEUS, on 8 June 2004, was arrested and detained. On 10 June 2004 he was released subject to substituted restrictive measures. Those measures were changed by Judge Rapoza on 27 January 2005.

8. The Preliminary Hearing commenced on 27 January 2005 and ended the same day. On 27 January 2005 the Special Panel severed the indictment against Domingos DE DEUS from Case No. 2 / 2004, renumbering his case as 2 a / 2004.

9. The Trial Hearing commenced on 28 February 2005.
The Verdict was pronounced on 16 March 2005.

10. Interpreters for English, Tetum and Portuguese languages assisted before the Court.

C. FACTUAL FINDINGS

I. Account of the proven facts (according to Sec. 39.3 (c) Reg. 2000/30).

1. In 1999, between April and October, a widespread and systematic attack was carried out against the civilian population of East Timor, which occurred during two interrelated periods of intense violence. Hereby the first period was prior to the announcement of 27 January 1999 by the Indonesian Government stating that the people of East Timor would be allowed to choose autonomy within the Republic of Indonesia or independence. This period ended on 4 September 1999, when the result of the Popular Consultation, held on 30 August 1999, was announced. The people at a quota of 78,5 % had voted for independence. The second period of violence followed the announcement of the result of the Popular Consultation on 4 September, and ended on 25 October 1999.

2. The widespread and systematic attack was part of an orchestrated campaign of violence carried out by the militia members in favour of autonomy, members of the Indonesian Armed Forces, ABRI, later renamed TNI in 1999, and the members of the Indonesian Police Forces, POLRI, with the consent and active participation of the civil and military authorities. The violence included incitement, life threats, intimidation, murder, forced deportations, premeditated arsons and other forms of violence.

3. In the terms of the Agreement of 5 May 1999 between the Republic of Indonesia, Portugal and the United Nations regarding the Popular Consultation, the Indonesian security authorities (TNI and POLRI) had the responsibility of assuring a secure climate deprived of violence or other forms of intimidation, as well as maintaining the law and order before and during the Popular Consultation. TNI and POLRI did not execute these obligations and they did not make any attempt to dismantle or neutralize the militia groups.

4. More than twenty-five militia groups operated throughout East Timor, in 1999, amongst them TIM PANCASILA.

5. The Indonesian Army in East Timor was composed by regular territorial forces (KOSTRAD) and the Special Force Command (KOPASSUS); each of them had units, officers and soldiers stationed in East Timor.
6. The district of Ermera is one of the thirteen districts of East Timor, and covers the five sub-districts Railaco, Ermera, Hatolia, Letefoho and Atsabe. In each of the sub-districts the TNI forces, including KODIM 1637 (Komando Distrik Militer), were headquartered by the sub-District Military Command (KORAMIL).
7. In the district of Ermera the Indonesian military forces , including the members of KORAMIL in Atsabe, worked in close coordination with the militia group TIM PANCASILA.
8. The United Nations created a mission to accompany the Popular Consultation, UNAMET. The United Nations hired personnel, namely Timorese, to assure the regular operation of the electoral act, and dispersed voting booths throughout the country.
9. Among the hired staff were Joao Lopes, Orlando Gomes and Alvaro de Deus Lopes. They attended the electoral proceedings in the Primary School of Baboe Leten village , sub-district of Atsabe.
10. The accused Domingos De Deus , in 1999, was a TNI soldier, ranked Lieutenant Police in 1993. He was Chief of the village of Malabe and militia chief (Pancasila) of area 2 , which covered 6 villages. Abel Gomes was commander of area 1, which covered 5 villages..
11. On 30 August 1999, election day, people in the schoolhouse undisturbedly cast their votes all morning until lunch time .The voting staff had a prepared lunch and resumed work by 2 p.m.
- 12 Militia had been around the schoolhouse all morning. Between 2 p.m. and 4 p.m. Joao da Costa , a commander of Kopassus militia, called his men by "phone" (walkie –talkie). Not long after that militia arrived at the place, together in a kijang (pickup). Abel Gomes and the accused Domingos de Deus were among them.
13. They were armed with guns, some of them had knives. They were many people.
14. They first went to the village chief's house, a kiosk opposite the schoolhouse. There – invited by Domingos Gomes- , they drank, some of them had food. Domingos de Deus was there as well.
15. When they arrived, Domingos Gomes uttered:" Soon they will die ".

16. Later on the UNAMET car arrived at the scene to collect the ballot box. The militia approached the schoolhouse. They carried guns and knives. At their arrival, Manuel Halimau shot into the air. Miguel La said: "Don't shoot like that, there will be a lot of people killed". After that they slapped Miguel, and all the militias were shooting into the air. They screamed: "Kill all that staff."

17. All people with the voting staff inside the school immediately were scared. They therefore gathered in one room. That room was open to the back, the window only equipped with a wire screen. The people inside the house lay down on the floor.

18. Among the voting staff were Francisca Gomes, Domingos de Deus' niece, and her husband Antonio.

19. The accused Domingos de Deus first did not enter the house, but went to the open back of the house; he could be seen and heard by the people inside.

20. The accused Domingos de Deus started shouting: "At day you eat Indonesian man's food and at night you give yourselves to Falentil in the bush." He called them names and shouted: "Come and see these dogs sitting inside". At last he called: "Wipe out".

21. Joao da Costa was the first one to enter the house, carrying three samurais. He started jumping in a ritual way, saying: "This is the time, the hour, now". He pulled out the small samurai and stabbed Alvaro de Deus Lopes; after that he went outside. Alvaro fell down on the floor at the right hand side near the door between two school chairs. Alvaro dragged himself outside.

22. A Tentara, Jose Ami, took Alvaro out. When they came outside, Joao da Costa asked him: "Why are you saving this person?" Ami answered: "No, this person is working for an international organisation, we cannot do this kind of things". Alvaro was taken to a house nearby to hide until his father came to take him to the mountains.

23. Francisca Gomes stood up, and, recognizing Domingos de Deus standing at the back of the house, she screamed: "Uncle, uncle, come and help us, take us outside".

24. So the accused Domingos de Deus entered the house, Francisca jumped up and hugged him, and the others in the room hung on Francisca and her husband Antonio, and all of them, which were Francisca, Antonio, Monteiro, Izabel Maria Alves, Miguel Lopes Alvaro, Mateus de Oliveira and Orlando Gomes, ran out. Izabel and Miguel ran to hide in a house nearby. Domingos did not see Alvaro lying on the floor.

25. When they arrived outside, Luis Gomes (Bandis) said:”Village chief get out of the way, so that we can look after these dogs”. Domingos answered:” I’m sorry, but these people are my children, they are my family”. Domingos then accompanied them to the car, which shortly after drove away with them. Domingos returned to the schoolhouse.

26. Joao Lopes, carrying the voting box, was going to leave the schoolhouse heading for the UNAMET car. Joao da Costa went inside and stabbed Lopes. Outside the house Lopes was received by the men who beat him. Marciana da Graca , Joao Lopes’ wife, and Joao rushed to the car. Militia allowed Marciana to accompany her husband . The voting box was carried to the car. When Joao Lopes was already in the car, militia attempted to drag him out, some TNI and SGI beat and stabbed him.

27. As soon as Orlando arrived at the door of the schoolhouse, militia received him from the stairs. They, namely at least Domingos Rakimetan and Pedro, kicked him, so that he fell down the stairs. Luis Gomes pulled a bamboo out of the fence to beat Orlando, who cried out:”au,au”. The accused Domingos de Deus punched him with his fist. Orlando ran to the field and fell down. There Joao da Costa stabbed him to death.

28. Joao Lopes died of the inflicted wounds the same day . Alvaro de Deus Lopes was rescued by his father, carried to the mountains. He finally recovered.

29. When the militia arrived at the area of the polling station, they, at least, were – according to the majority of the panel - up to” trouble”. The accused Domingos de Deus at least knew about that.

The acts and omissions by the accused and his co-militia members were part of a widespread attack by the Indonesian military on the civilian population of East Timor to terrorize those civilians who resisted the Indonesian occupation and wanted independence. This context was known to the accused.

II. Factual grounds (according to Sec. 39.3 (d) Reg. 2000/30)

The above account of the proven facts is based on the following:

A. 1. The evidence for the systematic attack on the civilian population to intimidate supporters of independence from Indonesia after the announcement of the Popular Consultation on 27 January 1999 and militia Tim Pantacila and Kopassus operating within the district of Ermera and facts within C I 1 – 8 are based on well known historical facts which can be ascertained from history books

(cf. for example James Dunn, East Timor, 3rd edition 2003, and in reference to Court Decision of 2 November 2004, Case No. 18a/2003).

2. The military rank within TNI of the accused Domingos de Deus is proven by his military card, accepted into evidence by the court.

B. The witnesses testified as follows :

1. Izabel Maria Alves :

UNAMET staff for the election, was inside the polling station.

Domingos de Deus was there at the back of the house with lots of his staff (Pancasila).

At 4 p.m. militia assaulted the people in the polling station.

Joao da Costa entered the house with 3 samurais; he stabbed Alvaro with the small one.

Domingos de Deus swore at the staff and used bad language and said:

“ Timor become independent and eat shit”.

Francisca called: “Uncle, uncle, come and take me out”. After that he ran into the room.

He pulled Francisca Gomes, Antonio and Monteiro out of the house; the others e.g. Veronica and Izabel, took the opportunity to go out at the same time.

They went to the teacher’s house to hide.

When Orlando arrived outside, they (Tim Pancasila) beat him, kicked him, he fell down the stairs. They , in particular were Domingos Rakimetan and Pedro. Orlando ran to the field, a lot of people beat him up with sticks, he fell, and Joao da Costa stabbed him to death.

There were two sectors of militia, Atsabe Sul and Atsabe Norte, this happened in Sul, Atsabe Norte had come to assault. They were many, they could not have come alone.

The people he saved were all relatives. If it would not have been for him, a lot of people would have died. But at that time he is the one who created this team.

Joao da Costa also stabbed Joao Lopes, even before he stabbed Orlando. She recognized the accused as Domingos de Deus.

2. Alvaro de Deus Lopes:

He was contracted for the election.

From 8 a.m. until 10 a.m. nothing had happened. After lunch militia came on foot or by car . They started calling us names and started shooting. Mr. Robert (from Nigeria) called the staff to gather in one room. Alvaro was counting the voting cards . They shot him.

From the back of the house Domingos de Deus started screaming: “ Antonio, come and see these dogs, they are sitting inside.”

When Domingos saw Joao stab Alvaro, he went to the other side, he saw

some of the staff screaming, so he took all of them but for Alvaro, Joao and Orlando out of there to a car. He did not see Alvaro lying on the floor. They (militia) screamed :”Grab them alive, cut their private parts, cut his penis off.”

Joao da Costa went in and told Alvaro, he was looking for him. He dragged Alvaro outside to stab him, but it did not happen. He brought him back inside, grabbed the knife and stabbed him on the back; the knife came out to the other side; Alvaro fell down. Then he dragged himself outside.

There was a Tentara, Jose Ami, who took Alvaro out. Da Costa asked him, why he saved him, and Ami answered: “This person is working for an international organisation, we cannot do this kind of things.”

Domingos Letimau beat Orlando in front of Alvaro. Orlando said: “ God, I didn’t do anything wrong.”

They took Alvaro in a house not far from the school to hide until his father took him to the mountains to cure him.

Da Costa was the only one who stabbed Alvaro.

Domingos de Deus was commander of area 2” we” in area 1, which were a bit far away from each other; Malabe is two villages away.

When Joao da Costa came into the room, Orlando was still hiding next to the door.

When militia first arrived, they went to a kiosk opposite the polling station and started drinking; one hour later they attacked.

He identified the accused as Domingos de Deus.

3. Marciana de Graca :

Joao Lopes’ widow

She was there sitting outside after voting. When they started shooting, she was asked inside.

Militia with Joao da Costa had surrounded the polling station from morning to 12 o’clock and continued until 2 o’clock. Some of them already drunk.

At 2 o’clock Domingos de Deus with his other mates arrived there. They were hanging around.

At 4 o’clock , when the UNAMET car arrived from Lowana, they started to come in, Domingos from behind the school, Joao da Costa from the door.

He met Joao Lopes who was holding a box, then he first slapped him at the door, after that he went inside and also stabbed him.

Domingos was standing there with a gun, and Joao da Costa stabbed Alvaro. Domingos de Deus said;” At day you eat the Indonesian man’s food and at night you give yourselves to the Falentil in the bush”, looking at her.

Domingos de Deus pulled Orlando out of a cupboard or something,then he Kicked Orlando: he was holding a gun.

The witness ran out of the house looking for her husband.

They both beat Orlando with sticks, behind her; he screamed :”au,au, I’m going to die. “ Outside they (Manuel Halimau, Domingo Lekimau, Joao da Costa) stabbed him with a knife to death.

Alvaro was the first one stabbed.
When the witness came outside, some militia said: "This lady didn't do anything wrong, it is better that we let her into the car to look after her husband." Some militia beat Joao Lopes, already in the car, and stabbed him again. They were Joao da Costa, Manuel Halimau and Domingos Lakimao, as her husband had explained to her.
Joao Lopes died the same evening.
The witness identified the accused as Domingos de Deus.

4. Mateus de Oliveira :

Local UNAMET staff

In the afternoon the voting staff started packing up. Suddenly Domingos and his followers came in a kijang, and surrounded the station. They were armed.
Domingos de Deus, from the back of the house, said: "We now at this time we live in Indonesia we eat Indonesian rice, we received Indonesian money, we feed our wives and children until their hands and feet get fat." And then: "Wipe out."
Domingos looked into the net, his niece stood up and said; "Uncle, uncle, we are here"; and then he called Antonio Belimao to bring him his gun. After that he came around, went in to save his niece and other colleagues. When they came out, some of them ran away, some went to the car.

In his statement, given on 24th November 1999, the witness named militia members present at the scene, among them Domingos de Deus, telling that Manuel Halimau and Joao da Costa kicked and punched Lopes. Da Costa stabbed Lopes who was carrying the ballot box. Lopes fell to the ground, and UNAMET staff helped him into the car. The witness ran into another room to hide. Alvaro de Deus Lopes came into the room followed by da Costa with the knife he had Lopes stabbed with. He plunged the knife into Alvaro's lower back, causing an exit wound under his right rib cage. When the witness ran to the cars he saw Domingos de Deus beating Orlando with a stick, outside the polling room in the field. He tried to stab Orlando on two occasions, though missed. Then da Costa stabbed Orlando in the abdomen area and twisted the knife.

On 21 February 2005 the witness in a further pretrial written statement given to the defence he described Domingos' role differently. Painstakingly questioned by the court he explained that after his statement on 10 February 2000 he had discussed the matter with Antonio, Francisca and Izabel, he was then confused and doubted the identity of Domingos, because he at the time was the head, the one who coordinated and gave orders to the militia; they all beat Orlando and he didn't do anything about it. The witness insisted that his confusion only concerned the beating, and that he became confused not before the others gave a different version about the beating.
So the court deems Mateus de Oliveira credible.

5. Miguel Lopes:

Local UNAMET staff

Alvaro's father

He did neither see his son stabbed nor Orlando and Joao killed.

He rescued Alvaro.

6. Alfonso Goncalves Pereira:

The attackers were SGI members.

Domingos de Deus was there, and Abel Gomes, Manuel Halimau, Miguel La.

Luis Gomes pulled a bamboo out of the fence and beat Orlando on the head;

Orlando ran outside, came to the field and fell down.

Joao da Costa mentioned in the morning, that there was going to be trouble , if the people voted for independence.

They were drinking and saying, why did UNAMET staff don't want to come out.

As soon as the UNAMET car arrived, Manuel Halimau shot first and Miguel said: "Don't shoot like that because if you are shooting like that, there will be a lot of people killed". Then they were going to slap him; the militias started shooting up in the air.

7. Paulo de Jesus:

Domingos de Deus, before he took people out, held Orlando Gomes, punched him twice with his fist, because they thought he supported independence.

Orlando had jumped out and he went after him.

The witness identified Domingos de Deus.

Joao da Costa stabbed Orlando.

They screamed , said CNRT that whoever there is the one who made us suffer.

Domingos was helping the local staff to go into the car because they were his family (Francisca and Antonio Gomes).

Domingos and Joao da Costa were of the same level, both TNI. Lots of his subordinates were there.

Joao da Costa called to Atsabe by hand radio, 2 hours later the militia arrived, amongst them Domingos de Deus. They had lunch at the village chief's house and drank.

8. Francisco de Araujo:

Village chief of Atsabe

Was not at the crime scene .

9. Pedro dos Santos:

Militia member

At 11.30 towards 12 o'clock the Koramil from Atsabe brought Joao da Costa to Bobolete.

At around 1 o'clock p.m. Joao da Costa phoned Atsabe for the forces to come. Not long after that they came with guns in a kijan. When, at 3.30, only a few were left, the forces started shooting outside TPS. Then they went into TPS, the first was Manuel Halimau, second Luis Gomes, then Celistino and Delphino. Domingos de Deus was amongst them. In the kijan were no militias, only forces.

The witness watched outside from the field that Joao went in; he killed Alvaro. Domingos, knowing that da Costa was a bad person, went in to take the youth, who were working with UNAMET out, and into the car. Then they went inside and brought Orlando and Lopes out of the house. The ones who were at the door received them and beat them up until they died. Joao da Costa pulled out his knife and stabbed Lopes. The malai from UNAMET eventually put Joao Lopes and the box into the car and went to Atsabe.

When Domingos came into the polling station, Alvaro already was stabbed. He went inside to save Orlando and Joao, his hand never touched them.

When they arrived, the population was still voting; when their number became fewer, they attacked, having shot a signal. Domingos and da Costa were military, the rest were forces from SGI command.

Domingos was a private, da Costa senior sergeant.

No orders were given.

When Domingos arrived, he had a G 3, but went into the house empty handed.

Domingos brought out Antonio Montegu, Asika, Veronika, Izabel and others.

Domingos was a dantun. He was going to save them knowing that da Costa was a bad person.

Militia leaders gave order to organize security for the voting population.

10. Manuel Monteiro:

Joao da Costa was the first to go into TPS and killed Alvaro. Then Domingos de Deus went in and brought out Antonio, Veronica, Izabel and all the others and took them into the car. He knew that da Costa was bad tempered.

Domingos came with the gun, but went into the house empty handed.

It was just da Costa's plan to make trouble. He called them to come to TPS by radio. Domingos did not know.

Domingos went in to bring Orlando and Lopes out. When they came out, the people outside got them, and da Costa first killed Orlando, then Lopes.

Domingos is not related by family with those he saved.

11. Domingos Gomes:

Member of Tim Pankasila, chief adviser until 15 June 1999

We were already there when they arrived with the car.

Domingos pushed them out and went out with them to the car.

Joao da Costa stabbed Alvaro.

After having voted the witness sat outside the house for a while. The village chief of Baboete invited him to eat something. In his house were militias including Domingos de Deus. The witness did not eat, but only drink. He asked them why they had here come for, because they wore uniforms and had guns. They answered: "you are an old man, you cannot demand". His younger brother then drove him home, because he was drunk. He did not see anything concerning the stabbings. Domingos de Deus was the coordinator of area I with Tim Pancasila, in charge of 5 village chiefs. Luis Gomes was commanding the operation in Baboete. Domingos was a military commander, as well, a commander of KORAMIL.

12. Domingos Gomes:

Member of Tim Pancasila

Joao da Costa came in and killed Alvaro. Domingos de Deus came in , he had bare hands ; Domingos pushed them out of the door and da Costa killed Orlando and Lopes outside with a knife. He identified Domingos de Deus in the courtroom. As soon as they arrived in the kijang , they surrounded and started to shoot. They said:"Soon they will die". They were many and we were afraid. He pushed people out, men and women, I couldn't count. When Orlando and Joao arrived outside, people kicked and punched Orlando . Joao da Costa killed. " Domingos de Deus kicked us a few times and then, he went out. He was telling us to run away, but we didn't. Domingos de Deus kicked Joao Lopes twice. He did not do anything to Orlando".

13. Daniel de Jesus:

Related by family with Joao Lopes.

They arrived with the car. Domingos de Deus went in and punched Orlando with the fist.

Domingos carried a gun. They were all armed when they went in.

He pulled Orlando out, punched and pushed him out of the door.

Orlando jumped out, he ran down , Pedro dos Santos caught him, took him to the field. All the militias beat him up. He fell down , lied down and Joao da Costa stabbed him.

The witness identified Domingos de Deus.

The witness did not see Domingos do anything to Joao Lopes.

Beating Orlando were Manuel Halimau, Luis, Pedro dos Santos and other militias.

14. All of the witnesses in the courtroom identified the accused as Domingos de Deus.

They corroborated as far as the stabbings of the victims and the rescue of Veronica, Antonio and Monteiro are concerned. Joao da Costa was the one who in person carried out the stabbings and killings.

Apart from that the witnesses described credibly and convincingly Domingos de Deus' role in the crimes, forming a mosaic of his participation in the criminal acts. He acted jointly with other militia members in swearing and threatening peaceful civilians. He carried a gun at least when he arrived at the scene.

The panel does not deem that there was a planned joint action of militia from area I and II, though militia were requested to turn up at the polling station by means of one "hand - radio" call. The circumstances in which the accused together with more persons participated in the commission of this particular crime however show, at least, an unspoken ad hoc understanding or arrangement accounting to an agreement formed between them then and there to commit that crime.

The panel does not consider the accused as a person of authority who could have saved the victims as well.

III. Responsibility of the accused

According to Section 14.3 (d) Reg. 2000/15 the accused is criminally responsible and liable for punishment for a crime within the jurisdiction of the panels if this person "in any other way contributes to the 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.

The evidence shows that the accused was together with the group of militia that were threatening people by shooting, by beating Orlando, stabbing Alvaro, Orlando and Joao, with the intention to kill.

Even, if he did not beat Orlando himself – according to the majority of the panel -, and though he did not inflict a wound himself, he was part of an organized force intent on killing UNAMET staff as part of independence supporters. He contributed to their criminal intent by his threatening posture of carrying a gun, at least at his arrival, and uttering scolds and verbal threats, thereby intimidating the unarmed people in and around the polling station, and strengthening the criminal resolve of the other members of the group. He therefore is responsible according to Section 14.3 (d) (ii) Reg. 2000/15 as part of a joint criminal enterprise.

There can be no doubt that the accused had the required intent as stipulated in Section 18.1 Reg. 2000/15.

D. LEGAL FINDINGS OF THE CASE

The accused is accountable for Murder as a Crime Against Humanity according to Section 5.1 (a) Reg. 2000/15.

Orlando and Joao were killed, Alvaro luckily survived the attack though seriously injured (Sec. 14.3 (f) Reg 2000/15).

The accused was at the time of the attack at least aware that the death of the victims would occur in the ordinary course of events. The nature of the attack , its brutality and contempt towards the UNAMET staff shows that the actions were meant to cause the death of the victims, or at least death constituted a reasonable possibility in the ordinary course of events. Every participant in the attack was conscious of the possibility that the attacked would die as a consequence of the attack.

E. SENTENCING

The majority of the Special Panel has taken into account the following:

Aggravating circumstances :

There are no aggravating circumstances to consider.

Mitigating circumstances :

The accused saved several persons.

The accused has no previous conviction.

He did not save Alvaro, because he, injured, already was lying on the floor.

The accused, at least during the commission of the crimes, was unarmed.

His contribution to the criminal act was low.

He is re-integrated into society. His social danger therefore is reduced.

His family background is of no significant weight, because the victims as well had families.

Sentencing policy

According to Sec. 10.1, 5 Reg. 2000/15 the Panel shall have recourse to the general practise regarding prison sentences in the courts of East timor and international tribunals. Hereby the panel "shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person" (Sec.10. 2 Reg 2000/15).

Conjunction of punishable acts

Regarding the killing of two persons and the attempted killing of one person as described above, the three crimes must be considered as one continued act in the sense of Art. 64. 1 IPC.

F. DISPOSITION

For the aforementioned reasons , after considering all the evidence presented during the trial and the arguments of the parties and the transitional rules of Criminal Procedure , the majority of the Special Panel finds and imposes sentence to the accused Domingos de Deus as follows:

GUILTY of the accomplished murders of Joao Lopes and Orlando Gomes, and the attempted murder of Alvaro de Deus Lopes, on 30 August 1999 , in Atsabe, district of Ermera, within a joint criminal enterprise as part of a widespread or systematic attack against a civilian population with knowledge of the attack, as stipulated under Sec. 5.1 (a) Reg. 2000/15.

In the punishment for this crime sentences the accused to 2 (two) years of imprisonment.

Orders the accused to bear the costs of the criminal procedure.

Pursuant to Sec. 42.1 and 42.5 of Reg 2000/30, the convicted person shall be immediately imprisoned and shall spend the duration of the penalty in East Timor.

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

This judgment was rendered and delivered on ¹² April 2005 in the District Court of Dili.

*See attached
Dissenting opinion
Schmid*

Schmid
Judge Brigitte Schmid, Presiding

Samith de Silva
Judge Samith de Silva

Maria Pereira
Judge Maria Pereira

(To be translated into Tetum, the English text being authoritative)



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

**TRIBUNAL DISTRITAL de DILI
SECÇÃO CRIMES GRAVES**

DISTRICT COURT of DILI

SPECIAL PANEL for SERIOUS CRIMES

Case No 2 a / 2004 Domingos de Deus

Date: ^e12 April 2005

PROSECUTOR

V.

Domingos de Deus

Dissenting Opinion of Judge Brigitte Schmid

The decision of the Court pronounced on 8 April has not been taken unanimously. The majority of the panel above all emphasized the fact that the accused helped two persons out of the house, who were followed by at least three more. The majority finally could not bring themselves to believe the witnesses so far as they described the active role of the accused. Consequently the majority did not find any aggravating circumstances.

However there cannot be any reasonable doubt that the accused not only was present at the scene of the crime but also took a leading part in the happenings.

Domingos de Deus was a person of local authority : he was a militia chief of area 2, which covered 6 villages, he was a low ranking TNI member (yet no higher rank at the scene), village chief of Malabe, a village far away from Atsabe. His armed militiamen and military were all over the place.

Domingos de Deus' authority enabled him to take his two relatives out ("these are my children, I have to take them out "); the others just followed.

It was a concerted action of militia of areas 1 and 2, and TNI. Joao da Costa placed just one phone call, and Domingos de Deus with his men soon after arrived.

This compels the conclusion that he was waiting with them at some place to be called.

And they came with weapons, targeting the UNAMET staff. They, therefore, waited in the local chief's house for the right time to attack.

According to the Defence witness Joao da Costa was well known as a violent person. So the accused not only knew well what da Costa was up to, but even came to the scene to carry out his part.

Domingos de Deus did not approach the house with the intention to save anybody. Instead he punched and kicked Orlando and Joao Lopes, dragged Orlando out of a cupboard, beat him with a stick, and even tried twice to stab him. The credibility of witness Marciana de Graca is beyond doubt; though Joao's widow, she did not show any eagerness to incriminate.

The Defence illegally tried to doubt Prosecution witness Mateus de Oliveira, at least by taking advantage of Mateus' confusion, caused by people who had decided that the accused should not be accountable. This witness, who in front of the investigator three times had made the statement that he had seen Domingos beating Orlando with a stick and trying to stab him twice, before the court expressively testified, that not the written statement given to the Defence was true, but his previous account.

It was not before his niece Veronika, recognizing him, called him for help , that he went into the house to rescue her and her husband.

There is no reason to doubt the credibility of the witnesses who testified that Domingos de Deus intimidated the people in the house calling them names, and threatening them, heating up the atmosphere by encouraging his men ("...see these dogs sitting inside", "We now at this time we live in Indonesia, we eat Indonesian rice, we received Indonesian money, we feed our wives and children until their hands and feet get fat" and then " Wipe out" (Mateus de Oliveira), At day you eat Indonesian man's food and at night you give yourselves to the Falentil in the bush " (Marciana de Graca).)

The accused was a member of TNI, who had the responsibility according to the Agreement of May 5, 1999 (historical fact) between the Republic of Indonesia, Portugal and UN regarding the Popular Consultation to assure a secure climate deprived of violence or other forms of intimidation, as well as maintaining law and

order before and during the Popular Consultation. On the contrary, he did not even verbally hinder anybody to carry out violence.

The accused not even attempted to save any of the victims, though having the authority to save people, as the rescue of his relatives shows.

The victims were defenceless, had no weapons, and, surrounded by militia and TNI, had no chance to escape.

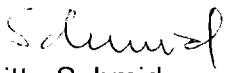
The attack was completely unprovoked by the people in the polling station, especially by the victims.

The sentencing aims of the Court are deterrence, retribution, reconciliation and reprobation. For violations of international law the most important aim is deterrence. This means "dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights"

(ICTR, Kambanda Judgment and Sentence, 4 September 1998, para.28).

In East Timor there is an additional requirement for deterrence because just across a highly porous border there are thousands of recalcitrant ex-militia men with the capability of once again destabilizing this country by means of murder.

For the foregoing reasons with regard to a maximum punishment of 25 years (according to Sec.10.1 (a), 5.1 (a) Reg. 2000/15) a punishment of 6 (six) years of imprisonment is deemed appropriate.



Brigitte Schmid



Dili, 12 April 2005

Judge of the Special Panel for Serious Crimes

(To be translated into Tetum, the English text remaining authoritative)