



# REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

## RDTL TRIBUNAL DISTRIAL de DILI SECÇÃO CRIMES GRAVES

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Case No. 18b/2001

Date: 13/10/2003

Original: English

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**Before:**

**Judge Maria Natércia Gusmão Pereira, Presiding**

**Judge Sylver Ntukamazina**

**Judge Siegfried Blunk**

Registrar: Joao Naro

Judgement of: 13 October 2003

### **THE PROSECUTOR V. DOMINGOS MENDONÇA**

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#### **JUDGEMENT**

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**The Office of the Public Prosecutor:**

Mrs Shyamala Alagenda

**Counsel of the accused:**

Ms. Ana Beatriz Sanchez

## **INTRODUCTION**

1. The trial of Domingos Mendonça (39 years old, married, born on 1 September 1964 in Holarua, Sub District of Same, Manufafi District, East Timor, farmer, before the Special Panel for Serious Crimes within the District Court of Dili (hereafter: the "Special Panel"), commenced on 30 June 2003, and was concluded today, the 13 October 2003 with the rendering of the decision.
2. After considering all the evidence presented during the trial, all the written and oral statements from the office of the Prosecutor General (hereafter: the "Public Prosecutor") and from the defense counsel for the defendant, and considering the arguments of the parties including their final statements of 30 of September 2003, the Special Panel,

## **HEREBY RENDERS ITS JUDGEMENT**

### **A. THE SPECIAL PANELS**

3. The Special Panels were established, within the District Court of Dili, pursuant to Section (hereafter "Sect.") 10 of UNTAET Regulation (hereafter "U.R.") no. 2000/11 as amended by U.R. 2001/25, in order to exercise jurisdiction with respect to the following serious criminal offences: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as specified in Sections 4 to 9 of U. R. 2000/15.

### **B. PROCEDURAL BACKGROUND**

4. On 7<sup>th</sup> August 2001, the Public Prosecutor filed before the Dili District Court a written indictment (in English) against the accused Domingos Mendonça, Benjamin Sarmiento, Romeiro Tilman, and João Sarmiento.
5. The accused Domingos Mendonça was charged in three Counts with Crimes Against Humanity: two counts of murder as a Crime Against Humanity (counts 20, 21), and one count of Persecution for political reasons as a Crime Against Humanity (count 22).
6. Attached to the indictment were copies of the following documents:
  - (1) The list of the victims, attached as annex A and containing:
    - a. Victims of the murder: Carlito de Araujo aka Tilman (Maulito), Luis Boco Siri, Agapito de Araujo, Afonso da Costa, Armindo da Costa (Armindo Tilman), Carlito da Costa (Alberto Ximenes) and Lorenço Tilman.
    - b. Victims of Detention and Deportation or Forcible Transfer and Persecution: Villagers from Grotu Lau, Villagers from Orema,

Villagers from Leubrema, Villagers from Datina, Villagers from Suri-Rema, Villagers from Orluli, Villagers from Trilolo

(2) Annex B, containing the statements of the witnesses, suspects Domingos Mendonça, Benjamin Sarmento, Romeiro Tilman, and João Sarmento, and also the documentary evidence.

All annexes were an integral part of the indictment.

7. The Court clerk provided notification of the receipt of the indictment to the accused Domingos Mendonça and to his legal representative, on 17 of August 2001, pursuant to Sect. 26.1 and 26.2, U.R. 2000/30.
8. The accused Domingos Mendonça was arrested and detained since 31 March 2001 and the Court (Judge Investigator) released him under substituted restrictive measures on 2 July 2001. He remained under substituted restrictive measures up to date.
9. On 12 September 2001 the Prosecutor submitted to the Court the indictment in Indonesian language.
10. The first preliminary hearing was scheduled for 8 November 2001. However, the accused Domingos Mendonça did not attend and the preliminary hearing was re-scheduled for 22 January 2002. On 22 January one of the judges was not available, and the hearing was postponed to 13 February 2002.
11. The Preliminary hearing commenced on 13 February 2002 and finished on 14 February 2002. During the Preliminary hearing, the Court checked whether the defendant Domingos Mendonça had read the indictment or if the indictment had been read to him, and asked him if he understood the nature of the charges, his right to be represented by a legal advisor, his right to remain silent, to plead guilty or not guilty to the charges, as provided for in Sect. 30.4 U.R. 30/2000. The Defendant Domingos Mendonça made a statement that he had read the indictment and understood the charges against him. The Court then accepted the list of evidence submitted by the Public Prosecutor.
12. On 12 August 2002 the trial was again postponed to 7 October 2002 because one of the judges was not available. On 7 October 2002 the Special Panel held another trial and the hearing was, therefore, postponed to 2 December 2002.
13. Considering that on 2 December the Special Panel was busy with the trial of the Lolotoe case the hearing was postponed to 17 March 2003.
14. On 17 March 2003 one of the Judges in the Panels was involved with another case and decided to postpone the trial to 19 May 2003.

15. On 19 May 2003 the return of one of the judges of the Panel to his home country led to the postponement of the trial to 30 June 2003.
16. On 30 June 2003, during the trial hearing the co-accused Benjamin Sarmiento and Romeiro Tilman made admissions of guilt, and the Court decided to sever this case, and the case of João Sarmiento and renumbered it 18a/2001.
17. The defence counsel of Domingos Mendonça asked the Court to decide upon the issue of the applicable law in East Timor consequent to the Decision of the Court of Appeal in the case Armando dos Santos declaring Portuguese Law as subsidiary law of East Timor. On 24 July 2003 the Panel rendered its decision declaring that the "the laws applied in East Timor prior to 25 October 1999" in the meaning of Section 3 U.R. 1/1999 was Indonesian Law.
18. On 4 August 2003 during the trial hearing, Domingos Mendonça's co-accused João Sarmiento pleaded guilty.
19. The Court then continued with the case of Domingos Mendonça, to hear the witnesses and renumbered it 18b/2001.
20. The Prosecution withdrew one count against the accused, that of the murder of Afonso Da Costa (count 21).
21. Interpreters for English, Bahasa Indonesian, Tetum and Mambae languages assisted at every act before the Court.

### **C. APPLICABLE LAW**

22. As specified in UNTAET Regulation No.1/1999, U.R.No.11/2000 as amended by U.R.2001/25, and U.R.No. 15/2000, the Special Panel for Serious Crimes shall apply:
  - UNTAET Regulations and directives;
  - Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;
  - Pursuant to Sect. 3 UNTAET Regulation No.1/1999, the law applied in East Timor prior to 25.10.1999, until replaced by UNTAET Regulations or subsequent legislation, insofar as they do not conflict with the internationally recognized human rights standards, the fulfillment of the mandate given to UNTAET under the United Nations Security Council Resolution 1272 (1999), or UNTAET regulations or directives.



23. The Special Panel has held that “the laws applied in East Timor prior to 25 October 1999” are Indonesian laws (*Prosecutor v. João Sarmento and Domingos Mendonça, Decision, 24<sup>th</sup> July 2003*).

#### D. FACTS OF THE CASE

##### STATEMENT OF THE FACTS BY THE PROSECUTOR

24. Between April 1999 and October 1999 *Tim Sasurat Ablai* militia operated from Leubrema Village around Orema Village in Same Sub-District, Manufahi District. During this period *Tim Sasurat Ablai* militia carried out acts of violence against those members of the civilian population in Same Sub-District who were considered to be pro-independence, linked to or sympathetic to the independence cause. The attacks included intimidations, threats, unlawful detentions, arsons, murders, forcible deportations and other acts of persecution. Many acts were directed against civilians who were presumed to be members or supporters of FALINTIL (Forças Armadas De Libertacao Nacional De Timor Leste: Armed Forces for the Liberation of East Timor) or supporters of independence.
25. Members of the *Tim Sasurat Ablai Militia* put up guard posts in many places in Same sub-district including in Anilumu, Blaro, Datina, Grotu Lau, Hailesu, Leubrema, Orema, Suri-Rema, Tionai, Titikua and Trilolo. The militia members who were guarding these posts were instructed to arrest any supporter of independence or Falintil who attempted to pass through the militia posts. They also patrolled all the villages and sub-villages in the Sub-District in search of pro independence support.

##### **Murder of Agapito de Araujo and Luis Boco Siri**

26. The prosecutor alleged that the accused **Domingos Mendonça**, was a member of *Ablai Militia*, and among others, was responsible for the murder of Luis Boco Siri and Agapito de Araujo, on or about 17 April 1999 in Grotu Lau Village, Same Sub-District, Manufahi District.
27. During the period prior to the consultation *Tim Sasurat Ablai Militia* threatened the villagers in Orluli. Sometime in April 1999, Bernadino Da Costa and Benjamin Sarmento told the villagers that all those who did not vote pro-autonomy would be killed.
28. On or about 17 April 1999 members of *Tim Sasurat Ablai Militia* led by Bernadino Da Costa, and Benjamin Sarmento and two other militia groups attacked the village of Orluli. About 78 militia members took part in the attack. When the members of the Ablai militia arrived in Orluli,

they divided into three groups. Two of the groups (Fahiluhan and Carbalao) secured the outskirts of the village. Members of *Tim Sasurut Ablai Militia* (the third group), under the command of Bernadino Da Costa, and Benjamin Sarmiento attacked the village. Before the attack most of the villagers had run into the jungle to hide from the militia. The militia beat the villagers they found in the village. Some of the other members of *Tim Sasurut Ablai Militia* who took part in the attack included **Domingos Mendonca**, Abilio Quintao, Antonio De Jesus, Abdullah Ernesto, Ahmad, Armindo, Tiago Mauseira, Alberto, Francisco Mendonca ("Resimau"), Resikoli.

29. The villagers Luis De Araujo, Maria Prego, Agapito De Araujo and Luis Boco-Siri were among those who remained in the village and did not run away.
30. Luis Boco-Siri was standing near his house when members of the *Tim Sasurut Ablai Militia* attacked the village. Some members of *Tim Sasurut Ablai Militia* including **Domingos Mendonça** and Francisco Mendonca ("Resimau") attacked Luis Boco Siri. There were four other men hiding in the house of Luis Boco Siri. The men were supporters of independence. When the militia attacked Luis Boco Siri the four men ran away to the jungle. Some militia members chased them but could not catch them. **Domingos Mendonça** and Francisco Mendonca ("Resimau") beat up Luis Boco Siri with sticks and also kicked him. They stabbed him and killed him.
31. Agapito De Araujo, his brother Luis De Araujo and their mother Maria Prego were in their house when members of the *Tim Sasurut Ablai Militia* attacked the village. All of them came out of the house. Members of *Tim Sasurut Ablai Militia* attacked Agapito De Araujo and severely beat him up with fists and sticks. Soon after Luis Boco Siri was killed, **Domingos Mendonça** and Francisco Mendonca ("Resimau") joined the other militia members who were beating up Agapito De Araujo.
32. Agapito De Araujo suffered severe injuries from the beating. He was bleeding profusely from his head, ears and eyes. His mother Maria Prego ran to him and embraced him trying to shield him from further beatings.
33. The members of *Tim Sasurut Ablai Militia* pulled Maria Prego away from her son Agapito De Araujo and stabbed him to death with spears. Some of the other members of *Tim Sasurut Ablai Militia* who took part in the beating and killing of Agapito De Araujo were **Domingos Mendonça**, Benjamin Sarmiento, Abdullah Ernesto, Ahmad, Armindo, Tiago Mauseira, Alberto and Resikoli.

## Persecution

34. The Prosecution alleged that between April 1999 and September 1999 Bernadino Da Costa, Domingos Mendonca and other members of *Tim Sasurut Ablai Militia* campaigned for autonomy in Same. During this period they terrorized the villagers living in and around Same, in particular Datina, Grotu Lau, Leubrema, Orema, Orluli, and Suri-rema. People from these villages were forced to support autonomy otherwise they would be killed. Villagers were intimidated, their properties seized and/or destroyed and animals killed.
35. Villages inhabited mostly by supporters of Falintil and independence for East Timor were targeted and attacked.
36. The prosecution alleged that the accused was individually criminally responsible for the crimes alleged against him in this indictment in violation of Section 14 of UNTAET Regulation 2000/15. Under section 14.2 and 14.3(a) to (c) individual criminal responsibility results if the individual committed, planned, instigated, ordered, solicited, induced, aided, abetted or otherwise assisted in the commission of the crimes, or attempted commission. Individual criminal responsibility also results if an individual in any other way contributes to the commission or attempted commission of the crime, if such contribution is intentional and is either (i) made with the aim of furthering the criminal activity or purpose of a group; or (ii) is made with the knowledge of the intention of the group to commit the crime.
37. The Prosecutor underlined that those acts or omissions by accused were undertaken as part of a widespread or systematic attack directed against the civilian population, and especially targeting those who were considered to be pro-independence, linked to or sympathetic to the independence cause for East Timor, with knowledge of the attack.

## STATEMENT OF THE FACTS BY THE DEFENSE

38. Regarding the murder of Luis Boco Siri and Agapito de Araujo the Defense rejects in total the accusations made against Domingos Mendonça. According to the defense counsel the witnesses and other evidence throughout the trial showed that the accused was not involved in the deaths of Luis Boco Siri and Agapito de Araujo.
39. In her statement Maria Prego, the mother of one of the victims and witness, does not mention the presence of Domingos Mendonça, which suggest that the accused did not take part and was not even present in the events that lead to the death of the victims.

40. The defense counsel claimed that Domingos Mendonça was a farmer who, as many other militia members, was forced under threat to be part of the Ablai militia by the commanders of this group (Bernardino Da Costa, Benjamim Sarmiento and Guilherme Marçal). He was not armed and only carried a machete, a normal instrument for a Timorese who works in the fields and used for self-defense, since the situation at the time was difficult.
41. The accused had no power of decision over the actions of other people, military or civilians. The accused was a member of the civilian population and was recognized as such.
42. There is not any concrete evidence that the crime was committed by the accused. Domingos Mendonça in his statement of 30<sup>th</sup> June of this year denied taking part in the killings. He said his brother Armindo da Costa told him about the two deaths. On the 7<sup>th</sup> July, when he was an interrogated by the Judges and by the Prosecution, he confirmed this point.
43. At the time of the deaths of the two victims, the accused was not in Orluli Village, he was in Orema; he did not see the victims bodies, he did not know who they were, he did not recognize them. He had never seen these people.
44. He did not take part in the planning to kill the people, since he was not the commander, and he did not even have a say within the group. Only in Orluli he overheard the commanders making plans to enter Faturahi. He only admits that he was ordered to line up with other colleagues, to speak to the population and to support autonomy, but not to kill people.
45. There are only two witnesses that say that Domingos Mendonça was present. However their statements are not credible.
46. The Prosecution witness Luis de Araujo was present in the killings of Luis Boco-Siri and Agapito de Araujo. He is the brother in law of Luis Boco-Siri and the brother of Agapito de Araujo. The witness said that João, who was present in the Courtroom, also beat him and that it was Resimau who killed Luis Boco-Siri. When he was asked if anyone else was present, he took the chance to accuse Domingos, who was also present in the Courtroom, and whose surname he did not know.
47. When the Defense asked the witness if he knew Domingos Mendonça he agreed, but when asked for how long did he know Mendonça, he avoided the question. When asked in what position Mendonça was at the time of the attack he said they were together. When he was asked

again, he said that Resimau beat him. In the statement the witness never mentioned Domingos Mendonça, only on the day of the trial, taking the opportunity to accuse him.

48. Therefore, the defense considers that the statement of Luis de Araujo is false. In his descriptions this witness never stated clearly what Mendonça did, the only common point between this witness and the statement of Sr. Mendonça is the accusation that Resimau killed the victims.
49. Regarding the witness Abilio Quintao the defense considers that his statement is not credible in anything concerning Domingos. His statement does not coincide with what Luis de Araujo said. Luis de Araujo said that Domingos beat three people, including him. Abilio, said that Domingos Mendonça as Domingos Maubele – without knowing for sure the accused's name- only attacked Agapito with a spear, which he had supposedly thrown after Resimau threw a spear at the victim and the victim had fallen to the ground. When interrogated by the Prosecutor the witness said that Domingos “Maubele” also beat Luis Boco-Siri with João, but since they could not, then Resimau was able to throw the spear. He said afterwards that after João beat Luis Boco-Siri, Domingos throw the spear ant that he was carrying a machete under his arm and another machete in the hand. In each response he said a different thing. In the first statement he did not mention Domingos Mendonça, while in relation to Boco-Siri, he only mentions João, Resimau and Rescoli, but never Domingos Mendonça.
50. The witness was himself a militia member and he was afraid of being involved in the facts. In his first statement he also said that a Domingos stabbed Agapito, but he did not say which Domingos, since in the beginning he spoke about one of the commanders called Domingos, but when he is confronted in the Courtroom about which Domingos he was talking about, he said that was the Domingos in the Courtroom. That is false, since Domingos Mendonça was never a commander. He was talking about Domingos Marcal, who was a militia leader and was present in the facts.
51. The witness, when he was giving his first statement, spoke of a Domingos and the investigator showed him 4 photographs of 4 people suspected of committing the crimes. The witness supposedly recognized Domingos, but didn't know his full name so he invented that this was Domingos Mendonça. That is, the investigating police influenced him in his statement.
52. In his testimony to the Court Antonio de Jesus said that on the 17<sup>th</sup> April, when he arrived in Orluli, these were two dead. He also said that a lot of

people gathered around him, but in front of him he only saw Francisco Mendonça (Resimau), accused of killing the victims.

53. Immediately after he says that these people were killed by Francisco Tilman and Francisco Mendonça aka Resimau. This statement has more credibility. Because he was not directly or indirectly involved, he is not afraid to talk like the last witness, who was also a militia member.

### **Testimony of Prosecution witnesses**

#### **(1) Testimony of witness Luis de Araujo**

54. Luis De Araujo is the brother in law of the victim Luis Boco Siri and the brother of the victim Agapito De Araujo. In 1999, the witness lived in Orluli Village and was present and suffered beaten from the attackers during the attack in the village on 17th April 1999 that resulted in the killing of Luis Boco Siri and Agapito de Araujo. The witness testified to the following facts:

- The militia entered Orluli village to kill clandestine people.
- Three militia sections entered Orluli Village.
- At the time, the accused Domingos Mendonça was armed with a machete and a spear, and was wearing a red and white scarf around his head.
- The witness was interrogated and accused by members of the Ablai militia, including the accused Domingos Mendonça, of having a clandestine meeting at his house.
- Luis Boco Siri and Agapito De Araujo were clandestine members.
- After being questioned, the witness was beaten by Joao Sarmiento. The accused Domingos Mendonça was together with the group of militia who beat the witness Luis De Araujo.
- The accused was together with the group that was beating and killed Agapito De Araujo.
- The witness saw the accused attacking Luis Boco Siri and Agapito De Araujo.
- Prevision, written statement of this witness was admitted and marked as "Prosecution Exhibit 1". The witness stated "*the next day with the help of other villagers we buried both the bodies of Agapito and Luis Boco. Agapito was buried about 5 metres outside my house. Same with Luis Boco who was also buried about 5 metres outside his house.*"

#### **(2) Testimony of the witness Abilio Quintao**

55. The witness Abilio Quintao was together with the militia group that attacked Orluli Village on 17th April 1999. The witness testified to the following facts:

- The accused belonged to Bernadino's militia group.
- Three groups of the Ablai militia entered Orluli Village on 17th April 1999. The accused was with the third group (the witness described this as the "fierce group").
- When they entered Orluli Village, the militia questioned Luis Boco Siri about why he was hiding "Adriano". Adriano was a pro-independence leader. The militia did not find Adriano there, if they did they would have killed Adriano because he was pro-independence.
- The accused Domingos Mendonca was together with the group of militia that were beating Boco Siri. In the words of the witness:  
    *"-Did Domingos also beat Luis Boco Siri?  
    -Domingos Mendonca, they were all together and his hands were also there"*
- At all material times the accused was armed with a spear and a machete.
- During the beating, Luis Boco Siri fell to the ground and Benjamin and Tiago Mausera beat him. Resikoli and the accused Domingos Mendonca were disputing as to who would be the one to "chop" Luis Boco Siri. In the meantime, Resimau came and speared Luis Boco Siri.
- The militia then beat Luis De Araujo (Prosecution Witness 1). Domingos Mendonca was one of the group of six who were beating Luis De Araujo.
- The militia then attacked Agapito De Araujo. Joao Sarmiento was the first person to attack Agapito De Araujo. Then Benjamin Sarmiento and Francisco Resimau attacked him and Domingos Mendonca attacked him. Resimau stabbed Agapito De Araujo first. Domingos Mendonca was together with the militia while they were beating Agapito De Araujo.
- When Agapito De Araujo fell to the ground, the accused Domingos Mendonca then stabbed Agapito De Araujo with his spear.
- Domingos Mendonca is known also as Domingos Maubele.

### **(3) Testimony of the witness Antonio De Jesus**

56. Antonio De Jesus was a member of the militia in 1999, and belonged to the same group as the accused, which is the *Tim Sasurut Ablai Militia*

Group (which witnesses have also described as *Leubrema Group/ Bernadino's group*). On 17th and 18th April 1999, this witness was together with the group with the accused Domingos Mendonca, which attacked Orluli Village and Grotu Lau Village. Antonio De Jesus testified to the following facts:

- The accused Domingos Mendonça belonged to Bernadino's group and he was part of Bernadino's group that entered Orluli Village on 17 April 1999.
  - In Holorua, before the attack, there was a meeting where Guilhermino Marcal lined up the 4 militia groups including Bernadino's Group and ordered them to go into Orluli and "fix" the people to enter in autonomy."
  - The accused Domingos Mendonca lined up and was also present when the orders were given.
  - During the attack in Orluli Village on 17 April 1999, the accused was armed with a machete.
  - The witness separated from his group (Bernadino's group). He testified that he was "surprised" at what was happening and he walked away, and he did not see where his group was (including the accused). The witness testified that he did not see Domingos Mendonca.
57. In the other hand when the Accused was questioned by the Court if at any time during the killing of Agapito and Luis, he was together with Antonio de Jesus, he replied "yes".
58. This part of the testimony of Antonio De Jesus is relevant as it contradicts the accused's statement to the Court. The accused stated that during the killing of Luis Boco Siri and Agapito De Araujo he was together with Antonio De Jesus. Antonio De Jesus in his testimony has denied being with the accused during this time.

#### **(4) Statement of witness Maria Prego**

59. Maria Prego was not able to attend and give direct testimony before the court, as she was old and had gone blind recently and was not physically fit to travel to Dili. The statement of Maria Prego was admitted into evidence pursuant to Section 36.3 with the agreement of both the Prosecution and the Defense, and was marked as "Exhibit 13A". The statement of this witness is in Bahasa Indonesia.
60. In her statement Maria Prego declared that her son Agapito was attacked by many militia members and was beaten. She stated that he hugged her, and two members of the militia grabbed her son from her

hands, and he was stabbed by "Resimau". She stated that she didn't know the names of the other militia members that killed her son.

61. The statement of the witness shows that more than one person killed Agapito De Araujo, and she did not know their names.
62. From the testimonies of the witnesses the Court found that the accused is responsible for the murder of Agapito de Araujo and Luis Boco Siri, because the accused in 17 April 1999 was together with the group of militia that entered and attacked Orluli and murdered the two people. Moreover, the accused even knew that there was a plan to enter Orluli.

#### **Testimony of the defense witnesses**

63. The defense did not present any witness concerning these facts but agreed to admit the written statement of Maria Prego.

#### **Count 22: Persecution (attacks in Orema, Datina, Grotu Lau, Orluli, Leubrema and Suri-Rema)**

##### **The Attack in Orluli Village on 17<sup>th</sup> April 1999**

64. The Court has analyzed the evidence provided by the witnesses when addressing the charge for the murder of Luis Boco Siri and Agapito de Araujo (above para 54f.).

##### **The Attack in Grotu Lau Village on 18<sup>th</sup> April 1999 and Orluli Village on 17<sup>th</sup> April 1999**

#### **Testimony of prosecution witnesses**

##### **(1) Testimony of witness Antonio De Jesus**

65. The witness declared that:
  - The same group of militia that entered Orluli Village on 17th April 1999 entered Grotu Lau Village on 18th April 1999.
  - The accused Domingos Mendonca also entered Grotu Village on 18th April 1999.
  - The reason for the militia entering Grotu Lau on 18th April 1999 was the same reason they entered Orluli Village on 17th April 1999 ie. to "fix" the people for autonomy.

##### **(2) Testimony of witness Lurdes Pinheiro**

66. The testimony of the witness was that:

- On 18th April 1999, the Ablai Militia came to Grotu Lau village.
- At that time all the men [of the village] had gone to hide and only the women remained in the village.
- The militia surrounded the village and were guarding so that nobody could escape.
- The accused was armed with a spear.
- The accused Domingos Mendonca threatened the women to keep quiet, and that if they spoke they would be killed.
- The accused threatened the witness that if the women didn't cook for the militia they would die.
- Domingos Mendonca killed a pig and took a goat that the villagers had killed.
- The women were scared to die; their hands and feet were shaking.
- Carlito Da Costa, a villager, returned, when the women called out to him, and the militia Benjamin Sarmiento killed him. The accused was present during the killing. He was killed because he didn't join autonomy and wanted referendum.
- Domingos Mendonca was "angry" when he asked the women to cook.
- The witness was asked what would have happened if the women did not cook, and the witness testified that "*if we didn't want to cook we could have all been dead.*"

### **(3) Testimony of the witness Casilda Pacheco**

67. The witness declared that:

- On 18th April 1999 the militia did an operation in Grotu Lau Village. The operation was to look for all the men to kill and all the men went to hide. The militia entered the village in 3 groups.
- Domingos Mendonca, the accused, ordered the women to cook.
- The accused killed a pig belonging to the villagers and the militia ate the food cooked by the villagers.
- The accused ordered Eliza to cook.
- Domingos Mendonca was armed with a spear.
- Domingos Mendonca was a member of the Ablai militia.
- The militias were looking for the men of the village.
- Domingos Mendonca and other militia members entered the house of Alfredo and destroyed things in the house

**(4) Testimony of the witness Maria Barros**

68. The testimony of the witness was the following:

- The accused was part of the Ablai militia, he was a member.
- Militia entered Grotu Lau Village looking for men that were supporting referendum. The militias were looking for the men to kill them. The men had gone into hiding.
- Militia told the women that the villagers must support independence.
- The accused killed a pig belonging to the villagers.
- The accused ordered the villagers to cook. He was with other militia members – Benjamin Sarmiento, Bernadino Da Costa.

**(5) Testimony of the witness Hermanzilda Pinheiro**

69. The witness declared to the Court that:

- On 18 April 1999, the accused and members of the Ablai militia entered Grotu Lau Village.
- The accused was a member of the Ablai militia.
- When they entered, Bernadino Da Costa told the villagers that they had to join autonomy and that if they joined referendum they would all be arrested.
- The accused armed with a spear threatened the witness that if she did not cook the forces (meaning the militia) would chop them up. He was alone when he said this.
- The witness believed that if they did not cook the accused would chop her.
- The accused told the witness that although the men were not there, he could kill the women.

**(6) Testimony of the witness Romana Britas**

70. This witness testified that the accused told her to cook or he would kick her and beat her. The witness initially told the court that Domingos Mendonca was "pretending" to threaten the villagers. But later during Examination in chief she confirmed that she and the other villagers were afraid and were shaking after the accused ordered them to cook.

- The militia entered Grotu Lau to get the villagers to join autonomy, and they threatened to beat the villagers if they didn't join autonomy. The accused also told the villagers to join autonomy.

- The accused was armed with a spear when the threatened the villagers to cook.
- During the attack, a villager called Bendita was slapped by militia member Tiago Mausera.
- The men had gone to hide because they were scared, as militia had said all must join autonomy.

**(7) Testimony of the witness Rosa Freitas**

71. The witness, regarding the attack stated that:

- The militia entered Grotu Lau village and threatened the women to cook.
- The Ablai militia entered Grotu Lau because the villagers did not want to join autonomy, and they wanted referendum. The militia said if they didn't join autonomy they would be dead.
- The accused was armed with a spear and a machete.
- The accused threatened the witness with a spear (the witness demonstrated to the Court with her hand towards her neck in a cutting motion).
- The accused killed a pig and chickens belonging to the villagers.
- The accused put his machete on the witness's mouth and threatened her to call the men.
- The next day the accused returned to Grotu Lau Village and ordered the women to go and collect the dead body of Carlito and told them where the body was.

**(8) Testimony of the witness Eliza Da Concenciao**

72. Regarding the attack the testimony of the witness was the following:

- Militias entered Grotu Lau in 3 groups and were looking for the men who went to hide.
- When the militias arrived they put the autonomy flag on the floor and started to look for the men.
- The accused said to the villagers *"there is no referendum, there is only autonomy. Referendum is coming from where? Autonomy will be here till we die."*
- The witness testified that accused told the villagers that *"you people in Grotu Lau want referendum, that is why they went to hide. If we went to call the men, we could have started a war"*
- During the attack in Grotu Lau Village, "Maulito" (Carlito Da Costa) was killed. He was killed because he was a

pro-independence supporter. He was killed by Benjamin Sarmiento.

- The accused killed a pig belonging to the villagers.
- The accused kicked the witness. At the material time the witness was 2 months pregnant.

### **Testimony of the defense witnesses**

73. The defense did not present any witness concerning these facts.

### **Attack in Surirema and Datina, Orema Villages**

74. The accused when questioned by the Court, replied: "*Can you tell the Court where these houses? These houses in Surirema.*"

#### **(1) Testimony of the witness Antonio Lopes**

75. The witness, regarding the attacks declared the following:

- a. Sometime in June 1999 about 20 members of the Ablai militia under the command of Bernadino Da Costa and Benjamin Sarmiento entered Surirema. Domingos Mendonca was with them.
- b. Domingos Mendonca was holding a spear, a sword and a machete, he was wearing a t-shirt with Ablai writing on it and had an Indonesian flag around his head.
- c. Domingos Mendonca gave orders and seemed to have authority over other 9-militia members. During the operation the accused led the group of nine in searching the houses of the villagers looking for any documents linked to clandestine. The accused searched about 30 houses. In two houses the accused poured petrol onto the rice stock of the villagers.
- d. The militia pierced the fingers of the villagers, and mixed it in a bowl with animal blood and the villagers were forced to drink the blood. About 200 villagers, including women and children from the ages of 2 and 3 were forced to drink the blood. At this time, the accused was present, and said, "*now that you have drunk the blood you have to follow autonomy*". The accused threatened the villagers that they had to follow autonomy or they would be killed.
- e. In July the Ablai militia attacked Datina Village. The accused went with the group. The militia threatened the villagers that they would be killed if they did not follow autonomy.

- f. In Datina, the accused killed a horse and pigs belonging to the villagers and ate them.
- g. On 4th September 1999, the Ablai militia returned to Surirema and destroyed all the 33 houses in the village leaving 275 villagers homeless. The accused participated in the destruction of these houses. The Ablai militia burnt 50 houses in Datina. The accused was present and participated in the burning.

## **E. FINDINGS OF THE COURT**

### **I. The attack against the civilian population and related requirements**

- 76. Widespread or systematic attacks were directed against the civilian population in East Timor in 1999. The attacks occurred during two interconnected periods of intensified violence. The first period followed 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. This period ended on 4 September 1999, the date of the announcement of the result of the popular consultation in which 78.5 per cent voted against the autonomy proposal. The second period followed the announcement of the result of the popular consultation on 4 September through 25 October 1999.
- 77. The widespread or systematic attacks were part of an orchestrated campaign of violence, that included among other things incitement, threats to life, intimidation, unlawful confinement, assaults, forced displacement, arson, murders, rapes, and other forms 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.
- 78. In 1999, more than twenty-five militia groups operated throughout East Timor. Their goal was to support autonomy within Indonesia. The Integration Fighting Forces (PPI), (*Pasukan Pejuang Integrasi*) under the command of Joao Tavares was the umbrella organization under which these militia groups were organized. It had the backing of the TNI and the Civil Administration. PPI Commanders issued, called upon and incited militia groups and their members to intimidate independence supporters and those perceived to support them. The militia groups participated in the widespread or systematic attack and acted and operated with impunity.

79. The Indonesian Military in East Timor consisted of both regular territorial forces (BTT) and Special Combat Forces, i.e. the Strategic Reserve Command (KOSTRAD), (*Komando Strategis Angkatan Darat*) and Special Forces Command (KOPASUS), (*Komando Pasukan Khusus*), all of which had units, staff officers and soldiers stationed in East Timor.
80. These large-scale attacks were directed against civilians of all age groups, predominantly against individuals who supported or were perceived to support independence and resulted in lethal injury including death by sharp force injury, gun shot injury, blunt force trauma or a combination of the three.
81. Widespread or systematic attacks were also carried out against property and livestock, including mass destruction of houses by fire, stealing of property, killing and stealing of livestock.
82. The widespread or systematic attack resulted in the internal displacement of thousands of persons. Additionally, the forcible transfer and deportation of the civilian population within East Timor and to West Timor, Indonesia was an essential feature of that orchestrated campaign of violence.
83. Under terms of the 5 May 1999 Agreements, between Indonesia, Portugal and the United Nations on the popular consultation, the Indonesian security authorities had the responsibility to ensure a safe environment devoid of violence or other forms of intimidation as well as the general maintenance of law and order before and during the popular consultation. The TNI and POLRI (which were the Indonesian Security Authorities) failed to meet these obligations and made no attempt to disarm or neutralize the militia groups. They were allowed to act with impunity.
84. From February to October 1999, the Indonesian Police Force (POLRI), the state agency for upholding the law and public order were also present in East Timor. It also included a Mobile Police Brigade (BRIMOB), whose Units and members were stationed in East Timor, including in Manufahi District.
85. Same is a Sub-District of Manufahi District, which is one of the thirteen district of East Timor.
86. Between April and October 1999, the ABLAI militia Group (*Aku berjuang lestarikan Amanat Integrasi*) (I Struggle for a perpetual integration mandate) operated throughout Manufahi District. It comprise with about 2000 members under the command of Nazario Corte Real, Fransisco Capela and Guilhermino Marcal. The ABLAI Militia was divided into several teams, which operate in various villages and sub villages.

87. *Tim Sasurut Militia ABLAI* was one of the militia groups under the ABLAI militia. It was established some time between March 1999 and April 1999. The inauguration ceremony was presided over by Eurico Guterres and commanders of ABLAI including Nazario Corte Real, Fransisco Capela and Guilhermino Marcal.
88. The Leaders of *Tim Sasurut Militia ABLAI* in Same Sub-District were Bernardino da Costa (DanRim) who was the first Sub-District Commander Benjamin Sarmiento (DanDim) who was the Deputy Commander and Romeiro Tilman (DanRu) who was Third-in-charge of the Sub-District Command. *Tim Sasurut Militia ABLAI* comprised many sections including the Soldado Section, Leubrema Section and Carbalao Section.
89. *Tim Sasurut Militia ABLAI* group operated in collaboration with others militia *tims* of the Ablai militia group in particular *Tim Hadomi Ablai Militia*.
90. Between April and October 1999, the *Tim Sasurut ABLAI militia* Group operates from Leubrema Village around Orema village in Same Sub-District, Manufahi District. During this period *Tim Sasurut Ablai Militia* carried out acts of violence against those members of the civilian population in Same sub-district who were considered to be pro-independence, linked to or sympathetic to the independence cause. The concerted attacks included intimidation, threats, unlawful arrests and detention, interrogations, arsons, murders, forcible transfer, deportations and other acts of persecution. Many acts were directed in particular against civilians who were presumed to be members or supporters of FALINTIL (*Forças Armadas De Libertacao Nacional De Timor Leste*: Armed Forces for the Liberation of East Timor) or supporters of independence.
91. Bernardino da Costa, Benjamin Sarmiento and Romeiro Tilman as Commander, Deputy Commander and Third-in-charge of the *Tim Sasurut Ablai Militia*, had control over its members.
92. The commanders of the *Tim Sasurut Ablai Militia* had regular meetings, they brief the militia about some of their plans and gave them some instructions as to how to carry them out.
93. Members of the *Tim Sasurut Ablai Militia* put up guards posts in many places in Same sub-district including in Anilumu, Blaro, Datina, Grotu Lau, Hailesu, Leubrema, Orema, Suri-rema, Tionai, Titikua and Tirilolo.
94. The militia members that were guarding these posts, were instructed to arrest any supporter of independence or Falintil who attempted to past trough the militia posts. They also patrolled all the villages and sub villages in the sub district in search of independence supporters.

## II. Factual finding on the charges against the accused

95. In light of all the evidence, especially the testimonies of the witnesses Luis da Silva, Abilio Quintão, Antonio de Jesus, Leonardo Paicheco, Oscar Beram Araujo, Jacinto de Araujo, Bendito Mendonça, Lurdes Pinheiro, Armindo da Costa, Casilda Paicheco, Maria Barros, Hermenezilda Pinheiro, Romana Freitas, Rosa Freitas, Eliza da Conçeição and Antonio Lopes, the statements which were made before the Court by the witnesses in the case, and statement of witness Maria Prego admitted by the parties, the black jacket belonging to victim Agapito de Araujo, and the reports on the situation of Human rights in East Timor, the note by the Secretary General, the Report of the Indonesian Commission on Human Rights violations in East Timor, January 2000, the Court is convinced that the following facts occurred:

### **Count 20; Murder of Luis Boco Siri and Agapito de Araujo:**

96. The Court considers proved the fact that on the 17 April 1999 members of *Tim Sasurat Ablai Militia* led by Bernadino Da Costa, and Benjamin Sarmiento and two other militia groups attacked the village of Orului in a number of about 80 people. The members of the Ablai militia divided into three groups: two of the groups (Fahiluhan and Carbalao) secured the outskirts of the village.
97. Members of *Tim Sasurut Ablai Militia*, (the third group) under the command of Bernadino Da Costa, and Benjamin Sarmiento attacked the village and beat the villagers they found there. Among the attackers were Abilio Quintao, Antonio De Jesus, Abdullah Ernesto, Ahmad, Armindo, Tiago Mausera, Alberto, Francisco Mendonca ("Resimau"), Resikoli and the accused **Domingos Mendonca** .
98. The villager Luis Boco-Siri was near his house when the attack took place as some members of *Tim Sasurut Ablai Militia* including Joao Sarmiento and Francisco Mendonca ("Resimau") attacked him, and beat him up with sticks and kicked him. Finally he was stabbed and died as a result of the attack.
99. The villager Maria Prego was in her house with her sons Agapito De Araujo and Luis De Araujo. When they came out of the house members of *Tim Sasurut Ablai Militia* attacked Agapito De Araujo and severely beat him up with fists and sticks. Soon after Luis Boco Siri was killed, Joao Sarmiento and Francisco Mendonca ("Resimau") joined the other militia members who were beating up Agapito De Araujo.

100. Agapito De Araujo suffered severe injuries from the beating. He was bleeding profusely from his head, ears and eyes. His mother Maria Prego ran to him and embraced him trying to shield him from further beatings.
101. The members of *Tim Sasurut Ablai Militia* pulled Maria Prego away from her son Agapito De Araujo and stabbed him to death with spears. **Domingos Mendonca** was among those that took part in the beating and killing of Agapito De Araujo together with Benjamin Sarmiento, Abdullah Ernesto, Ahmad, Armindo, Tiago Mausera, Alberto and Resikoli.
102. The Court is convinced that all facts occurred as described and that there is no doubt that the accused is responsible for the murder of Luis Boco Siri and Agapito de Araujo, this according to what the own accused himself told the Court and that was corroborated by the testimony of other witnesses.
103. The accused initially said, *"I did not participate in the killing of two people, I heard from Armindo that Agapito and Luis died in Oruli. I did not participate because from Oruli I did not see those killing ....(...) I did not go to Oruli I stayed in Orema together with Antonio de Jesus"*. But later he confirmed that, *"(...) before the killing of Agapito and Luis there was plan by militia to go to Oruli, the plan was made in Holarua, when we were lined up we received the order, it was not to kill but to gather the people to follow the autonomy(...) we went to Faturai ...we got to Oruli and Tirlolo. (...) I was holding a spear."*
104. The witnesses of the Prosecution have testified in detail about the participation of the accused in the attacks on the 4 villages of Oruli, Grotu Lau, Surirema and Datina. The defense has not presented any witness to contradict the Prosecution case.
105. The acts committed against the villagers of Surirema were inhumane and cruel. The act of forcing almost 200 villagers including women and children to drink a mixture of human and animal blood, and the destruction of all the houses, leaving 275 villagers homeless, is barbarous. The rounding up of villagers and forcing them to cook under the threat of death and the beating of men and women in villages, the intimidation of villagers are acts which caused severe mental and physical suffering on the villagers.
106. The acts of the members of *Tim Sasurut militia*, including the accused Domingos Mendonca, lead to harassment, torment, oppression, and finally death, designed to or likely to produce physical or mental suffering because the victims held political beliefs in favour of independence of East Timor.

107. During the attacks, the villagers were questioned by the accused about their support for the independence cause. The accused threatened the villagers and told them that those who did not follow autonomy would be killed. From the testimony of the witnesses it is without doubt that the policy behind the attacks was discriminatory on the grounds of the political beliefs of the population, which supported the independence of East Timor. It has been established beyond a reasonable doubt that the accused possessed the necessary discriminatory intent for the crime of Persecution as Crime Against Humanity.
108. The Court has drawn the following conclusions:
- 1) The accused was present during the line up, where orders were given to attack Orluli Village to "fix" independence supporters.
  - 2) He acted jointly with other militia members in interrogating, in beating (Luis De Araujo and Eliza da Concenciao) and killing victims (Agapito De Araujo and Luis Boco Siri), in forcing villagers to drink a mixture of human and animal blood, in the burning of houses and killing of livestock, in threatening innocent civilian with death if they did not follow the autonomy campaign, in forcing women to cook for the militia under the threat of death and destruction of personal property.
  - 3) The accused, dressed in Ablai uniform and armed with a machete, spear and sword participated jointly in these acts with other members of the *Tim Sasurut Ablai Militia*. The circumstances in which the accused together with more persons participated together in the commission of this particular crime, shows an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that crime.
109. From the above it is proved beyond reasonable doubt that the accused participated in the persecution of independence supporters in the villages of Orluli, Grotu Lau, Datina and Surirema and therefore, found guilty of Persecution as a Crime Against Humanity, as charged in Count 22 of the indictment.

### **III. Responsibility of the accused**

#### **Individual criminal responsibility**

110. Section 14.3 of Reg. 2000/15 sets out the basis for an individual's criminal responsibility. It reads as follows:

*"14.3 In accordance with the present regulation, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels if that person:*

- 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;**
- e in respect of the crime of genocide, directly and publicly incites others to commit genocide;*
- f attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under the present regulation for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose."*

111. Murder of the victims :

a) Luis Boco Siri;

The evidence shows that the accused was together with the Group of militia that were beating Luis Boco Siri. During the beating, Luis Boco Siri fell to the ground and Benjamin and Tiago Mauseira beat him. Resikoli and the accused Domingos Mendonca were disputing as to who would be the one to "chop" Luis Boco Siri. In the meantime, Resimau came and speared Luis Boco Siri.

Regarding this victim, although the accused did not inflict a wound himself, he was part of an organized force intent on killing independence supporters, and he contributed to their criminal intent by his threatening posture of carrying machete, sword and spear, thereby intimidating the unarmed villagers and strengthening the criminal resolve of the other members of the group, wherefore he is responsible according to section 14.3 (d) U. R. 2000/15.

b) Agapito de Araujo;

Evidence shows clearly that, the accused was together with the group that beat and killed Agapito de Araujo. Joao Sarmiento was the first person to attack Agapito De Araujo, than others militia members including accused Domingos Mendonca attacked him. Resimau stabbed Agapito De Araujo first, Domingos Mendonca was together with the militia while they were beating Agapito De Araujo.

When Agapito De Araujo fell to the ground, the accused Domingos Mendonca then stabbed Agapito De Araujo with his spear.

Regarding this victim, the accused committed a crime, jointly with others wherefore he is responsible according to section 14.3 (a) U. R. 2000/15.

112. The mental elements of this form of individual responsibility are found in Sect. 18.1 Reg. 2000/15 that reads:

*"A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the panels only if the material elements are committed with intent and knowledge.*

*Sect. 18.2 For the purposes of the present Section, a person has "intent" where:*

*In relation to conduct, that person means to engage in the conduct;*

*In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.*

*18.3 For the purposes of the present Section, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.*

112. There can be no doubt that the accused had the required intent.

#### **IV. Legal findings of the case**

113. Article 5 of UNTAET Regulation 2000/15 sets out various acts that constitute crimes against humanity, when those acts are committed as part of a widespread and systematic attack and directed against any

civilian population, with knowledge of the attack. Among those acts are murder and Persecution.

114. The accused Domingos Mendonça was accused of murder and Persecution as crimes against humanity.

### 1) Murder as a Crime Against Humanity

115. The offence of Murder as a Crime Against Humanity is provided for in Section 5.1 (a) of UNTAET Regulation 2000/15. The offence is not defined in this regulation but the Special Panel had the opportunity to do so in the case *The Public Prosecutor against Joni Marques*<sup>1</sup>:

*“643. The Panel, having assessed the shortcomings in the definition of murder as crime against the humanity in Sec. 5.1 (a) of UR-2000/15 is persuaded of the benefit of the guidance provided by the Preparatory Committee for the Rome Statute of the International Court and the precedents from the International Tribunal, with the remarks foreseen in Sect. 18 of UR-2000/15.*

*644. The Panel accepts the opinion of the parties in relation to the general mens rea provided by Sect. 18 of UR-2000/15. For this reason, an accused charged with murder, as a crime against humanity shall have his or her mens rea deemed by this Panel insofar as he or she has shown intent to cause the death of the victim or be aware that it will occur in the ordinary course of events. Accordingly, the Panel lists the four requisite elements of murder as a crime against humanity:*

*645. The victim is dead.*

*646. The death of the victim is the result of the perpetrator's act.*

*647. The act must be a substantial cause of the death of the victim.*

*648. At the time of the killing the accused must have meant to cause the death of the victim or was aware that it would occur in the ordinary course of events.*

*649. In summary, in a murder, as a crime against humanity, there is no requirement of premeditation as the mental element for murder as a crime pursuant to Sect. 340 of Penal Code Indonesia (KUHP). The mens rea is restricted to the deliberate intent to cause the death of the victim or that such result would occur in the ordinary course of events.”*

116. This definition was followed by the Special Panel in successive decisions, *inter alia* in the case *the Public Prosecutor against Jose Cardoso*<sup>2</sup>. Therefore the Panel must analyze if the 4 elements of murder are satisfied: 1) The death of the victim; 2) Death as a result of the perpetrator

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<sup>1</sup> 9-PID.C.G/2000 *General Prosecutor vs. Joni Marques & 9 others*, decision on 11 December 2001

<sup>2</sup> 4-PID.C.G/2001 *General Prosecutor vs. Jose Cardoso*, decision on 5 April 2003

act; 3) Substantial causality; 4) Intention to cause the death or awareness of the possibility.

117. Death of the victim. It has been proved that Luis Boco Siri and Agapito de Araujo were killed during the attack on 17 April 1999 in Orluli village. Luis Boco Siri was beaten up with fists and stick, and killed, and Agapito de Araujo also suffered many injuries from the beating, and was stabbed to death with spears. Their dead bodies were buried about 5 meters from their houses.
118. Death as a result of the perpetrator act. It has been proved that all the victims were alive before the attack and before being taken by the members of militia including Domingos Mendonça, and that their deaths were the result of Domingos Mendonça's and other militia members actions.
119. Substantial causality. It has also clearly been shown that the victims died because they suffered many wounds after being attacked with spears. The deaths of the victims were, the direct result of the wounds received during the attack.
120. Intention to cause the death or awareness of the possibility. It has been described previously that at the time of the killing the accused meant to cause the death of the victims or at least was aware that it would occur in the ordinary course of events. All the deaths were the result of the accused person's behavior. The nature of the attack, its brutality and contempt towards the villagers, showed 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 on to the villagers was conscious of the possibility that the people would die as a consequence of the attack.
121. It is therefore clear that the elements of Murder as a Crime against Humanity are satisfied in the present case.

## **2) Crime against Humanity in the form of Persecution**

122. Persecution as a Crime Against Humanity is defined in Section 5.1(h) of U.R. 2000/15 in the following manner:

*"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 are 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."*

123. Recognizing the broadness of this concept of persecution, M. Cherif Bassiouni has attempted to define the term more closely:

*"Throughout history . . . the terms "persecute" and "persecution" have come to be understood to refer to discriminatory practice resulting in physical or mental harm, economic harm, or all of the above. . . . The words "persecute" and the act of "persecution" have come to acquire a universally accepted meaning for which a proposed definition is: State Action or Policy leading to the infliction upon an individual of harassment, torment, oppression, or discriminatory measures, designed to or likely to produce physical or mental suffering or economic harm, because of the victim's beliefs, views, or membership in a given identifiable group (religious, social, ethnic, linguistic etc.), or simply because the perpetrator sought to single out a given category of victims for reasons peculiar to the perpetrator."*<sup>3</sup>

124. The ICTY Trial Chamber defined persecution as "[t]he gross or blatant denial, on discriminatory grounds, of a fundamental right, laid out in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5 [of the ICTY Statute] ."<sup>4</sup>
125. From this it is clear that the crime of persecution is a form of discrimination that results in the infringement of an individual's fundamental rights, and that this discrimination must be on specific grounds (*inter alia*, on the basis of political, racial, national, ethnic, cultural, religious, gender identity). Persecution can take various forms, although the common concept that must be shown is discrimination in regard to the enjoyment of a basic or fundamental right.
126. From the evidence adduced, the Court has drawn the following conclusions, as already mentioned in the factual findings:
- The accused was present during the line up, where orders were given to attack the village of Orluli with the declared aim of "fixing independence supporters".
  - The accused acted jointly with other militia members in interrogating, beating (Luis De Araujo and Eliza da Concenciao) and killing victims (Agapito De Araujo and Luis Boco Siri). Together with the group he participated in inhumane acts such as forcing the villagers to drink a mixture of human and animal blood, burning of houses and killing of

<sup>3</sup> See M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 7, 114-119 (Martinus Nijhoff: Dordrecht, 1992), p. 317.

<sup>4</sup> Prosecutor v. Kupreskic, Case No. it-95-16, Judgement (14 January 2000), para 621.

livestock, threatening innocent civilians with death if they did not follow the autonomy campaign, forcing women to cook for the militia under the threat of death and destruction of personal property.

- The accused, dressed in Ablai uniform and armed with a machete, spear and sword, participated jointly in these acts with other members of the *Tim Saşurut Ablai Militia*.
127. The circumstances in which the accused together with more persons participated together in the commission of this particular crime, proves an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that crime.
128. From the above mentioned it is proved beyond reasonable doubt that the accused participated in the persecution of independence supporters in the villages of Orfuli, Grotu Lau, Datina and Surirema and therefore, is guilty of the crime of Persecution charged in Count 22 of the indictment.

#### **F. VERDICT**

129. For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt, and therefore finds Domingos Mendonça guilty of Murder, as a Crime Against Humanity, according to Sect. 5.1(a) U.R. 2000/15, and guilty of Persecution as a Crime Against Humanity, according to Sect. 5.1 (h) U.R. 2000/15.

#### **G. SENTENCING**

130. The Special Panel has taken into account the following:

##### **Mitigating circumstances:**

131. The accused Domingos Mendonça, prior to the commission of the crime, for which he has been convicted, was living in a very coercive environment. There was pressure from militia to join criminal activities. As the accused stated, the coercive environment has been a factor for the accused in committing the crime along with some militia members, although there are some who refused to join criminal activities. The fact that some joined while others were able to resist, does not mean that there was no coercive environment, which has been a crucial factor for the Accused in committing the offences. He was not able to resist the solicitations of the regime that was in power at that time.
132. The Special Panel bears also in mind the family background of the accused and the fact that he is married and has children. However this

may be said of many accused persons and cannot be given any significant weight in a case of this gravity.

133. The Special Panel has also taken into consideration the fact that the accused has no previous conviction.
134. Having reviewed all the circumstances of the case, the Special Panel is of the opinion that the circumstances in mitigation surrounding the crimes committed by the accused, especially the coercive environment in which the accused was living, afford him some clemency.

#### **Aggravating circumstances:**

135. The accused murdered victims that were defenseless persons whose inability to respond to the threats and harm was unconditional;
136. The accused acted jointly with other militia members in inhumane acts of forcing the villagers to drink a mixture of human and animal blood.
137. The accused acted jointly with other militia members in the burning of houses and killing of livestock, threatening innocent civilian with death if they did not follow the autonomy campaign.

#### **Sentencing policy**

138. According to Sect. 10.1 (a) of UR-2000/15, for the crimes referred to in Sect. 5 of the aforementioned 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 East Timor and in international tribunals. "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).
139. The penalties imposed on the accused found guilty by the Panel are intended, on the one hand, as retribution against the said accused, whose crimes must be seen to be punished (*punitur quia peccatur*). They are also intended to act as deterrence; namely, to dissuade forever, others who may be tempted in future to perpetrate such atrocities, by showing them that the international community shall not tolerate such serious violations of law and human rights (*punitur ne peccetur*).
140. Another objective of punishing the perpetrators of the serious crimes committed in East Timor in 1999 is to avoid impunity and thereby to promote national reconciliation and the restoration of peace.
141. The Panel considered all the aggravating and mitigating circumstances upheld both by the practices of East Timorese courts in applying the Penal Code of Indonesia (KUHP) and the standards derived from the International Tribunal for Yugoslavia and the International Tribunal for

Rwanda, apart from those provided for under UR-2000/15 as well as under general principles of law.

### **Conjunction of punishable acts**

142. Regarding the killing of two victims: Since the accused was part of an organized force intent on killing independence supporters, and he took part in the execution of this intent either by killing himself (as in the case of murder victim Agapito de Araujo) or by the contribution described above (as in the case of murder victim Luis Boco Siri) his participation in the two killing must be considered as one continued act in the sense of Art. 64.1 IPC.
143. Regarding the Persecution as acts: The same reasoning applies to the several acts of persecution to which the accused contributed, wherefore they must be considered as one continued act in the sense of Art. 64.1 IPC.
144. It has been proved that the accused Domingos Mendonça committed a crime of murder as Crime Against Humanity, and crimes of Persecution as Crime Against Humanity. The Panel deems that the accused performed two acts (murder and persecution), because murder on the one hand and persecution on the other hand require a different intent and different means, and in this case were not committed at the same time (article 65.1 Indonesian Penal Code).
145. Taking into account the aggravating and mitigating circumstances, the Court deems appropriate to sentence Domingos Mendonça to 9 years of imprisonment for murder, and 6 years of imprisonment for persecution.
146. In the present case the maximum total punishment for the crimes committed is the collective total of the maximum punishment imposed on those crimes, but that in accordance with Article 65.2 of the Indonesian Criminal Code, this total must not exceed one third beyond the most severe maximum punishment, which in this case 10 (ten) years and 6 (six) months of imprisonment for Domingos Mendonça. Therefore, the Court deems relevant to sentence Domingos Mendonça to a single punishment of 10 years and 6 months imprisonment for all the crimes on which he is convicted, being the most severe punishment 9 (nine) years plus less than one third of this punishment.

### **H. 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 Special Panel finds and imposes sentence to the accused Domingos Mendonça as follows:

**GUILTY** of the murder of Luis Boco Siri and Agapito de Araujo, on or about 17th April 1999 in Orluli Village, Same Sub District, Manufahi District, as part of a widespread or systematic attack against a civilian population with knowledge of the attack, thereby committed the Crime Against Humanity of Murder as stipulated under Section 5.1(a) UNTAET Regulation 2000/15.

In punishment for this crime sentences the Accused to 9 (nine) years of imprisonment.

**GUILTY** of Persecution of supporters of independence of East Timor in Same Sub District, Manufahi District, in particular the villagers of Orema village, Datina village, Grotu Lau village, Orluli Village, Leubrema Village, Suri-Rema village between April 1999 and September 1999 as part of a widespread or systematic attack against a civilian population with knowledge of the attack, thereby committed the Crime Against Humanity Persecution as stipulated under Section 5.1(h) UNTAET Regulation 2000/15.

In the punishment for this crime sentences the Accused to 6 (six) years of imprisonment.

The total punishment for these crimes is 10 (ten) years and 6 (six) months imprisonment.

Orders the Accused to pay the costs of the criminal procedure.

#### **Credit for time served**

According to Section 10.3 U.R. 2000/15, section 42.5 U.R. 2000/30 and Article 33 of Indonesian Penal Code; the Special Panel deducts the time spent in detention by the Accused Domingos Mendonça due to an order of an East Timorese Court.

He was under detention for 3 months and 2 days (above para 8). Accordingly, this detention shall be deducted from the sentence today imposed, together with such additional time he may serve pending the final determination of any appeal.

#### **Enforcement of sentence**

Pursuant to Sections 42.1 and 42.5 of UR-2000/30, the convicted person Domingos Mendonça 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.

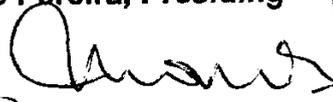
This decision is provided in one copy to the Defendant and his legal representative, the Public Prosecutor and the Director of prison.

This Judgment was rendered and delivered on the 13<sup>th</sup> October 2003 in the District Court of Dili by:

**Judge Maria Natércia Gusmão Pereira, Presiding**

**Judge Sylver Ntukamazina**

**Judge Siegfried Blunk**



See attached  
Dissenting opinion  
regarding the sentence  
of the disposition.



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE  
**RDTL**  
DILI DISTRICT COURT  
THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No. 18b/2001

**THE PROSECUTOR**  
**V.**  
**DOMINGOS MENDONCA**

**Dissenting Opinion of Judge Maria Natercia Gusmao Pereira**

The decision of this Court announced today has not been taken unanimously for the whole of its contents. While the three members of the Panel had agreed on the verdict and concluded that the witness testimonies and factual evidences proved beyond reasonable doubt the guilt of the accused, some disagreement has appeared regarding the calculation of the sentence or penalty. As far as we perceive it, we took the same route but we didn't reach the same destination.

As described in the factual findings, evidence throughout the trial showed that the accused was involved in the deaths of Luis Boco-Siri and Agapito De Araujo and in the Persecution of those villagers seemed as supporters of independence.

I would like to address one important issue and is that of the degree of involvement and participation of the accused Domingos Mendonca in the facts (see paragraphs 94 to 112 of the decision).

As is stated in the decision, the accused, as many other militia members, was forced under threats to be part of the Ablai militia commanded by Bernardino Da Costa, Benjamin Sarmiento, and Guilherme Marcal. He was

just an ordinary member of the militia and had not command over other militia members.

Considering the participation of the accused in the facts in relation with the penalties imposed to his other co-accused and taking also into account previous sentences of the Special Panel I do consider that the punishment of 10 (ten) years and 6 (six) months imposed to the accused is excessive.

For the crime of murder of Luis Boco Siro and Agapito de Araujo the majority of the Panel decided to impose a sentence of 9 (nine) years of imprisonment. My opinion is that the participation of the accused in the facts and his position in the militia deserve a punishment of 6 (six) years and 6 (six) months.

As for the crime of persecution the majority opinion was that the accused should be punished with 6 (six) years. My opinion is that a punishment of 5 (five) years would have reflected better the participation of the accused.

Therefore, the maximum total punishment, that after the adjustments in accordance with the Indonesian Criminal Code resulted, for the majority opinion in a sentence of 10 (ten) years and 6 (six) months is, in my view, excessive. I believe that the adequate sentence is a maximum total punishment of 8 (eight) years and 6 (six) months.

This Dissenting Opinion was rendered and delivered on the 13 October 2003 in the District Court of Dili by:

Judge Maria Natercia Gusmao Pereira.

A handwritten signature in black ink, appearing to read 'M. Gusmao', with a horizontal line underneath the name.