



**REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE**

**RDTL**

**TRIBUNAL DISTRICTAL de DILI**

**SECÇÃO CRIMES GRAVES**

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Case No. 12/2002

Date: 12/2/2004

Original: English

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Before:

Judge Dora Martins De Morais

Judge Antonio Helder Viera do Carmo

Judge Francesco Florit, presiding and rapporteur

Registrar: Joao Naro

Judgement of: 12.2.2004

**The prosecutor**

**V.**

**Inacio Olivera, Gilberto Fernandes, Jose Da Costa**

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**JUDGEMENT**

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**The Office of the Public Prosecutor:**

Ms. Wanbui Ngunia

**Counsels of the accused**

Ms. Maria Rocheteau for Inacio Olivera

Ms. Pamela Reuch for Jose Da Costa

Ms. Radmila Dimitijevic for Gilberto Fernandes

## INTRODUCTION

The trial of Inacio Olivera –around 43 years old, farmer, born in Lore, Lautem district-, Gilberto Fernandes –born on 2.3.1973 in Carano village, Los Palos, Lautem district, farmer- and of Jose Da Costa –born on 5.6.61 in Leuro village, Los Palos, Lautem district, farmer- before the Special Panel for the Trial of Serious Crimes in the District Court of Dili (hereafter the “Special Panel”) started on the 22nd September 2003 and ended today, the 12th February 2004, with the rendering of the decision.

After considering all the evidence presented during the trial, the plea of guilt made by the accused Gilberto Fernandes and the written and oral statements from the Defenses and from the Office of the Public Prosecutor (hereinafter: the “Public Prosecutor”), the Special Panel renders its judgement.

## PROCEDURAL BACKGROUND

On 19<sup>th</sup> November 2002, the Public Prosecutor filed before the District Court of Dili a written indictment (in English version) against the accused charging them with two counts of crimes against humanity.

Copies of statements of several witnesses were attached to the indictment. Sketches and pictures of the crime scene as well as ancillary documents were also attached.

The Court clerk provided notification of the receipt of the indictment to the accused and to the parties pursuant to Sect. 26.1 and 26.2 of UNTAET Reg. 2000/30 (as amended).

After the preliminary hearing, the trial started on the 22<sup>nd</sup> September 2003. In the course of the trial several witnesses were heard. At the end of the trial, the Parties were admitted to the closing statements.

Before the delivery of the closing statement, the accused Gilberto Fernandes pleaded guilty to the second of the two counts contained in the indictment against him. Counts 1 of the indictment was withdrawn by the Prosecutor exclusively with regard to the accused Gilberto Fernandes. The Court proceeded to the verification of the validity of the guilty plea, as required by Sec. 29 A of UNTAET Reg. 2000/30.

After the closing statements took place, the hearing was postponed for the issue of the disposition (12<sup>th</sup> December 2003) and then to the present date for the final written decision.

Interpreters for English, Portuguese and Tetum assisted every act before the Court, where needed.

## FACTS OF THE CASE

The Public Prosecutor submitted that, in the context of the events that disrupted the country in 1999, the relevant episode took place in Los Palos on the 27<sup>th</sup> August 1999.

On that day, according to the Prosecutor's version of events, militia members (amongst them, the accused) belonging to a group called Team Alfa which had operated in the area since 1998, assaulted the house of Verissimo Dias Quintas, leader of the pro-independence group CNRT in the district of Los Palos and *lurai* of the village. In the course of the assault the owner of the house was killed and people that had gathered there on that day to celebrate the end of the political campaign for independence were persecuted.

The three men (together with many others who could not be brought before the court because they are believed to be in Indonesia) were specifically accused of taking part in the murder and the persecution. Both acts were qualified in the indictment as crimes against humanity. The two counts, accordingly, read as follows:

Count 1: Crime against humanity, murder of Verissimo Dias Quintas.

By their acts or omissions, in relation to the events described in this indictment, ....Gilberto Fernandes, Jose Da Costa, Inacio Olivera ....., are responsible as individuals or as superiors for the murder of Verissimo Dias Quintas on 27 August 1999 which was committed as a part of a widespread and systematic attack against a civilian population with knowledge of the attack and thereby committed a crime against humanity – murder, a crime stipulated under section 5.1 (a) UNTAET Regulation 2000/15.

Count 2: Crime against humanity, persecution.

By their acts or omissions, in relation to the events described in this indictment, ....Gilberto Fernandes, Jose Da Costa, Inacio Olivera ....., are responsible as individuals or as superiors for the persecution of a group believed to be members or supporters of CNRT on 27 August 1999, by the intentional and severe deprivation of their fundamental rights contrary to international law, which was committed as a part of a widespread and systematic attack against a civilian population with knowledge of the attack and thereby committed a crime against humanity – persecution, a crime stipulated under section 5.1 (h) UNTAET Regulation 2000/15.

## FACT FINDING

In the indictment, the acts of violence at the house of Mr. Verissimo Dias Quintas is depicted as one of several episodes making up the widespread attack that hit the country throughout 1999. Specifically, as it turned out and become explicit in the course of the first hearing, the Prosecutor established a link between the facts in the charge and an episode that took place in the morning of the same day (27<sup>th</sup> August 1999), namely an act of aggression against some pro-autonomy campaigners, in Home (a village close to Los Palos).

In the course of the first hearing (pg 36 and 37 of the transcript) it surfaced clearly that in the Prosecutor's version of events a fight or skirmish in Home -where, allegedly, members of pro-autonomy group were the target of an act of aggression by pro-independence supporters- triggered the 'reaction' of a raid on the house of Mr. Verissimo Dias Quintas and ended with the death of Mr. Verissimo himself.

On the other hand, in the closing statement of the Prosecutor (the written version), the relevance of this connection is neglected and, in a way, put aside, since the Prosecutor omits to mention the episode in Home and- to illustrate the qualification of the murder and of the

assault as crimes against humanity- tries to place the facts of the charge in the usual setting of widespread and systematic attack against the civilian population. Thus, the theory of the 'reaction' vanishes and the floor is left to the formulaic representation of an act that finds its origin in the campaign of hatred that swept the country in the year 1999.

On the issue of this shift of perspective, more will be said later; for the moment, it suffices to briefly illustrate the facts following the order in which witnesses were heard:

1) Francisco Dos Santos. On the 27<sup>th</sup> August, he was seeking protection in the BRTT office but was then forced to join the group of pro-autonomy activists getting into a vehicle and heading to the victim's house. He saw how the aggressive action unfolded and makes references to the location of relevant sites (Mr. Dias Quinta's house, the market, the BRTT office); he explains that people belonging to the militia group Team Alpha were bringing weapons and giving orders. By the time he got to the residence of Mr. Dias Quintas, the house was already burning. He witnessed the shooting and saw Jose (Solari) wounded. He mentioned Gilberto (later in the course of the hearing identified as Gilberto Fernandes) repeatedly shooting a rifle but ignored if the target was hit. Inacio was giving orders. The witness also remembered the presence of Jose Da Costa.

2) Goncalo Da Costa, a member of Rapi, a juvenile group linked to Team Alpha. He participated in the skirmish in Home (Prosecutor: ...“what happened on the morning of the 27<sup>th</sup> of August?”. Answer: “First we were in the [went by] bus – we had a fight”) together with Gilberto. After the accident in the village of Home in the morning, the group of militia members went back to the militia post, from where, in the afternoon, the following events started. They were told by Rahman Zulkarnean (militia leader) that the CNRT office had to be burned. He witnessed the attack at the house of Mr. Verissimo with the presence of two of the accused (Inacio and Jose Obbo alias Da Costa carrying weapons and -the second at least- shooting to the house of the victim).

3) John/Joao Da Cruz, a Team Alpha member, who was present at the crime scene (if only at a later stage and for a short time) but participated to the action in Home, where he was sent because “there was an order to save and not to kill people” (he also said: “we were in the Post and then we had an instruction to go to Home because there was a lot of noise and then after that we went home”; “there was a big fuss there and they said that there was somebody and then we were ordered to make the place secure”); he describes their activity in Home as one of peacekeeping (Presiding judge: “what did you do in Home – how did you keep the peace in the place?” J: “We immediately secured the place and we immediately dispatched the people.” PJ: “There were people gathered, I understand?” J: “There were people there.” Public Prosecutor: “So, what action did you take to disperse the crowd – not just you – the group that was under the commander?” J: “I want to explain: the army immediately pulled the trigger up and immediately dispersed.”)

4) Alexio Dias Fernandes, a militia member, generally refers to Home and about the attack on the house of Mr. Verissimo and the CNRT office. He wasn't present to the actions but remembers (after been read the statement he had given in the course of the inquiry) that, while he was at the post, in the afternoon, Syaful Anwar gave the subordinates orders to get into the Kijang and drive toward Verissimo's house. He also adds that the attackers were armed with guns, swords and machetes. The testimony is quite confused on the time and circumstances of departure of fellow militia members for the house of Verissimo.

5) Alexio Pereira a.k.a. Alves, a militia member of Team Alpha; he was amongst the group of the attackers, saw the accused at the crime scene; he makes reference to the fact that Gilberto and Ignacio were carrying guns and were shooting (upward); he remembers that when the attack was over and they went back to "the Post" (Team Alpha office or headquarters) it was already evening (but contradictorily states that the firing went on for "more or less five minutes"); it is clear, from the words used by the witness in the course of the examination-in-chief (but he partially contradicts himself in the course of the cross examination by Ms. Dimitrijevic) that the Accused were present at the crime scene from the beginning of the action or, at least, before the stabbing of Mr. Verissimo Dias Quintas; he confirms hearing the order to burn the CNRT office but does not remember an order to kill Mr. Verissimo Dias Quintas. In the cross-examination led by Ms. Rochteau, Jose Solari and 'Martino' emerged as the autonomous murderers of Verissimo Dias Quintas; they got on the Kijang on its way to the house of the *lurai* and acted autonomously afterwards, entering the house of Mr. Verissimo (Jose Solari in first place and 'Martino' in second place, after the first was wounded).

6) Olavio Da Costa, CNRT activist and relative of the victim, present at the scene during the attack. He refers to the attack and about the situation in Los Palos at the time of the popular consultation.

7) Angelo Araujo Fernandes, a citizen of Los Palos, witnessed the arrival of the Kijang at the scene, confirms the presence of Jose Da Costa and witnessed the burning of the market.

8) Paulo Dias Quintas, son of the deceased; he was present only at the beginning of the attack; he escaped and returned only in the evening. He refers to previous incidents in Los Palos. He mentions talks between the two factions (pro-autonomy and pro-independence) to keep the situation calm in the area of Los Palos.

9) Cancio Paulo Dias Quintas, son of the deceased, was present during the attack but refers to few details; he witnessed the transfer of a wounded to the hospital. At the time it was already dark ("the time was already about 7 or 8 and I couldn't see anymore"). Eventually, he managed to escape from the burning house. Only later did he come to know of the death of his father.

10) Jose Filomeno Vila Verde de Assuncao, head of the CNRT in Los Palos at the time, did not witness the murder of Mr. Verissimo; at the time of the beginning of the attack he was in Olavio Da Costa's house. The attackers came from the market area at around 5.30 in the afternoon.

The Court first acknowledges that, despite the efforts and long hours spent to get from each witness the best of their memory, many areas of the testimonies are far from clear.

This does not affect crucial points of the decision, for the reasons that will be outlined later. The origin of the ambiguity of some testimonies lies in the difficulty of interpretation (Tetum and Bahasa Indonesia, the two language used as media were not the mother languages of the witnesses) and in the poor level of education of the witnesses (rarely, even in the Timorese experience, has the Court received evidence from such poorly educated people: it has not been reported in the transcript, but several witnesses, questioned on very basic details,

confessed to ignore the months of the year, the days of the week, the day of their birth or to count more than few figures. It appears obvious that in these conditions the difficulty of translation grow in an exponential size) rather than from the way the examination-in-chief and the cross-examination were led. In the context of Timor, the witnesses cannot be treated according to western court standards and practice: as outlined several times by Judge Helder, the Timorese member of the panel, questions should be asked in the simplest and more direct way, avoiding long repetitions or premises.

So, for example, on the presence of the accused at the crime scene, if there can be no doubt that they were present at some stage and in an active manner in front of Mr. Verissimo Dias Quinta's house (many testimonies converge: Francisco Dos Santos, Goncalo Da Costa, Alexio Pereira and Angelo Araujo Fernandes confirm this detail), only for Jose Da Costa it may be affirmed with the requisite level of certainty that he was present from the very onset of the action.

- Goncalo Da Costa testified: "Because Rahman said it had to be burned, then Inacio, Alves and Jose Obbo brought weapons – arms. Jose Da Costa struck the weapons on the house of Mr. Verissimo, SKS.

Prosecutor: And Inacio, what kind of weapon was he carrying?

G: He also carried SKS. Inacio was here and then Mr. Jose Obbo....

The reference to the order of burning the house of the victim –or the office of CNRT, in the same compound, few meters aside- clearly indicates that the witness refers to the very onset of the action and that at that time Inacio and Jose Obbo (Da Costa) took the weapons –a fact which is confirmed by the general picture of the attack during which the order to fire guns was delivered immediately after Jose (Solari), the first of the actual attackers of the *Lurai* come out wounded from the burning house of Mr. Verissimo (Alexio Pereira Alves testified: my friend Martino said this "take a shot and if you will not do it all the people will die").

- Alexio Pereira Alves: he was present at the crime scene from the beginning (or at least at the time when Mr. Verissimo was assaulted by Jose Solari) and mentions the presence of "these three persons who are here".

- Angelo Araujo Fernandes remembers that Jose Da Costa arrived on board the *Kijang* at the beginning of the attack ("I heard people shouting out so I ran in front of my house so that I can see. Not long after that a blue *Kijang*... Jose Da Costa stared at me sharply than I ran away and went inside my house").

In addition, Joao Da Cruz sees one of the accused at the time of the stabbing: "As I said before, somebody got stabbed and I took the body and I saw Mr. Oliveira in the streets."

Alexio Dias Fernandes gives a different picture, which creates the doubt that only Jose Da Costa was part of the original group of attackers and that the other two accused joined the attack at a later stage: "I was at the post and Jose Ompong came to the post and said 'Martino and Jose was (sic) stabbed'. This Jose came to the post and said that Martino and the other Jose had been stabbed by Verissimo. JF: So Jose who is here went to the post? AF: Yes. After that our friends got into the *Kijang* and went there. JF: There, where? AF: Went to Verissimo's house: Inacio, Alves....".

Later he adds: PW: "Did anybody leave the post to Verissimo's house? AF: Yes, that was Inacio, Gilberto, Carolino, those are the names I remember. PW: How did you get the information that they went to Verissimo's house? AF: Because I was at the post. PW: Did you hear something at the post that they were going to Verissimo's house? AF: All I know is that Martino and Jose were stabbed by Verissimo".

Likewise, in the course of the cross-examination, the witness Alexio Pereira, contradicting what he had said in the course of the examination-in-chief, affirms that Gilberto, Inacio and Jose left the Team Alfa post only later, after being reprimanded by Thomas Da Costa with the words "You are still sleeping when your friends die".

Now, to try and organise a coherent image from the jigsaw offered by the outlined discrepancy is an exercise that could theoretically be of relevance only for the first count; indeed, the second charge, persecution, covers all the duration of the attack, from the onset to its end, and any contribution to the attack will involve a portion of responsibility.

Conversely, as far as the first charge of murder as crime against humanity is concerned, were it proven that the three accused were not involved in the first part of the attack (when the murderous assault at the damage of Mr. Verissimo Dias Quintas took place), because, for example, they were resting at the Team Alpha post, it could hardly be asserted that the three militia members currently before the Court bear any responsibility. Since they are not directly depicted as the murderers (nobody contests that Jose Solari and Martinho Da Costa played that role), the origin of their possible guilt would lie, indeed, from the Prosecutor's point of view, in the activity of providing covering fire that they allegedly performed while the most severe crime was being committed. By granting the main perpetrator a free and uncontested access to the house of the *lurai*, the three accused would have participated in the general plot aimed at killing the figurehead of the CNRT in Los Palos.

But *de hoc, satis* for the moment.

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Another profile that is worth understanding, from a factual viewpoint, relates to the link between the episode in Home and the events of the afternoon of the 27<sup>th</sup> August 1999.

The Court must acknowledge that the information on this point is quite limited, due to the request, repeatedly made by the presiding judge to the Parties, to limit the investigation of this specific aspect to a general and superficial description of the events that occurred on the morning of the 27<sup>th</sup> August 1999 in Home, the sub-village of Los Palos. Despite this, a careful reading of the transcript allows the Court to come to the conclusion that it is a common perception, in the mind of some witnesses, that the above-mentioned link did exist.

Goncalo Da Costa:

PP WN: All I wanted to know is: you saw Gilberto in Home. What was he doing in Home?

G: In Home, it was a matter of shooting - they were firing guns but were firing up.

PP WN: Was Gilberto armed in Home?

G: From the Post, he brought the gun then we went to Home.

PP WN: Mr. da Costa, after the incident in Home, where did you go?

**G:** We went back to the Post.

**PP WN:** From the Post where did the people move to next?

**G:** From the Post to the CNRT office then Verrissimo's house.

Joao Da Cruz

**PJ FF:** What happened in Home?

**J:** In Home, there was somebody and then there was an order to save and not to kill the person.

**PJ FF:** Did you go to Home - had you gone to Home on that day?

**J:** First Home, then we went to the Post and took a rest and then it happened down. First it was Home, then we went to the Post and then rested and then we heard screams, burning – they were saying that the house of King Verissimo is burning and there were people wounded.

**PP WN:** You went first to Home, then the Post and then rested. Is that the sequence of events?

**J:** I want to repeat again and to make it clear. First I went to Home, and then I went to the Post and then rested a little while and then it happened.

Alexio Dias Fernandes

**JF:** Why Inacio, Alves, Gilberto, Carlolino, Oliveira went to Verissimo's house?

**AF:** *Keeps quiet.*

**AF:** They went to Home because Verissimo and John da Crus were causing trouble there.

**PW:** What happened to the people who went to Home?

**AF:** When they came back to the post then they went to the house of Verissimo.

Olavio Da Costa Monteiro Almeida

**OM:** ...there was an incident in the morning, which happened in the village of Home. It happened in the morning, there were threats against the king of the suco at that moment and after they ran and came back in the afternoon.

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The aggression against Mr. Verissimo, if taking place in the context of the raid on the house of Mr. Verissimo, was an autonomous one with a distinct cause. It is clear from the evidence that Martino and Jose Solari stopped the Kijang and boarded it outside the BRTT office and went to the house. Once there, Jose jumped out of the Kijang and went into the house of Mr. Verissimo carrying a sword. He came out of the house wounded. Following this Martino Da Costa entered the house with his sword.

It is relevant at this point to cite what Alexio Perreira Alves has to say on the point, in the course of a well-led (by Defense Counsel Ms. Rocheteau) cross-examination:

**PJ FF:** Where did you go with the blue Kijang?

**A:** We went for a patrol.

**DC MR:** Did you stop in Verissimo's house?



A: We went from the Post, then we reached BRTT office and Jose and Martino said stop, stop.

PJ FF: And then?

A: From there, Jose and Martino took a ride in the car and then we went directly to the market.

DC MR: In the BRTT office who ordered Martino and Jose to get into the Kijang?

A: They were there – suddenly they stopped.

DC MR: And Martino and Jose got into the Kijang?

A: Yes.

DM MR: Jose and Martino did not belong to the Team Alpha?

A: No.

DC MR: You said that when you reached Verissimo's house, Jose got out with a sword and went towards Verissimo's house?

A: At that moment, it was Martino who drew the sword and made me get inside.

DC MR: Who went inside Verissimo's house first – Martino or Jose?

A: First was Jose.

DC MR: So, it is correct that when you stopped in front of Verissimo's house or on the road outside of Verissimo's house, Jose a BRTT member got out with a sword and went towards Verissimo's house? Is this correct or not?

A: At the moment Jose entered, he returned and came back with the wound and he said I have been wounded.

DC MR: Who ordered Jose to enter Verissimo's house?

A: There was no order.

DC MR: He decided by himself?

A: He, himself.

DC MR: Then you said that you were sitting on the top of the Kijang?

A: Yes.

DC MR: On the side of the road of Verissimo's house?

A: Not precisely in the front but it is a little bit on the back.

DC MR: And then shortly Jose came out from Verissimo's house saying friends, friends, I am wounded?

A: Yes he said like that.

DC MR: It is correct?

A: Yes, that is true – at the time I was still in the Kijang.

DC MR: When Mr. Martino heard Jose saying friends, friends, I am wounded he ran into Verissimo's house with his sword. Is this correct?

A: Yes, that is correct but it was not based on any order.

DC MR: Mr. Alves, nobody gave orders to Martino to enter Verissimo's house?

A: The moment they came inside there was no order from anybody.

DC MR: They decided by themselves?

A: They came for what they really wanted to do. At the moment of the death of Verissimo, Jose was wounded, he was carried to the car – from that, I jumped to come down – then the car was already running before Martino came to Verissimo's house.

From these words no doubt remains that the violence unleashed by the anger caused by the skirmish in Home had a complex cause. In this complexity it is important to understand that the two actions (the assault to the house of the *lurai* and to the office of the CNRT and the assault to the *lurai* himself, Mr. Verissimo Dias Quintas) kept their reciprocal independence. They did not merge in a common responsibility, as to create a common cause of the death;

rather, they overlapped or, better, the murderous intent took advantage of the attack on the residence and to the office of CNRT.

It is not possible to give another explanation to details such as the kind of orders that were given at the onset of the attack and the reactions to the murder. It is not only the testimony of Alexio Perreira Alves which creates the basis of this factual finding, but it is also the case that it composes an interpretation which is fully compatible with other details.

Indeed, from the expressions used by militia members called as witnesses, the impression comes that the orders given to them were, generically, to attack and burn the office and people of the CNRT and the house of the *lurai*, and not to kill Mr. Verissimo or any specific individual:

- Goncalo Da Costa: Mr. Ama Jurikaine spoke to us that the CRTT office has to be burned. ....Because Rahman said it had to be burned, then Inacio, Alves and Jose Obbo brought weapons – arms.

- Alexio Pereira a.k.a. Alves: At the time, I heard the shouting “the CNTT office will be burned”.

The news of the order to attack people and burn the compound was spreading quickly, if the witness Olavio Da Costa, a close friend of the victim refers: “...a young person came and informed me that all the CNRT in Mr. Verissimo’s house and compound will be attacked”.

Similarly, a neutral witness, Angelo Araujo Fernandes, depicts in this way the beginning of the action and refers to the words of the militias at the time: “...After that they burnt the market and left in the car and they were shouting: ‘We will also burn the CNRT office’”.

Francisco Dos Santos, forced on the spot to join the action of the militias (he said he went to the Team Alpha post only to seek protection), when asked by the Prosecutor the reasons of the attack, answers: “As far as I know ... they attacked the house of Verissimo because it was the headquarters of CNRT”.

In the end, it appears that the object of the main attack was the CNRT people, as a group, and their premises. Apart from the testimony of the son of the victim (Cancio Paulo Dias Quintas stated in Court: “... I heard people shouting kill the leader of CNRT, the leader of CNRT”) the only other witness who refers to orders of killings does it with words that convey the idea that the aggression by the Team Alpha was against the CNRT group and not against a single individual (Jose Filomeno Vila Verde De Assencao: “Can you explain to the Court now what you heard?” “They were shouting: just declare (?) the CNRT, just kill the CNRT”).

It is appropriate to mention at this point that, as it emerges clearly in several passages of the transcript (where Jose and Martinho, who were only wounded but were said to have been killed, or the men punched and beaten in Home were likewise said to have been killed) and has been as well clarified in the course of the hearing by the interpreter, there is an unavoidable ambiguity in the Tetum word for “kill”, which also means “wound” or “cause injury”. The presence of this word with many meanings helps in explaining the otherwise incomprehensible expression: “kill the CNRT”.

The fact that there was no specific plan to kill but only to destroy things and threaten people appears to be deductible from the reaction of the same Team Alpha leaders to the (apparently unforeseen) developments of the attack to the house: the news of the fight between Jose Solari, Martinho Da Costa and Verissimo Dias Quintas, with the injuring of the first two and the death of the third, came as unexpected at least to some of the Team Alpha leaders and to the subordinates and prompted a further reaction (just to quote some amongst the many references: Francisco Dos Santos: "I saw Gilberto at the scene and then when I came back from BRTT I saw Inacio screaming, "Verissimo is dead""; Joao Da Cruz: **J**: "Immediately after Home, we went home to the Post...from Home to the Post, I immediately took a rest... We were still eating – then it had already happened. This should be explained: he reprimanded the army, saying you should go out, somebody has been stabbed..." **PJ FF**: "Who gave this order?" **J**: "Someone kicked me on the foot and said: you should go down... It was the commander Bakilin – he is a Javanese"; Alexio Dias Fernandes refers in similar terms).

More, the necessity of covering fire itself emerged only in the course of the aggression to the house as a consequence of the events.

Again the testimony of Alexio Alves: .... At the moment of the death of Verissimo, Jose was wounded, he was carried to the car – from that, I jumped to come down – then the car was already running before Martino came to Verissimo's house.

**DC MR**: And then Tomas said: just take a shot, otherwise if you do not want to, these people will die?

**A**: Yes, that is correct.

**DC MR**: Did Tomas say this before or after Jose and Martino came out?

**A**: After Jose came out wounded and then Tomas said this. ....

**DC MR**: And in relation to Martino, Tomas gave this order to shoot after or before Martino had been wounded?

**A**: Before Martino was wounded he said like that.

So, the picture is complete: there was the attack to the house, to which the accused participated in the full knowledge of it and of its consequence; there was the autonomous action of Jose' Solari and Martinho Da Costa, to which the accused were extraneous; there was, after the aggression to Mr. Verissimo had started, the order to shoot to cover the action. It appears difficult to recognize in this a planned action to kill Mr. Verissimo Dias Quintas or even a conscious participation to the murder by Inganio Olivera, Jose Da Costa and Gilberto Fernandes.

## LEGAL FINDINGS

The experience in East Timor teaches that the concept of crimes against humanity is extremely flexible and apt to be applied, as an elastic fabric, by progressive stretches of the legal terminology, to facts that, if surely dramatic if seen under the magnifying lens of the shocking details of which they are surrounded or of the grief caused to the victims or to the relatives of the victims, may not deserve such a relevant attention if compared to other, much more relevant in size, bloodsheds.

The Court does not refuse the idea, which derives from a well-settled principle stated in several international Courts' decisions, that even a single act as, for example, a single murder or a single act of persecution, may be a crime against humanity, if the conditions and the legal standards to acknowledge the sense of evil that this class of crime expresses are met in the single case; the Court understands that it is not possible at all to determine and state a given figure of casualties above which the multiple murders become, by force of a legal definition, a crime against humanity. But this Court expresses at least the opinion that the concept of crimes against humanity should be used as a last-resort category, needed to express the censure of the international community for atrocities whose magnitude offends the basic values and the sense of humanity of the whole international community and of each member of it.

If the greatest care is not taken in bringing people to Court for the charge of crimes against humanity, the consequence will be, as appears to have happened in the present case, that people, like the three accused, whose participation to a criminal action was simply ancillary and, in the end, a small contribution to the crime, end up being brought to justice under the same juridical qualification for which, in the past and before other Courts, criminals like say, Goering, Eichmann or Barbie were found guilty and sanctioned.

This does not make great sense and does not contribute to bring fairness and correct retribution for the wrongs committed, much less to the correct understanding of the historic events.

At the end of the day, it must be taken in consideration the circumstance, already emerging from the statements and other documents filed in Court, that Ingracio Olivera, Gilberto Fernandes and Jose Da Costa participated to the attack with guns but sneaking at the building and not at living targets (it is sufficient to watch the picture representing the house of the victim, literally carved up by the shots of the covering fire or to consider that the only victim was by sword and not by gunshot or to remember the passage when a witness, a CNRT member i.e. one of the attacked, showed to the Court the gesture made by one of the accused, in the course of the attack, inviting the victims to hide below a window and behind a wall, to seek shelter from gunshot, in order to understand the nature of the behaviours of the accused).

Having said that, the endeavour to find the correct qualification of the behaviour of the three accused starts from a preliminary annotation: the Court is reluctant to qualify the facts described in the two charges of the indictment as crimes against humanity because they do not appear to be part of a widespread or systematic attack.

This is a pivotal point in the interpretation of the facts: as it has been made clear by the Prosecutor in the course of the first hearing, the accusatorial perspective was based, at the beginning of the trial, on the perception that the aggression against the compound of Mr. Verissimo Dias Quintas and the assault to the *lurai* of the village was an act of revenge, a reprisal for the skirmish that had taken place in the sub village of Home in the morning of the same day (27 August 1999) and that had already led to the suppression of the mass planned by the two factions (BRTT and CNRT) to celebrate the end of the political campaign leading to the popular consultation.

This perception has proven to be correct, on the basis of the reading of the witness testimony mentioned above (pg.7 and 8) and this reading, put forward by the Prosecutor since the very beginning (at pg. 36 and 37 of the transcript of the hearing 22.9.03 the text doesn't do justice to the full and clear illustration made by the Prosecutor of the issue) gives a rational justification of a raid which otherwise would have been void of motive.

Indeed, thinking that while planning to celebrate the end of the campaign together with the opposite faction (the preparation of the joint ceremony had been going on with daily meetings between the parties for the last few weeks), the BRTT were planning, at the same time, the murder of the *lur'ai* appears, frankly, an excessive stretch of the facts.

Likewise, it is difficult to accept the idea that an act of intimidation of such a magnitude for the community of Los Palos would be carried out at the eve of the popular consultation. Certainly the situation in the district was tense, as some witnesses stated; roads were patrolled by militias, there were acts of intimidation and of arrogance, but nothing like a planned massive action. On the other hand, would have such an action made sense at all? Would have been in the interest either of Team Alpha leaders or of the BRTT to raise the level of deprecation against themselves just three days before the consultation, by attacking a peaceful party or by creating a martyr?

The obvious answers to these questions give a solid justification to the correctness of the perspective outlined by the Prosecutor. Then, if we accept the idea that attack and the murder were impromptu actions, provoked the same day as a revenge, if we share the opinion that there was no plot or plan for them just the day before, it is impossible to conceive it as a part of a widespread or systematic attack. It was not. It was an act that 'came out of the blue'. It was an autonomous act, simply favoured by the presence of an armed militia group taken out of the contest of the widespread and systematic attack that notoriously flagellated the population of East Timor in 1999.

The Court accepts the arguments of the Prosecutor in pg 12, point 9, of the written final statement (with the exclusion of the sentence 'it would be hard to classify the killing of the figurehead of CNRT in Los Palos as an isolated incident') that there was at the time a widespread and systematic attack against the civilian population of East Timor, but cannot share the conclusion drawn in point 10 because there was no evidence at all that the episode of the afternoon of 27<sup>th</sup> August 1999 was a planned and orchestrated one and because, indeed, for what the Prosecutor has strived to prove, there is the evidence of the contrary, i.e., that the attack had another origin (revenge) and was not part of any planned scenario.

The Prosecutor, probably conscious of this, does not mention in the final statement Home and the link between the facts of the morning and the events of the afternoon; though the Court holds this issue as relevant and accepts it as a matter of fact.

Commonly speaking –in most national jurisdictions and also in the jurisdiction of international tribunals– the reasons to commit a crime are irrelevant, being a well-settled principle of criminal law that what matters is the will to commit a crime, whichever the reasons for it may be.

The motive of the action does not take in this case a greater relevance than it has in any other case but it explains, from a factual point of view, that the episode can not be read in keeping

with the formulaic scenario constantly adopted before the Special Panels of the Dili district court, of the widespread or systematic attack. The fact that the attack on the house of Mr Verissimo was one motivated by revenge, and that this motive was formed the same day is an indicator of the absence of a widespread or systematic planned attack on the civilian population. If there had not been the skirmish in Home, the reaction would not have happened in the afternoon: so, the Court is left with the overriding question- where is the plan? The Prosecution did not discharge its burden to prove that this act formed part of a widespread or systematic attack. The opposite theory- that this act was independent from any plan- seems the more plausible explanation.

The acceptance of this interpretation of the facts implies the re-qualification of the facts from crimes against humanity to simple murder (count one) and from persecution to 'violence against property or persons committed by a group of people united for a common purpose', a crime included in section 170 of the Indonesian Penal Code (count two).

On the first crime, the murder of Mr. Verissimo Dias Quintas, the Court has already expressed its opinion that the action which led to the death of the *lurai* should be attributed exclusively to those (Jose Solari and Martinho Da Costa) who strictly committed the crime or to the restricted number of those, amongst the leaders of the militias, who may have had the consciousness of what was happening. As illustrated in the factual findings, the Court thinks that there was an independent chain of causality between the attack to the house and the people of CNRT by Team Alpha, on one side, and the assault to Mr. Verissimo Dias Quintas by BRTT members, on the other. As illustrated, the assault to the *lurai* took advantage from the attack that was being carried out, but, for the autonomy of it, people who had not a direct role can not be held responsible.

Whether Ignacio Olivera and Gilberto Fernandez were present to the crime scene from the beginning (i.e. when Mr. Verissimo was stabbed to death) or not (for Jose Da Costa there is no doubt on the point), becomes irrelevant to determine (i.e. to exclude) their murderous responsibility, since the three of them did participate in the attack to the house and the office of CNRT (of which they had knowledge and intent) but did not give any real contribution to the killing to which they were almost extraneous.

In the end, the three accused are not held responsible for the murder of Mr. Verissimo Dias Quintas.

On the second crime, the violence against property and persons committed by a group of people united for a common purpose, all the elements are present to affirm the responsibility of the three accused.

The *actus reus* and the *mens rea* of the crime are easily found in the behaviours of the three accused who, without doubt, gathered in front of the house of Mr. Verissimo Dias Quintas and surrounded the compound during the attack and the burning which followed. They shot at the house and at the belongings of the family of the *lurai* (the details of the destruction of the motorbike of Mr. Verissimo were given). It appears to be superfluous (and for this reason it will be spared) any detailed discussion about the knowledge and the intention, by the three accused, of the attack and specifically, of the elements of it, i.e. the participation of a number of people and the existence of a common purpose. Even the most illiterate and downtrodden man would have understood what kind of action was taking place. It suffices to note that the

accused had knowledge that a number of militia members were involved and that they had the intention to carry out the criminal action.

### SENTENCING POLICY

The determination of the term of imprisonment is not a complex issue, since the accused participated in the same crime and there is no reason to distinguish amongst the three.

The accused Gilberto Fernandes has pleaded guilty at the very last stage of the trial. While his choice can not be contested from a procedural point of view, it can not pass unnoticed that this may not have the consequences that an analogous plea would have if done at the beginning of the trial. Since there has been no time-saving for the Court. On the contrary, in this case, a postponement of the hearing for closing statements was requested in an attempt to reach, between the parties, an agreement upon which to base the guilty plea. There is no reason to grant to the pleader a better treatment than that granted to the rest of the accused. What is more, the circumstance that the qualification of the fact on which the pleading was done (count 2) was not correct (not persecution as a crime against humanity, but violence to people or property by a group of people), in the Court's mind, suggest to treat all the accused in the same way.

According to Sec. 10.1 (a) of UNTAET Reg.2000/15, for the crimes referred to in Sect. 5 of the same 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 under the international tribunals. Moreover, 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).

It is obvious that the first set of guidelines (Sec. 10.1 (a) of UNTAET Reg.2000/15) can not find application in the case: while it is not possible to retrieve data of any significance to establish "the general practice regarding prison sentences in the courts of East Timor" in relation to the crime for which the judgment is going to be issued (or for crimes analogously peculiar), it is likewise clear that "the general practice under the international tribunals" can not be of great help, since international Courts have not had to develop precedents on crimes of limited severity.

In the end, the Court is bound to follow the additional standards of the gravity of the offence and of the individual circumstances of the convicted person (Sect. 10.2 of UNTAET Reg.2000/15).

As far as the first one is concerned, the Court notices that the sentencing practice of this Court is significantly lenient when it comes to administer ordinary crimes (i.e. crimes not included in a contest of crimes against humanity, genocide or war crimes). This means, for example, that in the last case referred to an ordinary crime, *Prosecutor v. Carlos Soares*, the Panel imposed a conviction of four years and a half for a voluntary homicide.

The lenient approach of the Court obviously keeps an eye on the general conditions of East Timor in the first three quarters of 1999, the time window for which the ordinary crimes of murder, torture and rape are attributed to the competence of the Special Panel: if crimes of murders qualified as crimes against humanity deserve convictions of little more than ten

years (unless the accused pleads guilty, in which case the average punitive retribution has reached the well-established practice of a generous seven years) it is obvious that crimes which do not attain that qualification deserve sensibly less. In a Country emerging from a violent conflict between two factions and aiming to reconcile the population, a Court which attempts to judge the most severe facts produced by the wave of violence tends to support the process of conciliation by administering punishment which, while fair, is not too severe.

On the 'individual circumstances of the convicted persons' there is not much to say, since their personality (and, particularly, the presence of a precedent in the criminal record of one of them) is not of any significance in the evaluation of the fact in the charge: the contribution given by each of the accused to the collective action that resulted in the violence that destroyed the house and the compound of Mr. Verissimo Dias Quintas does not appear to be influenced by individual circumstances which, accordingly, do not alter the determination of the sanction.

All the above considered, the Court thinks appropriate to determine the sanction in one year and six months for each accused, roughly one third of the legal ceiling as per Section 170 of the Indonesian Penal Code; this appear to be a fair retribution for the wrong done.

No order of payment of the costs of the procedure will be made: it is plainly evident that the accused are not in condition to pay; a legal order to pay would be pointless and a source of further waste of resources.

Having considered all the evidence, and the arguments of the parties, the Special Panel for Serious Crimes issues the following decision:

1. With respect to the three defendants, in relation to the charges, as listed in the indictment, the Court establishes as follows:

Count 1) The accused are found not guilty for the murder of Verissimo Dias Quintas, on 27<sup>th</sup> August 1999 in Los Palos, qualified the act as simple murder pursuant to Section 8 UNTAET Reg.2000/15 and Article 338 Indonesian Penal Code;

Count 2) The accused are found guilty for the crime of count 2, subject to re-qualification of the crime pursuant to Article 170 Indonesian Penal Code (Violence against property or persons committed by a group of people united for a common purpose) instead of crime against humanity-persecution;

2. In punishment of the crime, the Special Panel sentences Inacio Olivera, Gilberto Fernandes, Jose Da Costa to an imprisonment of one year and six months each.

3. The Defenses have the right to file a notice of appeal within 10 from the day of the notification to them of the final written decision and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This Decision was rendered and delivered on the 23.12.2003 in the building of the Court of Appeal of Dili by



Judge Dora Martin De Moraes

Judge Antonio Helder Viana do Carmo

Judge Francesco Florit, presiding and rapporteur