



UNMISSET

United Nations Mission of Support in East Timor

*Case : 06/2002***INDICTMENT**

Case No. BO-086-99-SC

THE DEPUTY GENERAL PROSECUTOR FOR THE UNITED NATIONS
MISSION OF SUPPORT IN EAST TIMOR**Against:**

PAULINO DE JESUS

I. INDICTMENT

The Deputy General Prosecutor for the United Nations Mission of Support in East Timor, pursuant to the Authority of UNTAET Regulations 2000/15, 2000/30 as amended by regulation 2001/25 charges:

PAULINO DE JESUS

With

MURDER

As set forth in this indictment,

II. Name and particulars of the accused:

Name: PAULINO DE JESUS
Date of Birth/Age: 52 years
Place of Birth:
Nationality: Indonesian
Address: Atambua, East Nusa Tenggara Indonesia
Location: Detained in the Becora Jail, Dili since 13 May 2002.

III. Statement of Facts:

- a. In September 1999, the accused, Paulino de Jesus, was a member of the Indonesian military (TNI) in the village of Lourba, Sub-district Bobonaro, District Bobonaro.
- b. At around 18:00 hours (6pm), on 10 September 1999, members of the militia and soldiers of the TNI arrived at the village of Lourba, in a convoy of vehicles.
- c. Upon the arrival of the convoy of militiamen and TNI soldiers, Dinis Cardoso, Juvita Saldanha and their children ran to the back of their house to hide.

- d. TNI soldiers Pedro Mau, Sabino (last name unknown) and Paulino De Jesus abducted Lucinda Saldanha, the daughter of Dinis Cardoso. The TNI members were armed with a rifle and a knife.
- e. While the TNI soldiers were abducting Lucinda Saldanha, her mother Juvita Saldanha attempted to save her daughter. While doing so, militiaman Pedro Mau shot Juvita Saldanha in the leg. Juvita Saldanha ran for her life.
- f. During the abduction, Pedro Mau and Sabino [LNU] held Lucinda Saldanha and Paulino de Jesus stabbed Lucinda Saldanha in the back with a knife.
- g. Lucinda Saldanha died as a result of the stabbing.

IV. Criminal Responsibility

The accused are individually responsible for the crimes charged in this indictment. Individual responsibility under Section 14.3 UNTAET Regulation 2000/15 arises if an accused:

“(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;

[...]

(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:

a. 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

b. be made in the knowledge or the intention of the group to commit the crime;

[...]

(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 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.

V. Pursuant to the above the Deputy General Prosecutor for Serious Crimes charges:

Count 1:

By his acts or omissions, as described above, on or about 10 September 1999, in the village of Lourba, Sub-district Bobonaro, District Bobonaro, **Paulino de Jesus** is responsible for the murder of Lucinda Saldanha, in violation of section 8 of UNTAET Regulation 2000/15 and article 340 of the Indonesian Penal Code.

Count 2:

By his acts or omissions, as described above, on or about 10 September 1999, in the village of Lourba, Sub-district Bobonaro, District Bobonaro, **Paulino de Jesus** is responsible for the attempted murder of Juvita Saldanha, in violation of section 8 of UNTAET Regulation 2000/15 and articles 53 and 340 of the Indonesian Penal Code.

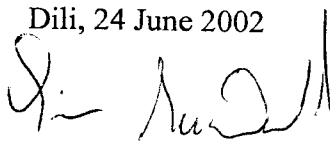
VI. Evidence list:

The evidence in support of this indictment is contained in Annex A, which forms part of this Indictment.

VII. Request for trial

The Deputy General Prosecutor hereby requests that the Special Panel for Serious Crimes of the Dili District Court assumes jurisdiction and tries this case expeditiously.

Dili, 24 June 2002



Eric MacDonald
Prosecutor for Serious Crimes

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DISTRICT COURT OF DILI

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No: 6/2002

**REQUEST BY PROSECUTOR FOR AMENDMENT OF
INDICTMENT AND SUBMISSION OF ADDITIONAL
DOCUMENTARY EVIDENCE**

THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

-AGAINST-

PAULINO DE JESUS

FOR THE PROSECUTOR :
Shyamala Alagendra

FOR THE DEFENSE:
Pamela Reusch
Sebastian Appenah

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The Prosecutor hereby makes a request pursuant to Section 27.3 and Section 32.2 for the Special Panel For Serious Crimes to allow the Prosecutor to :

- (1) amend the indictment against the accused Paulino De Jesus such that the charges against the accused are for Crimes Against Humanity Murder in violation of Section 5.1(a) and Crimes Against Humanity Attempted Murder in violation of Section 5.1(a) read together with Section 14.3(f) UNTAET Regulation 2000/15.
- (2) Submit additional documentary evidence in the form of Expert Reports and Report of Commissions as follows :
 - (i) Identical Letters from the Secretary General Addressed to the President of the General Assembly, The President of the Security Council & The Chairperson of the Commission on Human Rights
 - (ii) Note by Secretary General on Situation of Human Rights in East Timor
 - (iii) Report of Indonesian Commission on Human Rights Violations in East Timor
 - (iv) Report of the Representative of the Secretary General on internally displaced persons, Mr. Francis M. Deng, to the Commission on Human Rights

GROUNDS OF APPLICATION

1. Pursuant to Section 32.3 the court may, after the trial has begun and before final decision, on the request of the Prosecutor, allow the amendment of the indictment if the court determines that the evidence at trial establishes qualification of the crimes which is different than that which appears in the indictment.
2. The Prosecutor submits that the evidence at the trial establishes that factual circumstances of the offences charged in the indictment warrant the charges against the accused Paulino De Jesus to be for

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Crimes Against Humanity under Section 5.1 UNTAET Regulation 2000/15 and not Murder under Section 8 UNTAET Regulation 2000/15.

3. The witnesses presented by the prosecution thus far have testified on the following issues :
 - (1) That the attack in Lourba Village on 10 September 1999 was one of many attacks which occurred in Bobonaro District in 1999. The attacks were conducted as a joint operation by the TNI stationed in Bobonaro District and the Haer Metin Merah Putih militia group.
 - (2) That the TNI and Militia conducted similar operations in Lourba Village (other than on 10 September 1999), Malilait Village and Tuluatu village and the accused was present during all these operations. At the material time the accused was a serving member of the Indonesian Militiray (TNI).
 - (3) The attacks in the villages were conducted by joint TNI (military) and Haer Metin Merah Putih militia members targeting pro-independence supporters.
 - (4) Prior to the attack in Lourba Village the military and militia were lined up by their respective commanders and the forces left for Lourba village together. As they were leaving for Lourba, the TNI and militia were heard to have been shouting "tonight we have to blow up Lourba because people of Lourba are feeding GPK (a group feeding fretilin which is a pro-independence group)
 - (5) During the attack in Lourba Village on 10 September 1999, the TNI and militia burnt houses, killed several civilians and injured a few civilians.
 - (6) The above facts suggests that the attack in Lourba Village on 10 September 1999, where the accused allegedly participated was part of a widespread or systematic attack against the civilian population with knowledge of the attack.
4. At this stage, the court is not called upon to make any conclusive decision that the above matters has infact been proven beyond reasonable. The court will makes its final decision after hearing the

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defense witnesses and after hearing the closing submissions of the parties.

5. It is in the best interest of the accused that the court allows the amendment of the indictment at this stage, so that during the defense case, the accused may present evidence which is relevant to the charges the prosecutor seeks an amendment of the indictment to ie. Crimes Against Humanity Murder and Attempted Murder.
6. The amendment sought would accurately reflect the totality of the alleged criminal conduct of the accused as reflected by the evidence thus far present at the trial.
7. The proposed amendment will not prejudice the accused. The need for proper administration of justice and the requirement of a fair trial and considering that leave to amend an indictment does not prejudice the accused, it is the submission of the Prosecutor that the request ought to be granted.
8. The request of the prosecutor to submit additional documentary evidence is merely to support the general allegations of the widespread or systematic attacks that occurred in East Timor in 1999, and has no direct facts relating to the factual circumstances of the particular offences charged or the particular attacks in Lourba Village in September 1999. These documentary evidence has been submitted previously before the Special Panel for Serious Crimes in other trials involving charges of Crimes Against Humanity and has been admitted by the court without challenges from the defense or the accused person.
9. The admission of these additional documents will not prejudice the accused in any way, and the defense will be at liberty to raise any necessary issues with the said documentary evidence should the need arise.
10. The additional documents which the Prosecutor seeks to admit are attached herewith.

In light of the above submissions, the Prosecutor requests this honorable court to :

- (1) allow the amendment of the indictment against the accused Paulino De Jesus such that the charges against the accused are for Crimes Against Humanity Murder in violation of Section 5.1(a) and Crimes Against Humanity Attempted

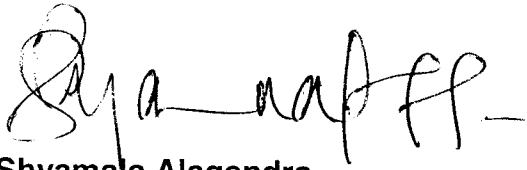
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Murder in violation of Section 5.1(a) read together with
Section 14.3(f) UNTAET Regulation 2000/15 ; and

- (2) allow the Prosecutor to submit additional documentary
evidence in the form of Expert Reports and Report of
Commissions

Dated the 13th day of August 2003

Respectfully submitted,



Shyamala Alagendra
Prosecutor for Serious Crimes

A representante do Ministério Público, bem como a defesa, apresentaram pedidos que, a seguir, após análise, assim foram decididos por este Painel:

A) Pedido da acusação para aditar a denúncia e nela incluir nova tipificação criminal, bem como pedido de juntada de novos documentos, com fundamento no que dispõe o artigo 32 do Regulamento 2000/30, da Untaet.

A defesa do arguido manifestou-se sobre tal pretensão e rechaçou-a alegando não estarem presentes os fundamentos que permitem tal alteração da denúncia. Entende que tal só seria possível após o encerramento da instrução, quando estivesse presente nos autos todo o conjunto de provas. Diz, ainda, que as provas existentes não permitem a conclusão de que houve a prática de crime contra a humanidade e, por fim, entende que tal alteração seria prejudicial ao acusado que tem o direito de saber, desde o início do julgamento, de qual acusação deve se defender.

Acolhe-se o pedido da acusação e rejeitam-se os argumentos da defesa.

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Com efeito, nos termos do que permite o Regulamento 2000/30, da UNTAET, pode o Ministério Público aditar sua acusação, para nela estabelecer nova qualificação do crime, desde que as provas produzidas em julgamento assim o permitam.

De se observar que os fatos imputados ao acusado ocorreram em setembro de 1999, época em que o população timorense foi alvo de graves ataques por parte das forças indonésias e das milícias que com aquela atuaram. Esses dados existem nos autos e são, ainda que sob uma análise perfunctória, suficientes para amparar a pretensão do Ministério Público. E, ao contrário do que entende a defesa, tal alteração da qualificação dos delitos nenhum prejuízo acarreta aos direitos do acusado, nem à sua defesa. É que, uma vez informado da denúncia, o acusado defende-se dos fatos que lhe foram imputados, sem importar, portanto, qual é o “nomem juris” que se dê a eles (aos fatos).

Demais a mais, neste caso, o acusado defende-se e o faz através da apresentação de um alibi que não guarda qualquer relação com os fatos criminosos que lhe foram imputados. Isto porque, nega ele a autoria dos fatos, afirmando não ter estado no local do delito, no dia e hora mencionados pela acusação.

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Assim sendo, a alteração do nome do delito ou a afirmação de que a conduta imputada ao réu pode, também, ser qualificada como delito contra a humanidade, em nada prejudica a linha de defesa até aqui desenvolvida. Tanto assim, que a defesa, no momento em que lhe foi dada a oportunidade para se contrapor ao pedido da acusação nada requereu quanto à produção de novas provas.

Isso posto, acolhe-se o pedido da acusação para aditar a denúncia, somando-se a ela a imputação ao acusado da prática de delito contra a humanidade, nos termos do que consta da petição de fls. 380 e 381, ns. 1 e 2.

B) Pede a defesa a oitiva de suas testemunhas que residem em Timor Oeste, ressaltando a possibilidade de tal ato ser realizado por meio de videoconferência ou de um encontro, na fronteira do país, com auxílio das forças policiais da Unmiset. Outrossim, se tal não for deferido, pede que se acolham as declarações de tais testemunhas, apresentadas nos autos, tal como dispõe o artigo 36.3, do mesmo regulamento.

Sobre tais pedidos, manifestou-se a acusação.

Decide este Painel indeferir o pedido da defesa no que diz respeito à videoconferência ou ao encontro deste painel e testemunhas, na fronteira do país.

O impedimento pessoal que não permite a presença das testemunhas perante este juízo não é suficiente para justificar a realização das oitivas delas através dos meios sugeridos. Não há qualquer previsão legal ou qualquer acordo entre o Timor Leste e a Indonésia que permita a prestação da depoimento através de videoconferência. Tampouco seria possível o encontro sugerido, entre este Painel e as ditas testemunhas, na fronteira entre os dois países. Tal situação não reúne condições de viabilidade do atos ou segurança dos envolvidos nele.

Contudo, a impossibilidade de as testemunhas do arguido comparecerem perante este Painel, guarda o necessário caráter de excepcionalidade que permite a este Painel autorizar que as declarações delas, já juntadas aos autos, possam ser consideradas matéria de prova.

Assim, tais declarações, com as restrições que lhe são ínsitas, vez que foram obtidas unilateralmente pela defensora e não se submeteram ao contraditório, ficam acolhidas por este Painel, e a elas, no

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momento do julgamento, será dado o devido e cabível valor.

Não havendo outras provas a serem produzidas, dá-se por encerrada esta fase do procedimento e designa-se o dia 10 de setembro, às 10h30m para a apresentação das alegações finais.

Dili, 08 de setembro de 2003


Dora Aparecida Martins de Moraes


Francesco Florit


Helder Viana do Carmo

