



THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
DILI DISTRICT COURT
THE SPECIAL PANELS FOR SERIOUS CRIMES

Before:
Judge Phillip Rapoza, Presiding and Rapporteur
Judge Brigitte Schmid
Judge José da Costa Ximenes

CASE NO. 27/2003

DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

V.

RUDOLFO ALVES CORREIA aka "ADOLFO"

FINAL JUDGMENT

For the Deputy General Prosecutor:
Mr. B. P. Bhandari

For the Defendant:
Mr. Sebastian Apenah

I. INTRODUCTION

1. The defendant in the present case is identified as follows:
 - a. Name: Rudolfo Alves Correia aka “Adolfo”
 - b. Date of birth: January 1956
 - c. Location of birth: Leki Lakuana, District of Aileu
 - d. Current residence: Village of Hera, Subdistrict of Hera, District of Dili
 - d. Status: Married. Seven children
 - e. Occupation: Farmer. Former TNI soldier
2. The trial of the defendant before the Special Panels for Serious Crimes began on 23 June 2004 and concluded on 19 July 2004.
3. The Special Panels rendered its verdict and sentence on 19 April 2005 and entered the following final judgment on 25 April 2005.

II. THE SPECIAL PANELS FOR SERIOUS CRIMES

4. The Special Panels for Serious Crimes were established within the Dili District Court to exercise that Court’s exclusive jurisdiction over serious crimes occurring in 1999, including genocide, war crimes, crimes against humanity, murder sexual offenses and torture.¹ Moreover, the existence of

¹ See, “II. Serious Criminal Offences,” Sections 4 through 9 of UNTAET Regulation No. 2000/15. See also Section 9 (“Exclusive Jurisdiction for Serious Crimes”) of UNTAET Regulation No. 2000/11 as amended; Section 1 (“Panels with Jurisdiction over Serious Criminal Offences”) of UNTAET Regulation No. 2000/15. We note that Section 2.3 (c) of Law No. 10/2003 of Timor-Leste provides that the “regulations and other legal instruments from UNTAET, as long as these are not repealed” shall continue to serve as part of the applicable law.

mixed panels of national and international judges to hear serious crimes cases is recognized in Section 163.1 of the Constitution of Timor-Leste.

III. PROCEDURAL BACKGROUND AS REQUIRED BY TRCP SEC. 39.3(b)

5. On 25 September 2003, the Public Prosecutor presented an indictment to the Special Panels for Serious Crimes pursuant to Section 24.1 of UNTAET Regulation 2000/30, as amended by Reg. 2001/25 (Transitional Rules of Criminal Procedure, hereinafter “TRCP”), charging Rudolfo Alves Correia aka “Adolfo” with one count of murder as a crime against humanity for the killing of Domingos Nu Nu Alves.²
6. On 4 December 2003, a judge of the Special Panels conducted a Preliminary Hearing that was attended by the Defendant who was represented by court-appointed counsel. (Appointed counsel has represented the Defendant at every stage of the proceedings against him.) At the time of the hearing, the Defendant asked the Prosecutor to clarify the indictment, which referred to one “Antonio Pinto aka Antonio B” as a co-participant. The Defendant alleged that Antonio Pinto and Antonio B were two different persons. The Court ordered the Prosecutor to clarify the issue within ten days.
7. On 23 January 2004, the Defendant filed a Motion to Dismiss the indictment substantially based on the lack of specificity in the indictment with respect to identify of Antonio Pinto and Antonio B.
8. On 16 February 2004, the Prosecutor who was then assigned to the case filed a response and a Motion to Amend the indictment in which she asked

² The Court has adopted the spelling of the victim’s middle name as contained in the indictment. Nonetheless, it notes that the name is set out on his gravestone as “Domingos Nonu Alves.” See Exhibit J in the Case File at p. 178.

to replace, in paragraphs 13 and 14 of the indictment, the name of co-participant "Antonio Pinto aka Antonio B or Mautersa" to read simply "Antonio B aka Mautersa."

9. On 2 March 2004, a judge of the Special Panels denied the Defendant's Motion to Dismiss and allowed the Prosecutor's Motion to Amend. (The Prosecutor did not subsequently file an amended indictment. Nonetheless, after allowing the Motion to Amend, the Court has treated the original indictment as if the name "Antonio Pinto aka Antonio B" in the original text had been replaced by "Antonio B aka Mautersa.")
10. On 23 June 2004 the Defendant came before the Court and his trial commenced. He chose to make no statement but did remark, "Because I have done nothing wrong I cannot make any statement now." Immediately after the trial began, counsel for the Defendant presented a written Motion Requiring the Prosecutor to Specify the Precise Category of Individual Criminal Responsibility upon which the prosecution intended to rely. The motion was filed pursuant to TRCP Section 27.2.
11. After consideration, the panel declined to hear the motion, essentially on the ground that it alleged a defect in the form of the indictment, which rendered it a preliminary motion pursuant to TRCP Sec. 27.1(a). Accordingly, the panel concluded that the motion had not been timely filed. Although TRCP Sec. 27.2 allows a party to file a motion "at any time," the rule contains an exception in the case of preliminary motions, which must be heard "prior to the commencement of the trial." As the motion was filed after trial had already commenced, it was thus filed late and could not be considered.
12. In declining to consider the motion, the panel also stated in open court that the Defendant was not prejudiced in any way by the form of the

indictment because it contained a description of each category of conduct by which a defendant could be considered individually responsible for an offense. Moreover, the indictment clearly stated that the Defendant's criminal responsibility was based on his alleged statement to Antonio B aka Mautersa to shoot Domingos Nu Nu Alves in the head. As those facts were disclosed in the indictment and referred to in Count One, it was not considered significant that the indictment set out the entirety of Section 14.3 of UNTAET Regulation 2000/15 with respect to the Defendant's individual criminal responsibility. On the other hand, the Court did consider significant the fact that the recitation contained Section 14.3(b), which states that a person shall be criminally responsible as an individual if he "orders, solicits or induces the commission of such a crime which in fact occurs or is attempted."

13. The Prosecutor presented the testimony of several witnesses during the first two days of trial, namely: Paulo Pinto, Domingos Soares de Jesus and Maria Dias da Costa. The first two witnesses were companions of Domingos Nu Nu Alves at the time of the shooting. The last witness was the victim's widow.
14. On 24 June 2004, the Prosecutor filed a Motion for Judicial Notice to be Taken of Adjudicated Facts and Admission of Evidence. The Defendant filed a written opposition and the Court took the request under advisement.
15. Also on 24 June 2004, the Prosecutor informed the Court that new information had come to her attention concerning the facts of the case. She requested that the trial be suspended to permit her office to conduct a further investigation into the matter. The Defendant had no objection and the trial was suspended.

16. On 19 July 2004, the panel reconvened and rendered its Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence. The Court issued a four (4) page written decision in which it indicated that there is no specific provision in the TRCP of the Indonesian Code of Criminal Procedure (ICCP) that permits the taking of judicial notice of facts previously adjudicated in other proceedings. The decision noted that this is unlike the situation in other jurisdictions, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) where Rule 94 specifically allows such a procedure.

17. The Court noted that in Prosecutor v. Damião da Costa Nunes, Case No. 01/2003, another panel had admitted previously adjudicated facts under the discretionary provision contained in TRCP Sec. 34.1, which broadly permits the Court to "admit and consider any evidence that it deems relevant and has probative value with regard to issues in dispute." Noting that this provision was permissive and not mandatory, the Court elected not to admit in evidence previously adjudicated facts, noting that more direct evidence was available. Accordingly, the Court denied the Prosecutor's motion on the issue of judicial notice, but allowed the portion requesting admission in evidence of four documents, being the "Report of the International Commission of Inquiry on East Timor," the "Report on the Situation of Human Rights in East Timor" presented to the Secretary General, the "Report of the High Commissioner for Human Rights" on the situation in East Timor and the "Report of the Indonesian Commission on Human Rights Violations" in East Timor.

18. During the course of the trial, in addition to the testimony of the witnesses, the Prosecutor presented the following pieces of evidence which were marked as exhibits by the presiding judge:

- a. Exhibit A Diagram showing location of events by witness Domingos Soares de Jesus.
- b. Exhibit B Second diagram showing location of events by witness Domingos Soares de Jesus.
- c. Exhibit C, D, E and F Four reports concerning the situation in East Timor described in paragraph 17, above.
- d. Exhibit G Crime Scene Report dated 17 June 2003 by Crime Scene Officer James Bell.
- e. Exhibit H Autopsy Report of presumed deceased Domingos Nuno Alves by Forensic Pathologist D. N. McAuliffe, MD dated 6 September 2003.
- f. Exhibit I Forensic Anthropology Report of Forensic Anthropologist Caroline Baker dated 22 September 2003.
- g. Exhibit J Series of photographs of the grave and alleged remains of of Domingos Nuno Alves.
- h. Exhibit K Witness Statement of Luis Albano dated 10 July 2004.

19. Following the introduction in evidence of Exhibits H through K on 19 July 2004, the Prosecutor stated that the information contained therein tended to negate the guilt of the Defendant. Consequently, she moved to withdraw the indictment against him. The Defendant did not object to the Prosecutor's request.

20. In further support of her request, the Prosecutor presented as a witness UNPOL Officer Ramil Labastida who had conducted an investigation into the identification of the remains of the deceased Domingos Nu Nu Alves during the adjournment of the trial.
21. The presiding judge indicated that the panel would take under advisement the Prosecutor's oral motion to withdraw the indictment.
22. The trial continued and the Defendant offered no evidence and elected not to make a statement to the Court. The presiding judge invited the Prosecutor and counsel for the Defendant to make their closing arguments in the event that the Court should deny the Prosecutor's request to withdraw the indictment.
23. Following a succession of continuances, on 19 April 2005, the Court reconvened in public session attended by the Defendant and his attorney. At the outset the Court announced that it was denying the Prosecutor's oral motion to withdraw the indictment, having concluded that there was sufficient evidence to convict the Defendant. Accordingly, the Court issued its written Disposition Relating to the Conviction of the Defendant Rudolfo Alves Correia and ruled that it found the Defendant guilty. Pursuant to TRCP Sec. 39.1, the Court qualified the crime for which the Defendant was responsible as an attempt to commit murder as a crime against humanity.
24. After the verdict was announced, the Prosecutor and counsel for the Defendant were both given the opportunity to address the Court on the issue of sentencing. Thereafter, the Court recessed for the panel to deliberate with respect to the imposition of a sentence. Later on 19 April 2005, the Court issued its written Disposition Relating to the Sentencing of the Defendant Rudolfo Alves Correia at a public session attended by the

Defendant and his attorney. The Court imposed a prison sentence of five (5) years committed, with the sentence to begin immediately.

25. On 25 April 2005, the Court delivered its final written decision at a public session attended by the Defendant and his attorney.

26. Interpreters in English and Tetum assisted before the Court at every stage of the proceedings.

IV. FINDINGS OF FACT BY THE COURT

A. Facts Proved as required by TRCP Sec. 39.3(c)

27. Considering all the credible evidence presented at trial and the reasonable inferences that can be drawn therefrom, the Special Panel concludes that the following facts have been proved beyond a reasonable doubt:

28. For centuries, East Timor was a colony of Portugal. On 28 November 1975, independence supporters in the capital city of Dili proclaimed the establishment of the Democratic Republic of Timor Leste. Shortly thereafter, on 7 December 1975, the armed forces of the Republic of Indonesia invaded East Timor and eventually declared East Timor to be its 27th province.

29. Between 1975 and 1999 the supporters of East Timorese independence continued to pursue their efforts through a variety of political and military means. During that period, various groups maintained a continuous guerilla presence in the countryside with widespread support from the population.

30. On 27 January 1999, the President of Indonesia announced that there would be a referendum in which the people of East Timor could vote whether to remain part of Indonesia as an autonomous province.
31. On 5 May 1999, the governments of Indonesia and Portugal along with the United Nations agreed to the holding of a popular consultation in East Timor to determine whether the people wished to remain part of Indonesia as an autonomous region. In the period leading up to the vote there was a widespread and systematic campaign by Indonesian military and police authorities, along with Timorese militia whom they supported, to use force and violence to suppress independence supporters and to promote autonomy.
32. The popular consultation on the autonomy issue was held under UN auspices on 30 August 1999. Voting was heavy throughout the country.
33. On 4 September 1999, the United Nations announced that 78.5% of those participating in the referendum had indicated their support for independence by rejecting the autonomy option.
34. Immediately thereafter, militia supporters of autonomy, assisted by the Indonesian military and police, launched a renewed wave of widespread and systematic violence against the civilian population. In addition to committing acts of murder, rape and torture against supporters of independence, pro-Indonesian forces forcibly deported or relocated a large part of the local population to West Timor. The entire campaign was part of a coordinated attempt to disrupt the peaceful resolution of East Timor's status and to prevent the implementation of the results of the popular consultation.

35. On 6 September 1999, two days after the announcement of the referendum results, Paulo Pinto, Domingos Soares de Jesus and Domingos Nu Nu Alves gathered at Pinto's house in Hera Village, east of Dili. All three were supporters of independence.
36. The members of their respective families had fled to the hills above Hera, as had many local independence supporters, to escape the violence being perpetrated throughout East Timor by Indonesian military and police forces, as well as by pro-autonomy militia forces.
37. The three men who had assembled at Pinto's house were gathering clothes, food, livestock and other items to take to their families and other independence supporters hiding outside Hera.
38. In the evening, three soldiers armed with rifles and wearing green military uniforms entered Pinto's house without warning. They were Rudolfo Alves Correia aka Adolfo, Antonio B aka Mautersa and a person named Mario. All three were Timorese members of the Indonesian armed forces (*Tentara Nasional Indonesia* or TNI).
39. The Defendant, Rudolfo Alves Correia, and the other two soldiers shouted at the three men, telling them not to run away. Each of the soldiers was carrying an AR-15 rifle, which was the type of weapon carried by members of TNI Battalion 745 headquartered in Lautem District.³
40. As a TNI soldier, the Defendant used to stand guard at the Polytechnic School in Hera. The students at the school were involved in political protests and soldiers would be sent there to chase them away. As a soldier

³ There was evidence that the three soldiers may have had something to drink beforehand. Nonetheless, there was no indication that they were drunk and the Defendant has not raised any defense based on intoxication pursuant to Section 19.1(b) of UNTAET Regulation 2000/15. In any event, the Court concludes that such a defense could not be supported on this factual record.

the Defendant also kept watch on members of the civilian population and made arrests when necessary to ensure that people did not flee to the mountains or assist independence supporters who were located there.

41. The Defendant and the other TNI soldiers confronted the three men and asked what they were doing. In order to avoid suspicion, they said that they had come to the house to get their pigs and goats to go to Atambua, the destination in West Timor for many of those who were compelled to leave East Timor by the military, police and militia forces opposing independence. Domingos Soares de Jesus had a large sack of clothes with him. When questioned by the Defendant about his bag he insisted that he was also preparing to go to Atambua.
42. The Defendant then accused all three of lying and stated that they had come to the house to prepare food for the members of FRETILIN⁴ and other independence supporters in the mountains. The Defendant seized the machetes that Pinto, Jesus and Alves carried and then started to punch and kick all three. (At some point the machetes were distributed among the three soldiers, with the Defendant keeping Pinto's, Mario receiving the machete of Jesus and Mautersa keeping the one belonging to Alves.)
43. The other two TNI soldiers followed the Defendant's lead and also began to grab at the three men, kicking them and beating them up. (Later, when Jesus fled to the mountains, he was still bleeding from the beating.) The soldiers then forced all three men out of the house at gunpoint. At some point during the events the Defendant said to the other soldiers "Let's go and burn the house." After everyone was outside, the Defendant set fire to the house.

⁴ FRETILIN is an acronym for "Frente Revolucionaria de Timor-Leste Independente." Both Pinto and Domingos Soares de Jesus testified that they had indeed supported FRETILIN by supplying food to them and other independence supporters in the mountains.

44. After leaving the house the three prisoners were forced to walk toward a nearby river. When they arrived at the river the Defendant discharged a warning shot that scared the three prisoners. The prisoners were then told to line up and the Defendant told the other two TNI soldiers “Just take them down there,” apparently referring to a road that was approximately one kilometer away from where they were standing.
45. When they reached the road, the three prisoners were made to stand in a line along the length of the road. Each of the prisoners was guarded by one soldier. Paulo Pinto was at the end of the line, guarded by Mario. In the middle was Domingos Soares de Jesus with the Defendant. At the front was Domingo Nu Nu Alves next to Mautersa.
46. The Defendant loudly shouted a phrase in Bahasa to Mautersa that literally translates “put it in the head” but which means “shoot him in the head.” According to Paulo Pinto, “Mr. Rudolfo is the one who ordered [Mautersa] to fire.”⁵
47. Mautersa then took his rifle, pointed it at Alves and shot. Alves fell down and in the ensuing confusion Pinto ran away. As he did so the Defendant and Mario fired several shots at him, but missed.
48. After Pinto ran away, the Defendant and Mautersa told Jesus, the remaining prisoner, that Alves “was a dog that died.”⁶ At a point Jesus was also able to run away.

⁵ Public Hearing Record of 23 June 2004 (Morning Session) at p. 10.”Pinto went on to say “as soon as he said that, the gun was shot. Ibid at p. 13.

⁶ Public Hearing Record of 23 June 2004 (Afternoon Session) at p. 3 and p. 6.

49. Pinto and Jesus ran up into the mountains where they found Maria Dias da Costa, the wife of Alves. They told her that her husband had been killed. Two days later, Pinto and Costa returned to where the shooting had occurred and found the victim's body lying on the road.
50. The body of the victim appeared to have been burned in part⁷ and the tongue had been cut out of his mouth.⁸ The victim's widow and her companions took the victim's body to the mountains to bury him. He was buried with several personal effects including a particular ring, in a grave located near the house of Luis Albano, approximately five kilometers from Hera Village.
51. On 11 September 2000, the relatives of the victim exhumed his body for reburial in the Hera Cemetery. By this date there were only skeletal remains, but the personal effects of the victim, including his ring, were still present. The victim's bones were kept overnight in the house of Luis Albano in Mota Kik village to offer prayers for the deceased prior to reburial. The next day the remains of the victim were placed in a cement burial vault located in his family's plot at the cemetery in Hera Village. The family buried additional personal effects with the deceased, including his wedding ring.

⁷ There is insufficient evidence concerning the extent of the burning for the Court to make a specific finding in this regard. We note that the absence of any reference in the autopsy report to burn damage on the skeletal remains of the victim indicates that any such burning was likely superficial in nature.

⁸ Evidence from other sources indicated several other injuries that may not have been visible at that time. In the statement of Luis Albano, admitted in evidence as Exhibit K, Albano states that he saw the body before the initial burial and noted a wound on the left side of the abdomen. The Autopsy Report by Forensic Pathologist D. N. McAuliffe, MD dated 6 September 2003 and marked Exhibit H states that the skeletal remains of the deceased evidence massive destruction of the scapula and fracture of underlying ribs, which the pathologist interpreted as "a combination of major penetrating and blunt force trauma." The Forensic Anthropology Report of Caroline Baker dated 22 September 2003, marked as Exhibit I, confirms those injuries and indicates that all of them were "consistent with an origin of perimortem trauma," meaning that they occurred around the time of the victim's death.

52. On 12 July 2004, UNPOL Officer Ramil Labastida conducted an investigation concerning the remains of Domingos Nu Nu Alves. In doing so, he retraced the steps taken with respect to the burial, exhumation and subsequent reburial of the victim. He also spoke to numerous witnesses who attended both burials and was able to confirm the continuity of the skeletal remains. He noted that the items buried with the body at the first site were all recovered at the exhumation and that many of them, along with some additional items, were later reburied with the victim's skeletal remains at the permanent gravesite in Hera.

53. An examination of the skeletal remains of the victim in 2003 disclosed no gunshot wound to the skull.⁹

54. The cause of the victim's death as set out in the Autopsy Report is "homicidal violence," with the manner of death being described as "homicide."

B. Facts Not Proved as required by TRCP Sec. 39.3(c)

55. Considering all the credible evidence presented at trial and the reasonable inferences to be drawn therefrom, the Special Panel concludes that the following facts have not been proved beyond a reasonable doubt:

56. The shot fired by Mautersa struck Alves in the head and killed him.

57. The specific cause, manner or means by which the death of Alves was brought about.¹⁰

⁹ The injuries described in both the Autopsy Report and the Forensic Anthropology Report exclude any reference to a head wound. Moreover, the photographs of the victim's skeletal remains introduced in evidence as part of Exhibit J plainly show an intact skull. See, Case File at pp. 185-186.

58. The identity of the direct perpetrator(s) of the murder of Alves.

V. APPLICABLE LAW

59. As established in UNTAET Regulation No.1999/1, UNTAET Regulation No. 2000/11, as amended by UNTAET Regulation No. 2001/25, and UNTAET Regulation No. 2000/15, the Special Panels for Serious Crimes shall apply the following:

(a) The laws of East Timor as promulgated by Sections 2 and 3 of UNTAET Regulation No. 1999/1;

(b) Any subsequent UNTAET regulations and directives;

(c) The laws applied in East Timor prior to 25 October 1999 (until replaced by UNTAET Regulations or subsequent legislation) insofar as they do not conflict with 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. Law 10/2003 of the National Parliament clarified that the law applicable in East Timor prior to 25 October 1999 was Indonesian law, a fact previously held by the Special Panels in the case of Prosecutor v. João Sarmento and Domingos Mendonca (Decided 24 July 2003);

(d) Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict.

¹⁰ The Autopsy Report does state that the cause of death was "homicidal violence" and the manner of death was "homicide." Also, numerous injuries to the body are noted in the report. Regardless, the specific cause, manner or means by which the homicide of Alves was brought about is not stated.

(c) Subsequent laws of democratically established institutions of Timor-Leste. To the extent that such laws apply in a particular case and represent a change from previous law, the law more favorable to the Defendant shall apply, as stated in Section 3.2 of UNTAET Regulation No. 2000/15.

VI. LEGAL AND FACTUAL GROUNDS AS REQUIRED BY TRCP SEC. 39.3(d)

A. Individual criminal responsibility

60. Section 14 of UNTAET Regulation No. 2000/15 sets out the parameters of individual criminal responsibility. In relevant part it states:

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:

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

61. Consequently, pursuant to Section 14.3(b) of UNTAET Regulation No. 2000/15, a person can be individually responsible for a crime even if he did not personally commit the offense, provided that he “orders, solicits or induces” its commission.¹¹ This is true whether the crime “in fact occurs or is attempted.”

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¹¹ See Prosecutor v. Francisco Dos Santos Laku, Case No. 08/2001 (Decided 25 July 2001) in which the Court ruled at page 11 that “even if [the defendant] was not the main perpetrator of the murder, he ordered the murder, [and] thereby his individual responsibility is met in Sect. 14.3(b) of UR-2000/15.” (In Laku the defendant was a Timorese member of the TNI who had ordered militia members to kill an independence supporter.) See also Deputy Prosecutor General for Serious Crimes v. Anton Lejan Sufa, Case No. 4a/2003 (Decided 25 November 2004) at par. 12 in which the Court found that the defendant, who was a militia

B. Scope of the phrase “order, solicits or induces”

62. We first note that the phrase “orders, solicits or induces” is framed disjunctively rather than conjunctively. Consequently, a defendant is criminally responsible for an offense committed by another so long as the defendant performs any one of the three actions described in Section 14.3(b). It is thus not necessary to establish that he ordered, solicited and induced another to commit a crime for him to be individually responsible.
63. Accordingly, the gravamen of the offense described in Section 14.3(b) is that a defendant must engage in conduct by which he seeks to cause another to commit a crime. It is not necessary to prove that the accused himself committed the crime or participated in its commission. Rather, it is only necessary to prove that the defendant ordered, solicited or induced its commission or attempted commission by another.
64. The three terms used in the statute describe different levels of instigation by which a defendant may urge another to commit a crime.

Order – The first term stated in the regulation, “order,” refers to an action in which an accused commands another to commit a particular crime. Although orders are most commonly issued in a military setting, there is no indication in the regulation that it was intended to apply only in those circumstances. Indeed, even outside the military context it is possible for one person to order another to do something, including the commission of a crime, in circumstances where the person issuing the command has

member, acted on instructions from a village chief and ordered other militia members to kill several independence supporters. At pars. 16 and 17, the Court ruled that the defendant ordered the members of his militia group to commit murder “knowing they would follow his orders and were able and sufficiently armed to do so [and therefore he] bears individual criminal responsibility according to Sec. 14.3(b).”

reason to believe that his words will be obeyed.¹² As noted below, whether or not an the regulation can apply to orders given in a civilian context is irrelevant in the circumstances of the present case.

Solicit – The second term used in the regulation is “solicits,” which generally denotes a less emphatic form of conduct than an “order.” In criminal terms, solicitation is an offense that also reaches conduct by which one encourages, entices or requests another to commit a crime. Consistent with this view is the Model Penal Code, which defines solicitation as encouraging or requesting another person to engage in conduct that constitutes a crime or an attempt to commit a crime, with the intent that the crime be committed. Model Penal Code, Sec. 5.02(1) (1962).

Induce – The final term is the most comprehensive of the three in that it refers to a wide spectrum of actions intended to produce or bring about a particular result. In that sense it subsumes the previous two terms, as both orders and solicitations can be said to induce the results that they seek to achieve. Nonetheless, to induce a particular result does not necessarily require an order or a solicitation and can be brought about through less demanding means such as persuasion and the use of other forms of influence.

C. Causation and intent

65. Regardless of which term best defines a particular defendant’s actions, criminal responsibility under Section 14.3(b) requires more than a mere causal relationship between the actions of a defendant and the resulting offense. Even in circumstances where a defendant’s action in fact caused another to commit a crime or attempt to do so, a defendant can be held

¹² See Anton Lelan Sufa at n. 10, supra.

criminally responsible only if he acted with the intent that the resulting crime be committed.¹³ Were we to conclude otherwise, a defendant could be held responsible for the criminal actions of others even in circumstances where the defendant had neither the intent nor a reasonable expectation that his own actions would lead to the commission of the crime.

66. This view is consistent with the provisions of Section 18.1 of UNTAET Regulation 2000/15, which states that an accused shall be criminally responsible only if the material elements of his crime “are committed with intent and knowledge.” As defined in Section 18.2 of the same regulation, the meaning of intent “in relation to a consequence” is that “a person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Similarly, the requirement of “knowledge” is met when a defendant has “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.”

D. Whether the crime “in fact occurs or is attempted”

67. The final element that must be established is that the purpose of the defendant’s action was the commission of a crime within the jurisdiction of the Special Panels “which in fact occurs or is attempted.” Thus, although a defendant must have intended that another person commit a particular crime, it is irrelevant whether the other person was successful in the commission of the crime, so long as it was attempted.

68. An attempt requires more than the mere contemplation of a crime or planning of an offense. Even steps taken in preparation for a crime may fall short of an attempt. As stated in Section 14.3(f) of UNTAET

¹³ The proof of such intent could be satisfied in circumstances where a reasonable person would know or have reason to know that his actions were likely to produce the resulting crime, regardless of the subjective intent of the particular accused.

Regulation 2000/15, an attempt to commit a crime requires “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.” In a situation where a perpetrator takes such a substantial step, even though the crime does not occur, a defendant who ordered, solicited or induced the commission or the underlying offense nonetheless bears criminal responsibility under Section 14.3(b) for the other’s attempt.

E. Attempt to commit murder as a crime against humanity

69. Section 5.1 of UNTAET Regulation No. 2000/15 sets out a number of criminal offenses that can be qualified as crimes against humanity if they are “committed as part of a widespread or systematic attack and directed against any civilian population, with knowledge of the attack.” Accordingly, when an offense such as murder is committed within this context it amounts to murder as a crime against humanity. See Section 5.1 (a) of UNTAET Regulation No. 2000/15.

70. In Public Prosecutor v. Joni Marques, Case No. 09/2000 (Decided 11 December 2001. “Los Palos Case”) the Court addressed the definition of murder as a crime against humanity. In addition to the *chapeau* requirements of crimes against humanity, the Court ruled that the additional elements of the crime require proof that (a) the victim is dead; (b) the perpetrator’s act was a substantial cause of the victim’s death; and (c) the perpetrator intended to cause the death of the victim or reasonably knew that his act was likely to result in the victim’s death.¹⁴ The Court

¹⁴ See Joni Marques at pars 645-648.

also stated, inter alia, that under international law murder, as a crime against humanity, does not require premeditation.¹⁵

71. As a serious criminal offense contained in Section 5.1 of UNTAET Regulation No. 2000/15, murder as a crime against humanity can be either committed as provided in Section 14.3 (a) through (d) of the same regulation or attempted as provided in Section 14.3(f). Accordingly, when a person attempts to commit a murder as a crime against humanity and (1) commences the execution of the crime by taking a substantial step toward its accomplishment, and (2) the crime does not occur because of circumstances independent of that person's intentions, that person nonetheless incurs criminal responsibility under Section 14.3(f) for his attempt to commit the crime.¹⁶

F. Present Case

72. Applying the law as stated above to the facts of the present case, the Defendant bears criminal responsibility for an attempt to murder Domingos Nu Nu Alves as a crime against humanity.

73. Although there is no direct evidence that the Defendant either personally killed the victim or attempted to do so, there is substantial credible evidence before the court that he did "order, solicit or induce" the commission of such an offense by Mautersa.

¹⁵ Ibid. at par. 649. This view is consistent with the position taken both by the ICTY and the ICTR as set out in Deputy Prosecutor General for Serious Crimes v. Francisco Pedro, Case No. 01/2001 (Decided 14 April 2005) at par. 14.

¹⁶ See Francisco Pedro at n. 9. In Pedro at par. 15, the Court found that the accused intended to kill the victim as part of a systematic attack on the civilian population. The defendant brought the victim to the intended place of killing under cover of darkness and had taken "substantial steps" toward completion of the crime. Due to the fact that the murder was prevented by the victim's sudden escape, the Court ruled that the defendant was guilty of attempted murder as a crime against humanity.

74. Pinto and Jesus were unanimous in stating that the Defendant ordered Mautersa to shoot Alves in the head. When he did so he was shouting loudly and Mautersa immediately complied. We conclude that when the Defendant gave his order he had every reason to believe that in the circumstances Mautersa would comply and that any such shot to the head would be fatal.

75. Throughout the events of that fateful day, the Defendant operated as the leader of the three TNI soldiers. Although there was no evidence concerning their respective ranks, the Defendant clearly took the lead, a pattern that culminated in his order to shoot Alves. The Defendant directed the questioning of the victim and his friends and disarmed them. He was also the first soldier to assault them, causing the other TNI soldiers to join in the attack. After the prisoners had been led at gunpoint out of the house, it was the Defendant who stated that the house should be burned and then personally set fire to the premises. As the prisoners were marched toward the river, it was the Defendant who fired a warning shot, frightening the men. It was the Defendant who told the other TNI soldiers where to take three prisoners, directing them to "Just take them down there." On the road a TNI soldier accompanied each prisoner, with Mautersa guarding Alves. At that point the Defendant shouted to Mautersa to shoot Alves in the head. Mautersa immediately took his rifle and shot at Alves, who fell to the ground.

76. In the circumstances, the Defendant had every reason to believe his order would be obeyed. Indeed, the speed with which Mautersa complied supports the reasonableness of such an expectation.

77. Even if we were to conclude that the described actions did not constitute an "order" within the meaning of Section 14.3(b), we would nonetheless conclude that the Defendant is criminally responsible. This is so because

at a minimum his words can be construed as intending to solicit or induce the commission of a crime that he knew Mautersa was in a position to perform.

78. Mautersa was armed with an AR-15 rifle, a considerable firearm used by the TNI. He was in close proximity to the victim and the Defendant directed him to “put it in the head” a phrase clearly understood to mean “shoot him in the head.” In those circumstances, the intent of the Defendant is unquestionable, as he had every reason to believe that a shot fired at the head of the victim at close range would be fatal. Moreover, the evidence before the Court establishes that the Defendant knew that the action against the victim and the other prisoners was part of a widespread and systematic attack against a civilian population, qualifying any murder or attempted murder committed in that context as a crime against humanity.
79. Although Mautersa’s shot may very well have struck Alves considering that he immediately collapsed, it did not enter his skull, as the subsequent examination of the victim’s skeletal remains showed no such wound. Accordingly, it is clear that whatever Pinto and Jesus thought they saw, the bullet from Mautersa’s gun did not strike the skull of the victim so as to cause a fatal wound in his head.¹⁷ Whether Mautersa’s shot grazed

¹⁷ Although both Pinto and Jesus testified that the bullet struck Alves near the temple, it is doubtful from the forensic evidence that either could have seen such an event. Although it may be possible that the bullet grazed the skull of the victim without causing an entry wound that would later be visible, there is no forensic or expert evidence before the Court upon which the panel can reach such a conclusion. We note that in his testimony Pinto eventually admitted that he did not actually see Mautersa fire the shot. He heard Mautersa’s gun fire and turned around in time to see him lower his rifle. See Public Hearing Record of 23 June 2004 (Morning Session) at pp. 18 and 21. On this record, it is as likely as not that the witnesses reasonably inferred that the victim suffered a head wound based on the Defendant’s shouted order to shoot Alves in the head, Mautersa’s prompt compliance and the victim’s immediate collapse. On the other hand, with respect to the shot hitting the victim’s temple, Jesus testified, “I saw with my own eyes.” See Public Hearing Record of 23 June 2004 (Afternoon Session) at p. 6. Nonetheless, the exact cause of the victim’s collapse remains unclear and it could equally have been from a gunshot wound to another part of his body or simply from the effects of overwhelming fear prompted by a gunshot at close range. Regardless, the point is without significance to the resolution of this matter, as the Defendant bears criminal responsibility

Alves or struck him elsewhere in his body is unclear, but this lack of clarity in the evidence does not prove that Mautersa did not intend to kill him or that the Defendant did not intend to order his death. Indeed, they both appeared to have concluded that Alves was dead as they told Jesus “this was a dog that died.” The fact that the evidence does not establish that the victim was in fact dead does not affect the Defendant’s criminal responsibility under Section 14.3(b) which applies whether the crime “in fact occurs or is attempted.”

VII. VERDICT AS REQUIRED BY TRCP SEC. 39.3(e)

80. Having considered all the credible evidence presented at trial and the reasonable inferences that could be drawn therefrom, the Panel found the Defendant guilty beyond a reasonable doubt, but pursuant to Section 39.1 of UNTAET Reg. 2000/30, as amended by Reg. 2001/25, qualified the crime for which the Defendant bears individual criminal responsibility as an attempt to commit murder as a crime against humanity.

VIII. SENTENCING AS REQUIRED BY TRCP SEC. 39.3(f)

A. Mitigating circumstances¹⁸

81. The Defendant returned from East Timor in July 2002 and allegedly has been living peacefully in his community since then.

for his actions pursuant to Section 14.3(b) whether the crime that he ordered, solicited or induced “in fact occurs or is attempted.”

¹⁸ The Court does not consider as a significant mitigating circumstance the statement by counsel for the Defendant that his client felt “regret and sorrow” for the victim’s family. When the trial began the Defendant explained that he did not wish to make a statement “because I have done nothing wrong.” See Public Hearing Record for 23 June 2004 (Morning Session) at p. 3. Similarly, the difficult family circumstances of the Defendant cited by counsel are not unique and apply to an even greater degree to the family of Domingos Nu Nu Alves.

B. Aggravating circumstances

82. The Defendant and his two confederates were professional soldiers and members of the TNI. As such, they had a duty to protect and defend the civilian population, not to attack it.
83. The Defendant and the other TNI soldiers each carried an AR-15 rifle. Each of the three men whom they arrested had a machete, a tool commonly owned by many Timorese. The prisoners were disarmed immediately upon their arrest.
84. The Defendant initiated a beating of the three prisoners in which the other two TNI soldiers joined. The beating was so severe that when Jesus later arrived in the mountains he was still bleeding.
85. After the Defendant and the other TNI soldiers forced the three prisoners out of the house, the Defendant set fire to the house.
86. The three prisoners were forced to walk at gunpoint. When they were near the river, the Defendant fired a warning shot to scare them further.
87. The Defendant's statement to Mautersa to shoot Alves was completely unprovoked.

C. Sentencing policy

88. According to Sec. 10.1 (a) of UNTAET Regulation No. 2000/15, in determining the terms of imprisonment for crimes charged under Sec. 5 of that regulation, the Court shall be guided by the sentencing practices of the courts of East Timor and also of international tribunals. Moreover,

Sec. 10.2 of the same regulation provides that the Court shall take into account "such factors as the gravity of the offence and the individual circumstances of the convicted person."

89. The penalty imposed on a defendant found guilty by the Special Panel serves several purposes.

First, the penalty is a form of just retribution against the defendant, on whom an appropriate punishment must be imposed for his crime.

Second, the penalty is to serve as a form of deterrence to dissuade others who may be tempted in the future to perpetrate such a crime by showing them that serious violations of law and human rights shall not be tolerated and shall be punished appropriately.

Third, the prosecution and punishment of the perpetrators of serious crimes committed in East Timor in 1999 promotes national reconciliation and the restoration of peace by bringing closure to such cases, discouraging private retribution and confirming the importance of the rule of law.

90. The Court considered all the pertinent mitigating and aggravating circumstances as well as the above sentencing policy. It concludes that the sentence that it has imposed is proportionate both to the offence committed by the Defendant and the purposes served by sentencing in such a matter.

⋮

D. Sentence

91. Having found the Defendant Rudolfo Alves Correia aka “Adolfo” guilty beyond a reasonable doubt on the ground that he bears individual criminal responsibility, as set out in Section 14.3(b) of UNTAET Regulation 2000/15, for the attempt to murder Domingos Nu Nu Alves as a crime against humanity; and
92. Considering the arguments of the Prosecution and the Defense and the factors put forth at the sentencing hearing, as well as the pertinent provisions of the Transitional Rules of Criminal Procedure,
93. On 19 April 2005, the Special Panel for Serious Crimes imposed and announced the following sentence in public session at which the Defendant was present and represented by counsel:
- A. **SENTENCED** the Defendant Rudolfo Alves Correia aka “Adolfo,” in punishment for the crime of which he was convicted, to imprisonment for a term of five (5) years, and
- B. **ORDERED** the Defendant Rudolfo Alves Correia aka “Adolfo” to pay the costs of the criminal procedure as provided in TRCP Sec. 39.3 (g)

E. Credit for time served

94. Pursuant to Section 10.3 of UNTAET Regulation 2000/15 and TRCP Section 42.5, the Special Panel deducted the time spent in detention by the Defendant. The Court was informed and believed that the defendant was held for a period of three (3) days following his arrest and before his release by an Investigating Judge of the Dili District Court. Accordingly,

that period of previous detention was be deducted from the sentence imposed by this Court, together with such additional time he may serve pending the determination of an appeal, if any, from the final written decision of the Court.

F. Execution and enforcement of sentence

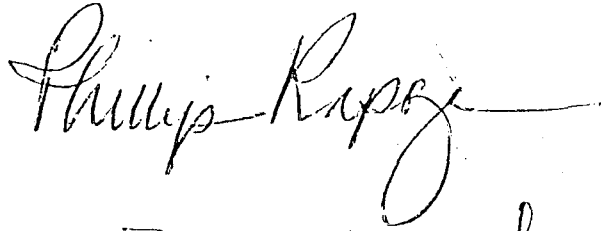
95. Pursuant to TRCP Sections 42.1 and 42.6, the Defendant was immediately imprisoned on the above sentence upon its imposition on 19 April 2005. He shall spend the duration of the sentence in Timor-Leste.
96. This sentence was imposed without prejudice to the Defendant's right to petition for his conditional release from incarceration pursuant to TRCP Section 43 after he has completed two-thirds of the term of his imprisonment.

G. Final Decision and Appeal

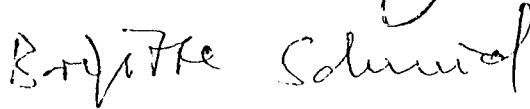
97. A copy of this final written decision shall be provided to the Defendant and his legal counsel, the Public Prosecutor, and to the prison manager.
98. The Defendant has the right to file (1) a notice of appeal within ten (10) days from the date of notification to him of this final written decision of the Court and (2) a written statement of appeal within the following thirty (30) days pursuant to TRCP Sections 40.2 and 40.3.

This Final Judgment was issued on 25 April 2005 by the Special Panels for Serious Crimes sitting at the Court of Appeals building in Caicoli, Dili, by:

Judge Phillip Rapoza,
Presiding and Rapporteur



Judge Brigitte Schmid



Judge José da Costa Ximenes



(The original of the above Final Judgment was rendered in English, which shall be the authoritative version)