



DISTRICT COURT OF DILI

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No: 11/C.C./TDD/2002.

INDICTMENT

THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

- Against -

MARCELINO SOARES

Proc. / 11 / 2003

200.4.

I: INDICTMENT

The Deputy General Prosecutor for Serious Crimes pursuant to her authority under UNTAET Regulations 2000/16 and 2000/30 as amended by 2001/25, charges **Marcelino Soares** with **CRIMES AGAINST HUMANITY: MURDER, TORTURE, AND PERSECUTION BY UNLAWFUL DETENTION** as set forth in this indictment.

II: NAME AND PARTICULARS OF THE ACCUSED:

Name:	Marcelino Soares
Place of Birth:	Hera town, Hera sub-district, Dili
Date of Birth/Age:	1952
Sex:	Male
Nationality:	East Timorese
Address:	Hera town, Hera sub-district, Dili
Occupation at the time:	Babinsa, TNI Village Level Commander

III: INTRODUCTORY STATEMENT OF FACTS

1. A widespread or systematic attack was committed against the civilian population in East Timor in 1999. The attack occurred during two interconnected periods of intensified violence. The first period followed the announcement on 27 January 1999 by the Government of Indonesia that the people of East Timor would be allowed to choose between autonomy within the Republic of Indonesia or independence. This period ended on 4 September 1999, the date of the announcement of the result of the popular consultation in which 78.5 per cent voted against the autonomy proposal. The second period followed the announcement of the result of the popular consultation on 4 September through 25 October 1999.
2. The widespread or systematic attack was part of an orchestrated campaign of violence, that included among other things, incitement, threats to life, intimidation, unlawful confinement, assault, forced displacement, arsons, murders, rapes, torture and other forms of violence carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces, ABRI (Angkatan Bersenjata Republik Indonesia) renamed TNI (Tentara Nasional Indonesia) in 1999 and members of the Indonesian Police Forces POLRI (Kepolisian Republik Indonesia) with the acquiescence and active participation of civilian and military authorities.
3. With the backing of the TNI and the Civil Administration, more than twenty five militia groups operated throughout East Timor. Their goal was to support

autonomy with Indonesia. The Integration Fighting Forces, PPI (Pasukan Pejuang Indonesia) under the command of Joao Tavares and Eurico Guterres was the umbrella organization under which these militia groups were organized. With the acquiescence of TNI and the Civil Administration, PPI commanders issued and called upon and incited militia groups and their members to intimidate independence supporters and those perceived to support them. The militia groups participated widespread or systematic attacks, acting and operating with impunity.

4. The widespread or systematic attack was directed against civilians and predominantly against individuals who supported or were perceived to support independence and resulted in lethal injury including death by sharp force injury, gun shot injury, blunt force trauma or a combination of the three.
5. As part of the widespread or systematic attack against the civilian population, the militia destroyed property including houses and livestock belonging to the civilian population.
6. The widespread or systematic attacks resulted in the internal displacement of thousands of persons. Additionally, the forcible transfer of the civilian population within East Timor and deportation to West Timor, Indonesia, was an essential feature of the orchestrated campaign of violence.
7. Under the terms of the 5 May 1999 Agreements, between the Indonesia, Portugal and the United Nations on the popular consultation, the Indonesian security authorities (TNI and POLRI) had the responsibility to ensure a safe environment devoid of violence or other forms of intimidation as well as the general maintenance of law and order before and during the popular consultation. The TNI and POLRI failed to meet these obligations.
8. The Indonesian Military in East Timor consisted of both regular territorial forces and Special Combat Forces ie the Strategic Reserve Command (KOSTRAD) (Kommando Strategis Angkatan Darat) and Special Forces Command (KOPASUS) (Kommando Pasukan Khusus) all of which had units, staff officers and soldiers stationed in East Timor.
9. From February 1999 to October 1999, the Indonesian Police Force (POLRI) the state agency for upholding law and public order were also present in East Timor. It included a Mobile Police Brigade BRIMOB, (Brigade Mobil) whose units and members were stationed in East Timor, including in Dili district.

IV: SPECIFIC STATEMENT OF FACTS

10. Dili is one of the thirteen districts of East Timor and is comprised of five sub-districts, namely Dom Aleixio, Nain Feto, Christos Rei, Metinaro and Atauro.

11. In 1999 Timorese TNI soldiers were based in the TNI post in Hera, which is in the sub-district of Metinaro.
12. During 1999 **Marcelino Soares** was the Babinsa, or Village Level Commander of the TNI in Hera which is in the sub-district of Metinaro. As Babinsa **Marcelino Soares** had direct command and control over the Timorese TNI soldiers stationed in Hera. His duties and responsibilities included directing the operations of the Timorese TNI in Hera, giving orders to the soldiers under his command (including orders to arrest and detain persons) and supervising the treatment of persons detained by his soldiers in Hera.
13. In March 1999 a unit of Indonesian TNI soldiers (called the 'Rajawali') were posted to Hera and worked out of the same TNI post as the Timorese TNI soldiers. The Indonesian TNI soldiers were under the command of their Indonesian supervising officer whilst the Timorese TNI soldiers remained under the command of **Marcelino Soares**. **Marcelino Soares** liaised closely with the commander of the Indonesian TNI soldiers and both groups occasionally conducted joint operations in and around Hera.
14. On the morning of 20 April 1999 seven (7) members of a clandestine pro-independence group (ESTAFET) arrived in Hera from Remixiu, Alieu District. Included in that group were Luis Dias Soares, Rafael de Jesus Amaral (alias Joao) and Felipe de Sousa. The group arrived at the home of clandestine supporter Carlos Pinto in Hera town in the morning with a letter from their leader Manuel da Silva (aka Kiukai Dollar) asking for food and assistance for clandestine supporters in Alieu. Carlos Pinto was not at home at the time.
15. Shortly after their arrival, the group were surrounded by Timorese and Indonesian TNI soldiers. Four members of the group managed to escape whilst Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa were captured by Indonesian and Timorese TNI soldiers and taken to a building next to the TNI post for questioning. **Marcelino Soares** was present at the TNI post and ordered the TNI soldiers under his command to search the area for the remaining four persons who had managed to escape. He also ordered his men to search the house of Carlos Pinto.
16. **Marcelino Soares** then ordered Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa to line up and interrogated them about their activities. A knife and the letter from Manuel da Silva were found in the possession of Luis Dias Soares. Luis Dias Soares was singled out as a supporter of FALINTIL and taken to a separate room by an Indonesian TNI soldier where his hair was cut off.
17. Following their questioning Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa were detained in separate rooms where they were severely beaten with sticks and rifle butts by Timorese TNI soldiers.

18. Rafael de Jesus Amaral was beaten by TNI soldiers including **Marcelino Soares**, Antonio Pinto (aka Antonio B) and Mario Malekat. **Marcelino Soares** repeatedly assaulted Rafael de Jesus Amaral in the front and back of his body with a stick. Antonio Pinto then punched Rafael de Jesus Amaral in the mouth, knocking out two of his teeth. During the assault Antonio Pinto accused Rafael de Jesus Amaral of being a pro-independence supporter and supporting resistance leader Xanana Gusmao. Rafael de Jesus Amaral was also cut with a razor blade on the nose, assaulted, and burnt on the thigh with his belt buckle which had been held over flames until it was hot. Rafael de Jesus Amaral was tortured until he lost consciousness.
19. Following his assault Rafael de Jesus Amaral was left in the room bound by his hands and feet. During the night Rafael de Jesus Amaral was able to escape through the window of his room and out of the building.
20. During the same night, Luis Dias Soares was beaten to death by Indonesian and Timorese TNI soldiers including Mario Malekat and Antonio Pinto. His body was placed in two sacks bound with rope. Around midnight Timorese TNI soldiers including Antonio Pinto and Mario Malekat along with Indonesian TNI soldiers loaded the body of Luis Dias Soares into a Kijang truck and took the body to be buried in an unmarked grave in Sukar Laran, close to the TNI post.
21. Felipe de Sousa was held captive in the TNI building for four days. During this time he was severely beaten by TNI soldiers including Antonio Pinto, who hit him with metal pipes, rifle butts and who slashed him with their knives. After four days, Felipe de Sousa was released from detention with the assistance of his cousin Manuel Joaquim, also a TNI soldier.

V: GENERAL ALLEGATIONS

22. The acts or omissions by the accused, described in this indictment, were undertaken as part of a widespread or systematic attack directed against the civilian population, with knowledge of the attack, and especially targeting those who were believed to be linked to or sympathetic with the independence cause in East Timor.

VI. CRIMINAL RESPONSIBILITY

(a) Individual Criminal Responsibility

23. The accused **Marcelino Soares** is charged with individual criminal responsibility in this indictment. An accused is responsible under Section 14 UNTAET Regulation 2000/15 if he:

- “(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;*
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;*
- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;*
- (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:*
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the panels; or*
 - (ii) be made in the knowledge or the intention of the group to commit the crime; and*

...

(b) Superior Criminal Responsibility

24. In addition the accused **Marcelino Soares** is charged with superior criminal responsibility in this indictment. An accused is responsible under Section 16 UNTAET Regulation 2000/15 for the acts of his subordinates:

“ . . . if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

VII: THE CHARGES

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

Count 1: Crimes Against Humanity: Murder

By his acts or omissions in relation to the events described in paragraph 20 of this indictment, **Marcelino Soares** is responsible as a superior for the murder of Luis Dias Soares on or about 20 April 1999 in Hera, Dili District which was committed as part of a widespread or systematic attack against a civilian population with knowledge of the attack and thereby committed **CRIMES AGAINST HUMANITY: MURDER**, a crime stipulated under Section 5.1(a) UNTAET Regulation 2000/15.

Count 2: Crimes Against Humanity: Torture

By his acts or omissions in relation to the events described in paragraphs 17 -21 of this indictment, **Marcelino Soares** is responsible as an individual and superior for the torture of Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa on or about 20 April 1999 in Hera, Dili District which was committed as part of a widespread or systematic attack against a civilian population with knowledge of the attack and thereby committed **CRIMES AGAINST HUMANITY, TORTURE**, a crime stipulated under Sections 5.1(f) and 5.2(d) of UNTAET Regulation 2000/15.

Count 3: Crimes Against Humanity: Persecution by unlawful detention

By his acts or omissions in relation to the events described in paragraphs 15-21 of this indictment, **Marcelino Soares** is responsible as an individual and superior for the persecution by the unlawful detention of Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa on or about 20 April 1999 in Hera, Dili District which was committed as part of a widespread or systematic attack against a civilian population with knowledge of the attack and thereby committed **CRIMES AGAINST HUMANITY: PERSECUTION**, a crime stipulated under Sections 5.1(h) and 5.2(f) of UNTAET Regulation 2000/15.

VIII: VICTIMS AND EVIDENCE FOR TRIAL

The victims are Luis Dias Soares, Rafael de Jesus Amaral and Felipe de Sousa.

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

IX: REQUEST FOR TRIAL

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

Dated

27 February 2005

Siri Frigaard

Siri Frigaard

Deputy General Prosecutor for Serious Crimes