



Case Status Liquisa Church Massacre

Updated 24 June 2002

I. SUMMARY OF CASE:

Accused:

Letkol. Inf. Asep Kuswani, former Dandim 1636 Liquisa
Letkol. Pol. Adios Salova, former Kapolres Liquisa
Leoneto Martens, former Bupati Liquisa

Summary of Case:

The accused were indicted on 31 May 2002 (the date was changed in court to 19 June 2002, the date of the reading of the indictment) with 2 counts of crimes against humanity. The indictment takes the form of subsidiary/alternative charging:

1. Murder as a crime against humanity

- Primary charge against all accused - Art.9(a) murder as a crime against humanity using Art.42 (by not limiting it to the subsections, the allegation can encompass Military Command Responsibility and Civilian/Police Command Responsibility).
- Subsidiary charge against Asep Kuswani – Art. 9(a) murder as a crime against humanity using Art.42 (1) (Military Command Responsibility).
- Subsidiary charge for Adios Salova – Art. 9(a) murder as a crime against humanity using Art.42(2) (Civilian/Police Command Responsibility).
- Subsidiary charge for Leoneto Martins – Art.9(a) murder as a crime against humanity using Art.42(2) (Civilian/Police Command Responsibility).

2. Assault as a crime against humanity

- Primary charge against all accused - Art.9(h) assault as a crime against humanity using Art.42(1) (Military Command Responsibility).
- Subsidiary charge against Asep Kuswani – Art. 9(h) assault as a crime against humanity using Art.42 (1) (Military Command Responsibility).
- Subsidiary charge for Adios Salova – Art. 9(h) assault as a crime against humanity using Art.42(2) (Civilian/Police Command Responsibility).
- Subsidiary charge for Leoneto Martins – Art.9(a) assault as a crime against humanity using Art.42(2) (Civilian/Police Command Responsibility).

See earlier notes on military command responsibility under Art. 42(1) and civilian/police command responsibility under Art.42(2) of Law 26/2000.

Factual allegations

This case concerns the massacre at the church in Liquisa on 6 April 1999.

The prosecution argues that the following took place in Liquisa.

As the issue of the Referendum developed in the province of East Timor particularly in the regency of Liquisa, conditions of security and public order began to escalate until there was enmity, fighting and disagreements between the pro-independence and pro-autonomy groups, namely the BMP (Besi Merah Putih) part of whose members later became members of Pamswakarsa.

Then the enmity, fighting and disagreements became more widespread that is on 3 April 1999 pro-independence threatened to kill pro-integration masses from BMP in desa Dato, Liquisa. On 4 April 1999 pro-independence masses led by Jacinto da Costa Perreira burnt the homes of pro-autonomy masses BMP because BMP from Pukelara and Maubara burnt the home of Felisberto dos Santos and killed his son Elidio a member of the pro-independence movement.

On 5 April 1999 because they were scared of being killed by pro-autonomy, ie.BMP, pro-independence masses started to flee to the residence of Pastor Rafael Dos Santos in the church complex at Liquisa, because Pastor Henry from Maubara provided information that members of the pro-autonomy group BMP would be attacking Liquisa district.

Based on the information of Pastor Henry, the pro-independence group led by Jacinto Da Costa Perreira along with his members went to the border of Maubara-Liquisa to deal with the planned attack by pro-integration, ie. BMP but when they met at Batu Blete, BMP were assisted by TNI and POLRI who shot at them, killing 2 and wounding 7, among them Jose from Hatu Kesi and Sirilio dos Santos who was shot in the thigh.

At 1300 hours pro-independence from Maubara, Pukelara and Liquisa and the environs fled to the residence of Pastor Rafael Dos Santos in the church complex at Liquisa, totalling about 2000 people and TNI and members of POLRI with pro-integration, i.e. BMP shot into the air, panicking the refugees and causing great fear. In the early afternoon around 1300 hours the Liquisa Church complex was surrounded by TNI and POLRI who were then followed by the arrival of BMP and shot into the air until pro-independence from Maubara, Pukelara, Liquisa and those around were frightened and fled and hid in the Liquisa Church complex.

Thereafter on Tuesday 6 April 1999 around 0700 hours about 300 pro-independence, i.e BMP led by Manuel Sousa began to gather and surround the residence of Pastor Rafael in the complex, there were those who carried firearms, rakitan guns, machetes, samurai swords, knives, instruments for beating, instruments for stabbing, arrows or other hard instruments and shouted that the pro-independence refugees should leave the church complex.

At around 0800 hours, Pastor Rafael Dos Santos was visited by 2 BRIMOB members named Damianus Dapa and Fransiskus Salamali asking that Jacinto Da Costa Perreira and Gregorio Dos Santos be surrendered to pro-integration ie BMP but this was rejected by Pastor Rafael Dos Santos because of fear he would be killed. Around 1130 hours 5 POLRI led by Lettu.Pol. Jhon Rea came to the home of Pastor Rafael Dos Santos in the Liquisa Church complex to ask that Jacinto Da Costa Perreira be surrendered, whereupon Father Rafael Dos Santos was prepared to surrender him on condition that Jacinto Da Costa Perreira and his friends be brought to POLDA Timor Timur in Dili and BMP be pulled back from Liquisa. At that moment, pro-integration masses from BMP threatened the refugees by shouting:

‘Leave this complex or the second layer will come, if any of you are in the church then at 0100 WITA [1300 hours] we will attack the church’

and they threw rocks at the residence of Pastor Rafael Dos Santos in the church complex which was surrounded by a walled fence, resulting in an extremely frightening and increasingly tense situation, because TNI from Kodim 1638 Liquisa and members of BRIMOB/POLRI from POLRES Liquisa joined with pro-integration masses from BMP.

On the basis of the conditions agreed to by Pastor Rafael Dos Santos, Lettu Pol. Jhon Rea went to the Kodim 1638/Liquisa to report this matter and to report that pro-integration ie BMP would carry out an attack on the Liquisa Church at 1200 if Jacinto Da Costa Perreira was not surrendered. The report of Lettu Pol. Jhon Rea was witnessed by the three accused who at the time were at the Markas Kodim 1638/Liquisa.

Considering the report of Lettu Pol. Jhon Rea, Deputy Danrem 164/Wira Dharma Kol. Inf. Mujiono held a musyawarah (meeting of district level leaders) with the three accused and also Lt. Kol. Inf. Yayat Sudrajat as Kommandan Satuan Tugas Intelijen Tribuana VIII inviting Leoneto Martins to convey their agreement to the conditions of Pastor Rafael Dos Santos but the invitation was rejected by Leoneto Martens who said he was afraid he would be killed if he went to meet Pastor Rafael Dos Santos, so finally Deputy Danrem Kol. Inf. Mudjiono inviting/tasking Lettu Pol. Jhon Rea to meet Pastor Rafael Dos Santos.

Around 1215 at the very moment Lettu Pol Jhon Rea set off to the Liquisa Church complex, shots were heard at the location, accompanied by an attack on the Liquisa Church complex by pro-integration ie BMP led by Manuel Sousa and Jose Afaat (camat Maubara), POLRI including Chico and Alfonso and TNI, among whom were:

1. Jose Matheus
2. Tome Diogo
3. Abilio Alves
4. Carlos (Danramil Maubara)
5. Antonio Gomes
6. Isak Dos Santos
7. George Viegas
8. Maurisio
9. Jeferino
10. Zacarias
11. Manuel Martins and
12. Jacob

The attackers killed the refugees from pro-independence who were sheltering in the residence of Pastor Rafael Dos Santos at the Liquisa Church complex by shooting with firearms, rakitan guns, slashing with machetes and samurai swords, shooting arrows, stabbing with knives, and hitting with other hard objects, resulting in the death of 20 named civilians, and two of whom are unknown persons buried in the graveyard at Maubara. 21 were wounded.

Alleged basis of criminal responsibility:

Each of the accused is said to be criminally responsible for the acts of those subordinates under his effective control because he did not exercise correct and lawful control over his subordinates, he knew or deliberately ignored information that clearly showed that his subordinates were committing or had just committed crimes that were part of a widespread and systematic attack directed at the civilian population and he failed to take any or the necessary steps to prevent or stop the acts or surrender the perpetrators to the legitimate authorities for investigation, prosecution and punishment.

Based upon the facts detailed above, the specific allegations against the accused are as follows:

1. *1st count - Murder as a crime against humanity*

a. Primary charge against all three accused

Asep Kuswani was responsible for peace and public safety in Liquisa, Adios Salova was responsible for Kamtibmas (peace and order in society) in Liquisa and Leoneto Martins was responsible for governance and development.

The accused, described as being effective military commanders or superiors, did not control their forces/subordinates who were under their effective command and control that is, they knew or given the circumstances should have known or deliberately ignored information that clearly showed that their forces/subordinates were committing or had just committed gross violations of human rights amounting to assault committed as part of a widespread or systematic attack directly aimed at the civilian population and they did not take the appropriate and necessary steps within their respective competence to prevent or stop the actions of their forces/subordinates or to surrender the perpetrators to the offices with responsibility for investigation and prosecution.

Each of the three accused knew there was an attack on civilians in the church complex, but did not take the necessary steps to prevent or stop the incident, or surrender the accused to the authorities responsible for investigation and prosecution. Those TNI who allegedly participated in the attack are named (see above), but no individual POLRI or militia are named. POLRI are not identified as having participated.

This is a command responsibility case that includes military and civilian/Police command responsibility under Art.42 of Law 26/2000. Nevertheless, the primary charge is linked to Article 55(1) of KUHP, which deals with secondary forms of participation such as aiding and abetting.

b. Secondary charge against Asep Kuswani

As Dandim, he was responsible for peace and safety of the public in Liquisa. Members of TNI (see the list cited above) took part in the attack on the Liquisa Church complex. He was an effective military commander who was responsible for the gross human rights violations committed by troops under his effective command and control or under his effective power and control, and the crimes are a result of the failure to carry out effective control. From the people who fled and sought shelter at the church complex, he knew or given the circumstances should have known that members of TNI under his effective command and control were committing or had just murdered refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

Of the TNI alleged to have taken part in the attack along with BMP, twelve are named (see above for the names) and it is these TNI that Asep Kuswani is said to be responsible for.

This is a military command responsibility charge under Art.42(1) of Law 26/2000.

c. Secondary charge against Adios Salova

As KAPOLRES he was responsible for Kamtibmas (peace and order in society) in Liquisa. Members of POLRI, including Chico and Alfonso, took part in the attack on the Liquisa Church complex. From the people who fled and sought shelter at the church complex, he knew or given the circumstances should have known that members of POLRI under his effective command and control were committing or had just murdered refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

Two POLRI are named as having taken part in the attack with BMP, Alfonso and Chico from POLRES Liquisa, and it is these two that Adios Salova is said to be responsible for them.

This is a civilian/Police command responsibility charge under Art.42(2) of Law 26/2000.

d. Secondary charge against Leoneto Martins

Along with their leaders Manuel Sousa and Jose Afaat (Maubara), eleven members of BMP militia are named in this charge as having taken part in the attack on the church:

1. Crispin Da Costa Perreira
2. Alfonso
3. Miguana
4. Viktor
5. Fransisco
6. Joao Lou Mesa
7. Mourego
8. Fernando Lakubou
9. Tedi
10. Romaldo
11. Maserna

It is alleged that from the people who fled and sought shelter at the church complex, Leoneto Martins know or given the circumstances should have known that those under his effective control were committing or had just murdered refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

2. *2nd count – assault as a crime against humanity*

a. Primary charge against all three accused

The charge alleges that Asep Kuswani was responsible for peace and public safety in Liquisa, Adios Salova was responsible for Kamtibmas (peace and order in society) in Liquisa and Leoneto Martins was responsible for administration and development.

All three accused, described as being effective military commanders or superiors, did not control their forces/subordinates who were under their effective command and control that is, they knew or given the circumstances should have known or deliberately ignored information that clearly showed that their forces/subordinates were committing or had just committed gross violations of human rights amounting to assault committed as part of a widespread or systematic attack directly aimed at the civilian population and they did not take the appropriate and necessary steps within their respective competence to prevent or stop the actions of their forces/subordinates or to surrender the perpetrators to the offices with responsibility for investigation and prosecution.

This charge lists the names of 11 members of BMP, 12 TNI and 2 POLRI alleged to have taken part.

Each of the accused had a responsibility to prevent the attack, but did not take the initiative to prevent the concentration of masses and made no efforts to seize firearms and objects used by the BMP and did not take steps to prevent/exclude and chase away the crowd from Liquisa Church complex, in particular:

1. Let Kol Pol Adios Salova as head of POLRES Liquisa did not initiate legal action against those who had firearms and other sharp weapons without permission, having had the responsibility to take legal steps;

2. Leoneto Martens as Bupati did not prevent the concentration of BMP, a large number of whom were Pamswakarsa which he created and controlled.

There is no such allegation against Asep Kuswani as Dandim 1638 Liquisa.

This charge incorporates both military and civilian/Police command responsibility. Yet, it is linked to Art.55 of KUHP on secondary forms of participation, such as through aiding and abetting.

- b. Secondary charge against Asep Kuswani

As Dandim, he was responsible for peace and safety of the public in Liquisa. This is a military command responsibility charge under Art. 41(1) of Law 26/2000.

Several TNI members, among whom 12 are named, took part in the attack on the Liquisa Church complex (see list above). The accused was an effective military commander who was responsible for the gross human rights violations committed by troops under his effective command and control or under his effective power and control, and the crimes are a result of the failure to carry out effective control.

From the people who fled and sought shelter at the church complex, he knew or given the circumstances should have known that members of TNI under his effective command and control were committing assault or had just assaulted refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

- c. Secondary charge against Adios Salova

As KAPOLRES he was responsible for Kamtibmas (peace and order in society) in Liquisa. This is a civilian/Police command responsibility charge under Art. 42(2) of Law 26/2000.

Several of his subordinates, including Afonso and Chico, are alleged to have taken part in the attack on the Liquisa church complex

From the people who fled and sought shelter at the church complex, he know or given the circumstances should have known that members of POLRI under his effective command and control were committing assault or had just assaulted refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

- d. Secondary charge against Leoneto Martins

As Bupati, Leoneto Martins was responsible for governance and development in Liquisa. This is a civilian command responsibility charge under Art.42(2) of Law 26/2000.

Along with their leaders Manuel Sousa and Rafael dos Santos (Maubara), eleven members of BMP militia are named in this charge as having taken part in the attack on the church:

1. Crispin Da Costa Perreira
2. Alfonso
3. Miguana
4. Viktor
5. Fransisco
6. Joao Lou Mesa
7. Mourego
8. Fernando Lakubou
9. Tedi
10. Romaldo
11. Maserna

TNI and POLRI also took part.

It is alleged that from the people who fled and sought shelter at the church complex, Leoneto Martens know or given the circumstances should have known that those under his effective control, namely Jose Afaat (camat Maubara) and BMP who were a mass organisation under the District Administration were committing assault or had just assaulted refugees sheltering at Pastor Rafael's residence, but the accused did not take the appropriate and necessary steps to prevent or stop the actions, or after the attack, the accused did not surrender the perpetrators to the responsible authorities for investigation and prosecution.

Possible sentences if convicted:

Convictions under Art.42 (command responsibility) carry the same sentences as direct perpetration. Therefore, a conviction under Art. 9(a) for murder as a crime against humanity may lead to punishments ranging from death or life in prison to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison. A conviction under Art.9(h) for assault as a crime against humanity may lead to a maximum sentence of 20 (twenty) years in prison and to a minimum of 10 (ten)years in prison.