

Case Status N Noer Muis

Updated 23 August 2002

I. SUMMARY OF CASE

Accused: M Noer Muis

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N Moer Muis, as the Military Commander of East Timor (Komandan Resort Militer 164 Wira Dharma Timor Timur) from 13 August 1999 to 30 March 2000, with 13 Military sub districts (Kodims) under his command, was indicted on 4 July 2002. There are two charges:

1. First charge of murder as a crime against humanity in violation of Art 9(a) using Art 42(1) Military Command Responsibility.
2. Second charge of assault/persecution as a crime against humanity in violation of Art 9(h) using Art 42(1) Military Command Responsibility.

Factual allegations

a. First Charge: Murder as a Crime Against Humanity

This charge relates to the attacks on the Diocese of Dili, the home of Bishop Belo and the Suai Church. The prosecution argues for the following:

After the announcement of the results of the popular consultation on 4 September 1999, which was in fact won by the anti integration (pro-independence) group, the situation in East Timor heated up and conflict occurred between the group proclaiming themselves as pro-independence and the pro-integration group.

In this heated situation, on the day following the announcement, (5 September 1999), around 14.30 East Indonesian Time, a mob from the pro-integration group who had lost the popular consultation suspected that there had been some fraud perpetrated by UNAMET and the pro-independence group during the vote count whereby UNAMET had not acted neutrally in conducting the election. Objections made by the pro-integrationists, which were not afforded any careful attention by UNAMET, resulted in a feeling of dissatisfaction amongst pro-integrationists. As a result of the expression of this dissatisfaction, an attack was carried out on the Dili Diocese by militia members, TNI troops and members of POLRI against pro-independence people who had taken refuge and were being sheltered inside the Diocese office. The attack took the form of shooting with firearms and rakitan guns and stabbings and gashings with machetes and samurai swords. The attack was perpetrated against the refugees who were at that time being sheltered within the Dili Diocese Office. As a product of the attack at least 3 people died, namely:

- Jose Malton Da Costa
- Fransisco
- Engenio Da Costa.

The Dili Diocese office was also damaged and burnt. The attack on the Dili Diocese was reported to the accused, as the military commander of East Timor (Danrem 164 Wira Dharma) by the Dandim of Dili and by other members of the Dili Kodim in the field. He did not do anything to localize or to prevent or stop the attack carried out by the militia, members of the TNI and members of the police. The military in East Timor (Wira Dharma Timor Timur) or any other agency did not do anything to seize the sharp weapons and firearms and disarm those who attacked the Dili Diocese.

On the 6 September 1999, at around 9.15 Western Indonesian Time a pro-integration mob, militia members, TNI troops and members of the police armed with sharp weapons, firearms and rakitans held a demonstration expressing their dissatisfaction with the popular consultation and moved in the direction of the residence of Bishop Belo in Dili, where they knew that civilian members of the pro-independence camp had taken refuge. When they reached the house the pro-integrationists, militia troops, TNI troops and members of the police shot at the house which forced the pro-independence refugees sheltering there to leave the house. After they left the house they gathered together in the Mother Mary Garden in front of the house. Shortly thereafter a cry of “attack” was heard and pro-integrationists, militia, TNI and members of the police attacked by shooting at the pro-independence refugees. As a result, at least 10 civilians or more died, of whom one was named Nunu. In addition to which Bishop Belo’s house was damaged and burnt.

The morning before the attack on Bishop Belo’s house, the Bishop and Manuel Soares Abrantes went to the Korem where they were received by the accused. They told him that they had come because the security situation in Dili was becoming more and more frightening as a result of the shooting and that many refugees had already gathered at the Bishop’s house. They asked him how it was possible to stop the shooting and restore security and normalcy. The accused suggested that they all go together to the airport to meet important guests from Jakarta including General Wiranto. On meeting Wiranto, the Bishop asked him “Can you restore security and order the militia to take down all their roadblocks? It is the militia themselves who have taken control of security in the streets and they check every person who passes if there are pro-independence people who pass.” The General pointed to the accused and said that the Brigadier would order that the militia leave and return things to normal. For a second time the Bishop asked the General to restore security in East Timor, particularly in Dili. The General replied “yes Bishop.” And therefore the accused was aware of the build up of refugees at the Bishop’s house.

On the morning of the attack, Bishop Belo telephoned the head of Police in East Timor, Timbul Silaen, and asked him to provide a truck to evacuate the refugees from Dili to Baucau. Silaen told him that it would be better if he phoned the accused directly. The Bishop then phoned the accused as military commander of East Timor

and asked for a truck and for protection. The accused just replied “there is no vehicle” and Bishop Belo’s request was not filled.

On Monday 6 September 1999 at around 13.30 Western Indonesian time, a mob from the pro-integration camp (which included amongst others Izedio Manek, Olivio Mendoza Moruk (AKA Olivia Mou), Martinus Bere Motornus and Vasco Da Cruz who had joined together as the Laksaur militia group under the leadership of Olivia Moruk), TNI troops, and members of the police staged an attack on the civilian population, which included priests and nuns, who had taken refuge in the Ave Maria church complex in Suai. The attack involved the use of firearms, including large scale weapons (M-16) and rakitan guns, and sharp weapons. The attack occurred without any action being taken to prevent or stop it by the security forces, in particular no preventative action was taken by those from the Suai Kodim and Korem 164 Wira Dharma Timor Timur which were under the command of the accused. As a result of the attack at least 26 civilians were killed including 17 men and 9 women.

Amongst the victims were:

- Father Tarsius Dewanto
- Farther Hilario Madeira
- Farther Fransisco Soares

b. Second charge – Assault/persecution as a crime against humanity

This charges relates to the attacks on the Diocese of Dili and the home of Bishop Belo

The account of the build up to and the attack on the Diocese of Dili is the same as the account set out above. It is pleaded that as a result of the attack at lease four civilians were injured - namely:

- Nelio Mesquito Da Costa Rego
- Nonato Soares
- Joao Bernadino Soares
- Vincente A G Sousa

The account of the attack on Bishop’s Belo’s house and the account of his prior requests for assistance are the same as the account set out above. It is pleaded that as a result of the attack at least one civilian was injured – namely a ten year old child named Lili who suffered a gun shot wound to her left eye.

Alleged basis of criminal responsibility

a) murder as a crime against humanity

The accused as military commander of East Timor had power and responsibility for defence in East Timor through the Kodims. In particular, the accused had authority to ensure that the popular consultation was a success by working with the Indonesian Government and international institutions. However, the accused did not fulfill his duties as required.

The Kodims of Dili and Suai was under the accused power and control or effective power and control and the three attacks occurred as a result of his failure to appropriately control his troops who the accused knew, or should have known, were committing or had just committed gross human rights violations. These gross human rights violations took the form of crimes against humanity. The alleged incidents formed part of a wide spread and systematic attack, of which the accused was aware, which was directed towards the civilian population and involved the murder of at least 39 people in total. The accused did not take the appropriate and necessary steps that were within his authority as the Military Commander of East Timor in order to prevent and stop the incidents from occurring. The accused also did not hand over the perpetrators of the attacks to the appropriate authorities to be investigated and charged.

b) Assault/persecution as a crime against humanity

The Kodim of Dili was under the accused power and control or effective power and control and the two attacks occurred as a result of his failure to appropriately control his troops who the accused knew, or should have known, were committing or had just committed gross human rights violations. These gross human rights violations took the form of crimes against humanity. They formed part of a wide spread and systematic attack, of which the accused was aware, which was directed towards the civilian population and involved an assault on a particular group or a group whose membership shared the same political beliefs, race, nationality, ethnicity, religion, gender or some other characteristic. The accused did not take the appropriate and necessary steps that were within his authority as the Military Commander of East Timor in order to prevent and stop the incidents from occurring. The accused also did not hand over the perpetrators of the attacks to the appropriate authorities to be investigated and charged.

Possible sentence if convicted

Convictions under Art 42 carry the same sentences as direct perpetration. Therefore a conviction under Art (a) for murder as a crime against humanity ranging from death to a maximum sentence of 25 years to a minimum sentence of 10 years. A conviction under Art 9(h) for assault/persecution as a crime against humanity carries a maximum sentence of twenty (20) years and a minimum sentence of ten (10) years imprisonment.