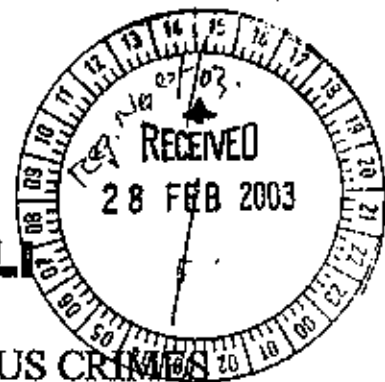


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DISTRICT COURT OF DILI

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

Case No: 02

INDICTMENT

THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

-Against-

JOANICO GUSMAO

I. INDICTMENT

The Deputy General Prosecutor for Serious Crimes, pursuant to her authority under UNTAET Regulations 2000/16 and 2000/30 (as amended by Regulation 2001/25), charges:

JOANICO GUSMAO

WITH

**CRIMES AGAINST HUMANITY OF:
MURDER**

As set forth in this indictment:

II. NAME AND PARTICULARS OF THE ACCUSED

1. Name: **Joanico Gusmao**
 Place of birth: **Maucatar Sub-District, Covalima District, East Timor**
 Age/Date of birth: **40 years of age**
 Sex: **Male**
 Nationality: **East Timorese**
 Address: **Leila Village, Maucatar Sub-District, Covalima District**
 Occupation: **formerly member of Laksaur Militia**

III. INTRODUCTORY STATEMENT OF FACTS

1. A widespread or systematic attack directed against the civilian population was committed 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 with 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 confinements, assaults, forced displacements, arson, 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) with the acquiescence and active participation of civilian and military authorities.
3. In 1999, numerous militia groups operated throughout East Timor. Their goal was to support autonomy within Indonesia. The militia groups participated in the widespread or systematic attack and acted and operated with impunity.
4. This large-scale attack was directed against civilians of all age groups, 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 attack resulted in the internal displacement of thousands of persons (IDPs). 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 terms of the 5 May 1999 Agreements, between 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, during and the immediate aftermath of the popular consultation. The TNI and POLRI failed to meet these obligations and made no attempt to disarm or neutralize the militia groups. They allowed the militia groups to act with impunity.
- 8. The Indonesian Military in East Timor consisted of both regular territorial forces (BTT) and Special Combat Forces, i.e. the Strategic Reserve Command (KOSTRAD), (*Komando Strategis Angkatan Darat*) and Special Forces Command (KOPASUS), (*Komando Pasukan Khusus*), all of which had units, staff officers and soldiers stationed in East Timor, including in Cova Lima District.
- 9. From February 1999 to October 1999, the Indonesian Police Force (POLRI), the state agency for upholding the law and public order were also present in East Timor. It included a Mobile Police Brigade (BRIMOB), whose Units and members were stationed in East Timor, including in Cova Lima District.

IV. STATEMENT OF FACTS

- 10. Covallma District is one of the thirteen Districts of East Timor. It shares a common border with Nusa Tenggara Timor (West Timor), which is part of Indonesia. Covallma is comprised of six sub-districts namely, Tilomar, Sual, Fatumean, Fatululik, Fohorem and Zumalai.
- 11. Before 1999, the Indonesian army formed paramilitary groups in East Timor including WANRA and Gadapaski. These groups were trained in weapons and armed by KOPASUS.
- 12. Sometime in April 1999, the Laksaur militia group was formally inaugurated. The goal of the Laksaur militia group was to support

autonomy within Indonesia. The Laksaur militia group participated in the widespread or systematic attack against the civilian population in Covallima District.

13. The Supreme Commander of the Laksaur militia was Olvio Mendonca Moruk (deceased) and his brother Egidio Manek was the Deputy Commander.

14. **Joanico Gusmao** was a member of the Laksaur militia.

Murder of Felix Mali (5 September 1999)

15. Felix Mali was living with his wife and two children in Sukaer Laran Sub-Village, Debos Village in Suai Sub-District, Covallima District. In 1988 Felix Mali became a member of Korenti Mate Fatin a clandestine group which supported the Falintil members in the jungle.

16. Sometime in 1988, Felix Mali was appointed as leader of Korenti Mate Fatin. He suffered from a physical disability that prevented him from walking.

17. On 5 September 1999 at about 3am, members of Laksaur militia including, **Joanico Gusmao**, armed with rifles and swords attacked Sukaer Laran Sub-village.

18. **Joanico Gusmao** was armed with a sword.

19. When the militia attacked, Felix Mali was in his house. The members of the Laksaur militia set fire to neighboring houses and then proceeded to the house of Felix Mali. **Joanico Gusmao** forcibly entered the house.

20. **Joanico Gusmao** came out of the house of Felix Mali and went into the house of Fernando Pereira and ordered everyone in the house to leave because the militia members were going to burn the house. The militia ordered them to get into a truck they parked near the house of Felix Mali.

21. **Joanico Gusmao** went back into the house of Felix Mali and killed him by stabbing him in the back with his sword.

22. The villagers of Sukaer Laran Sub-Village were then forcibly taken by the militia to West Timor.

VI. CRIMINAL RESPONSIBILITY

Individual Criminal Responsibility

30. For each count in this indictment charging the accused with individual responsibility, the 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*
 - (iii) be made in the knowledge of the intention of the group to commit the crime;"*

VII PURSUANT TO THE ABOVE, THE GENERAL PROSECUTOR CHARGES:

The Accused Joanico Gusmao

Count 1. Crime Against Humanity: Murder

By his acts or omissions in relation to the events described in paragraphs 15 to 22 (inclusive), **Joanico Gusmao** is responsible for the murder of Felix Mali, on or about 5 September 1999 in Sukaer Laran Village, Suai Sub-District, Covalima District as part of a widespread or systematic attack against a civilian population with

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knowledge of the attack and thereby committed a CRIME AGAINST HUMANITY, MURDER a crime stipulated under Section 5.1(a) of UNTAET Regulation 2000/15 and for which he is Individually responsible under Section 14 of UNTAET Regulation 2000/15.

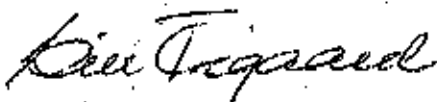
VIII. LIST OF VICTIMS

The list of victims, which form part of this indictment is attached as Annex "A"

IX. REQUEST FOR TRIAL

The Deputy General Prosecutor For Serious Crimes hereby requests the Special Panel for Serious Crimes of the District Court of Dili to try this case expeditiously.

Dated this 28th day of February 2003



Stri Frigaard
Deputy General Prosecutor For Serious Crimes