

**THE GENERAL PROSECUTOR OF THE
DEMOCRATIC REPUBLIC OF EAST TIMOR**

CASE No OE-31-99-SC

AGAINST

**UMBERTUS ENA aka MALA CLOE
CARLOS ENA aka TOLO CLOE**

I. INDICTMENT

The General Prosecutor of the Democratic Republic of East Timor, pursuant to his authority under Untaet Regulation 2000/16 and 2000/30 as amended by Untaet Regulation 2001/25, charges:

**UMBERTUS ENA aka MALA CLOE
CARLOS ENA aka TOLO CLOE**

WHITH

CRIMES AGAINST HUMANITY:

MURDER, ATTEMPTED MURDER, or in alternative INHUMANE ACTS

As set forth in this Indictment.

II. NAMES AND PARTICULARS OF THE ACCUSED

1. Name: Umberto Ena
 Age: 37 years
 Date of Birth: 1965
 Place of Birth: Naetuna, Passabe, Oecussi, East Timor
 Location: Becora Prison
 Occupation: Farmer

2. Name: Carlos Ena aka Tolo Cloe
 Age: 42 years
 Date of Birth: 15 April 1960
 Place of Birth: Naetuna, Passabe, Oecussi, East Timor
 Location: Becora Prison
 Occupation: Farmer

III. STATEMENT OF FACTS

A) 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, 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*) 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 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 and made no attempt to disarm or neutralize the militia groups. They were allowed 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.
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 Oecussi District.

B) SPECIFIC STATEMENT OF FACTS

10. The district of Oecussi is an enclave of East Timor and is about 43 km away from the rest of East Timor. It is landlocked on three sides by Indonesian territory of West Timor. The Selat Ombai Sea is to the north.
11. The district of Oecussi is divided into four (4) Sub districts, Pantemakassar A and B, Nitibe, Oessilo and Passabe.

- 12. The Sakunar militia operated within the District of Oecussi from approximately April to October 1999.
- 13. Simao Lopes was the supreme commander of the Sakunar militia.
- 14. In Passabe village, Gabriel Kolo, a police officer and also chief of the village, was the commander of the Sakunar militia.
- 15. **Umbertus Ena aka Mala Cloe, Carlos Ena aka Tolo Cloe**, Aleixo Sipa and Liberatus Mauno aka Latus were members of the Sakunar militia in Naetuna village, Sub-District of Passabe.
- 16. On or around 9th of September 1999, a large number of militia members including **Umbertus Ena aka Mala Cloe, Carlos Ena aka Tolo Cloe**, Aleixo Sipa and Liberatus Mauno aka Latus came down from Passabe to Nakome village. The militia members burnt down almost all the houses of the village with all their belongings. Only one or two houses were not burnt during the attack.
- 17. One or two days later, the same group of militia members came back down from Passabe to Nakome village. They were carrying machetes, swords, spears, clubs and sticks.
- 18. Upon arrival of the militia members, the villagers of Nakome were gathered in front of one of the houses that had not been burnt in the first attack.
- 19. The militia members secured the area, surrounded the villagers to make sure nobody could escape from their attack and started stoning them.
- 20. While this stoning was still going on, **Umbertus Ena aka Mala Cloe, Carlos Ena aka Tolo Cloe**, Aleixo Sipa and Liberatus Mauno aka Latus targeted three villagers namely Ernesto Lafu, Serafim Tolo and Vicente Quelo aka Mala Quelo, perceived as being CNRT members or/and supporters of independence of East Timor.
- 21. **Umbertus Ena aka Mala Cloe, Carlos Ena aka Tolo Cloe**, Aleixo Sipa and Liberatus Mauno aka Latus struck repeatedly Ernesto Lafu, Serafim Tolo and Vicente Quelo aka Mala Quelo using their machetes.

Ernesto Lafu and Vicente Quelo aka Mala Quelo died directly from their injuries while the militia members thought Serafim Tolo was also dead. The three victims were left on the spot.
- 22. After the attack, a large number of cattle belonging to the villagers was stolen and taken to Passabe.

IV. CRIMINAL RESPONSIBILITY

Individual Criminal Responsibility

The accused are individually responsible for the crimes alleged against them in this Indictment pursuant to Section 14 UNTAET Regulation 2000/15. Under Section 14 individual responsibility results if the individual:

“(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 of the intention of the group to commit the crime;”

(e)...

(f) Attempts to commit such a crime by 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...”

V. PURSUANT TO THE ABOVE THE GENERAL PROSECUTOR CHARGES:

The accused Umbertus Ena aka Mala Cloe and Carlos Ena aka Tolo Cloe:

COUNT 1: CRIME AGAINST HUMANITY: MURDER

By their acts or omissions in relation to the events described in paragraphs 16 to 21 of the present indictment, **Umbertus Ena aka Mala Cloe** and **Carlos Ena aka Tolo Cloe**, are responsible together with others for the murder of Ernesto Lafu and Vicente Quelo aka Mala Quelo from Nakome village, Passabe sub district, Oecussi district, on or around 9th September 1999, as a part of a widespread or systematic attack against a civilian population with 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 they are individually responsible under Section 14 of UNTAET Regulation 2000/15.

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COUNT 2: CRIME AGAINST HUMANITY: ATTEMPTED MURDER

By their acts or omissions in relation to the events described in paragraphs 16 to 21 of the present indictment, **Umbertus Ena aka Mala Cloe** and **Carlos Ena aka Tolo Cloe**, are responsible together with others for the attempted murder of Serafim Tolo from Nakome village, Passabe sub district, Oecussi district, on or around 9th September 1999, as a part of a widespread or systematic attack against a civilian population with knowledge of the attack and thereby committed a **CRIME AGAINST HUMANITY, ATTEMPTED MURDER**, a crime stipulated under Section 5.1(a) of UNTAET Regulation 2000/15 and for which they are individually responsible under Section 14 of UNTAET Regulation 2000/15.

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In Alternative

COUNT 3: CRIME AGAINST HUMANITY: INHUMANE ACTS INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH

By their acts or omissions in relation to the events described in paragraphs 16 to 21 of the present indictment, **Umbertus Ena aka Mala Cloe** and **Carlos Ena aka Tolo Cloe** are responsible with others for inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health against Serafim Tolo on or around 9th September 1999, in Nakome village, Passabe sub district, Oecussi district, as a part of a widespread or systematic attack against a civilian population with knowledge of the attack and thereby committed a **CRIME AGAINST HUMANITY, INHUMANE ACTS INTENTIONALLY CAUSING GREAT SUFFERING OR SERIOUS INJURY TO BODY OR MENTAL OR PHYSICAL HEALTH**, a crime stipulated under Section 5.1(k) of UNTAET Regulation 2000/15 and for which they are individually responsible under Section 14 of UNTAET Regulation 2000/15.

VI. WITNESSES AND EVIDENCE

Pursuant to UNTAET Regulation 2000/30 Section 24.2 as amended by UNTAET Regulation 2001/25, the list of witnesses and evidence that support this indictment is contained in Annex A, which forms an integral part of this Indictment.

VII. REQUEST FOR TRIAL

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

Dated, 5. May 2002


Siri Frigaard

Deputy General Prosecutor for Serious Crimes.



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UNMIS E T

United Nations Mission of Support in East Timor

OFFICE OF THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES



To: The Special Panel for Serious Crimes, District Court of Dili

Case: Prosecutor V. Umbertus Ena aka Mala Cloe and Carlos Ena aka Tolocloe (OE-31-99-SC)

Date: 6-2-03

Matter: Application for Leave to Amend Indictment Pursuant to Section 32 of Regulation 2000/30 as Amended by Regulation 2001/25

The Prosecutor requests that the Special Panel for Serious Crimes make an order granting leave to amend the indictment filed against the accused Umbertus Ena aka Mala Cloe and Carlos Ena aka Tolo Cloe on 5 May 2002, 2001.

Background

The accused persons Umbertus Ena aka Mala Cloe and Carlos Ena aka Tolocloe are currently in detention in Becora prison. The Prosecution filed an indictment against both the accused to the Special Panel for Serious Crimes on the above mentioned date on the charges of crime against humanity- murder (count-1), crime against humanity – attempted murder (count-2), and alternatively crime against humanity –inhuman acts (count- 3) for the acts or omissions in relation to the events described in paragraph 16 to 21 of the above-mentioned indictment. The Prosecutor hereby requests that the count two (crime against humanity –attempted murder) charged against both the accused persons be removed from the indictment and count three (crime against humanity- inhuman acts) be accepted as a main charge of the indictment.

The reason for Amendment

The penal provision made in the Section 10.1(a) UNTAET Regulation 2000/15 empowers the Special Panel to determine the term of imprisonment up to a maximum period of 25 years for the crimes referred in sections 4 to 7 of the same regulation. The term, “Attempted Murder” or “ Attempted Crime” has not been mentioned in any sections 4 to 7.

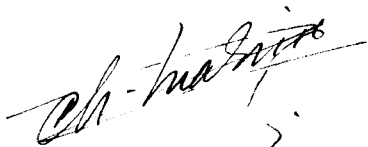
The only provision that deals with attempted crime is Section 14 3(b), (c), (d) and (f) of the UNTAET Regulation 2000/15. However there is ambiguity in the said legal provision in making sure whether the term “ Attempted Murder” comes within the broad ambit of Crimes Against Humanity. The Special Panel has also not defined this specific provision so far.

Assuming that the crime of “Attempted Murder” is an integral part of CrimeS Against Humanity, the question again that leads to ambiguity is the penal provision in determining the extent of the lesser punishment between “Attempted Murder” and “Inhuman Acts” as has been demanded by section 32.4 of Regulation 2000/30. The penal provision provided in the Section 10.1(a) of UNTAET Regulation 2000/15 has not outlined any criteria and left for the judge to

decide the length of imprisonment of an accused depending upon the nature of a case up to the maximum term of 25 years. This has created ambiguity to make sure whether the crime charged under "Count -2" is heavier than the crime mentioned in the "Count -3" or vice versa. Article 53.2 and 4 of the Indonesian Penal Code (IPC) which deals with the attempted crime provides that the maximum of the basic punishment imposed on the crime in case of attempt shall be mitigated by one third, and that additional punishment for attempts are the same as for the completed crimes. One should not anticipate the length of imprisonment unless the Court decides for the same.

The jurisprudence developed by the Special Panel in the cases of Public Prosecutor V Joni Marques and others, Public Prosecutor V Joseph Lekhi, and Public Prosecutor V Mateus Tilman (I) also does not appreciate the provision of alternative count in the serious crimes indictments.

For the above-delineated reasons the Prosecutor requests that the Special Panel for Serious Crimes grants leave to delete the Count-2 from the indictment mentioned above.



Charles Nsabimana
Prosecutor for Serious Crimes

	Date	Received By
Filed in Dili Court		
Served on Defense		

1. The court in the case of *Public Prosecutor V Joni Marques and others* considered that the alternative charges should be lesser offences than the main charge.

In the case of *Public Prosecutor V Joseph Lekhi* a request made by the public prosecutor to amend the indictment in order to present alternative counts to the charges (34-36) was dismissed saying that it was less accurate than the very first one initially submitted (16-1-01)

Likewise in the case of *Public Prosecutor V Mateus Tilman* The court accepted the inclusion of count -3 (serious maltreatment) into count-1 (attempted murder); and count 2 (attempted murder). The court also decided that the count-3 could not be considered as a separate count, considering that the public prosecutor acknowledged count -3 a subsidiary to count -1 and count -2. (24-8-01).



República Democrática de Timor-Leste
TRIBUNAL DISTRITAL DE DILI
CRIMES GRAVES

DISTRICT COURT OF DILI

SPECIAL PANEL for SERIOUS CRIMES

Public Hearing Record

Case: #5/2002 – *The Public Prosecutor Vs. Umbertus Ena (U) and Carlos Ena (C)*

Hearing: Preliminary Hearing

Date: 14th February, 2003

Place: Court of Appeal Building – Court Room

Judge: Sylver Ntukamazina (J)

Public Prosecutor: Charles Nsabimana (PP CN)

Defense Counsels: Siphosami Malunga (DC SM) and Pamela Reusch (DC PR)

Interpreters: Johanes Naro and Donna Baker

Transcriber: Elizabeth Muigai

TIME: 9:40 A.M.

J: All the parties are ready so the Special Panel for Serious Crimes continues with the hearing of Case No. 5/2002 - *The Public Prosecutor Versus Umbertus Ena and Carlos Ena*.

This session is open to the public.

DC SM: Please Your Honour, Umbertus Ena speaks Baiqueno.

J: During the last hearing we had been informed that the witnesses speak Baiqueno so we would like the translator to translate from Baiqueno to Tetum and vice versa.

First is the issue of the extension of the detention of the accused persons and so it is up to the Defense to provide the Court with the authorities cited during the last hearing in order for the Court to finish our decision but I don't see anything in the file. The Defense, did you submit the authorities requested by the Court?

DC SM: Honourable Judge, we overlooked to submit the authorities but with the permission of the Court I could go and make copies and submit them to the Court now.

J: If you could do it by today because the Court would like to hear the matter today.

DC SM: Thank you Honourable Judge, I will do it.

J: The second issue is the issue of amendment of the indictment. We received an application from the Prosecution for it to amend the indictment pursuant to Section 32 of UNTAET Regulation 2000/30 as amended by Regulation 2000/35. The Prosecution is seeking from the Court to grant leave to amend the indictment in order to remove from the indictment Count Two relating to the crime against humanity, attempted murder and Count Three relating to inhuman acts as crimes against humanity. We accept the main charge of the indictment and not as an alternative as in the present indictment. Did the Defense receive a copy of the application from the Public Prosecutor?

DC SM: Yes we did.

J: The Public Prosecutor, do you have anything?

PP CN: We have no objection.

J: This Court has decided to grant leave to amend the indictment and thus the amendment is admitted as proposed by the Prosecution - we do now only have 2 counts – the first count is the count of murder but the first crime is the crime of murder as a crime against humanity and count 2 inhuman acts causing great suffering or serious injury to mental and physical health as crimes against humanity. What was count 2 (attempted murder against humanity) is removed from the indictment. We are going to proceed on the basis of the amended indictment by the Public Prosecutor. We are requesting the Public Prosecutor to submit all the file – the new written indictments.



The accused, Umbertus Ena can you please stand up. Do you understand the nature of the indictment against you? Did you read the indictment or did someone read it to you?

U: My saying is this: I had said that I am only a small man and there were people who wanted to kill me and I was defending myself so that I could live.

J: Mr. Umbertus Ena, you will have an opportunity to express yourself – to make a statement if you wish to do so. But now, the Court wants to be sure that you read the indictment and that you understand the nature of the charges against you. Last time, during the last hearing, we had the opportunity to check whether your rights to legal counsel had been respected and whether you had some opportunity to discuss with the your counsel in respect to the charges against you and now we want to move ahead and check if you understand everything with respect to the charges against you.

Did you read the indictment against you submitted by the Public Prosecutor?

U: Can I speak?

J: Yes please.

U: Would you like me to answer the first one or do you want me to speak now?