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United Nations Mission of Support in East Timor

OFFICE OF THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

DISTRICT COURT OF DILI

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

CASE NO: 151 /2002

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**INDICTMENT**

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**THE DEPUTY GENERAL PROSECUTOR**

**FOR SERIOUS CRIMES**

**-Against-**

**DAMAIO DA COSTA NUNES AKA DAMIANUS**

## I. INDICTMENT

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

**DAMAIO DA COSTA NUNES AKA DAMIANUS**

WITH

**CRIMES AGAINST HUMANITY OF:**

**MURDER**

as set forth in this indictment .

## II. NAME AND PARTICULARS OF THE ACCUSED

1. Name: Damaio Da Costa Nunes aka Damianus  
Place of birth: -  
Age/Date of birth: -  
Sex: Male  
Nationality: East Timorese  
Address: presently in Becora Prison  
Occupation:

## III. INTRODUCTORY STATEMENT OF FACTS

1. A Widespread or systematic attack was directed 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*) with the acquiescence and active participation of civilian and military authorities.

3. In 1999, 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 Integrasi*) under the command of Joao Tavares and Eurico Guterres was the umbrella organization under which these militia groups were organized. It had the backing of the TNI and the Civil Administration. PPI Commanders issued, called upon and incited militia groups and their members to intimidate independence supporters and those perceived to support them. The militia groups participated in the widespread or systematic attacks 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 livestock belonging to the civilian population.
6. The widespread or systematic attacks 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 the terms of the 5 May 1999 Agreements, between the Republic of 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 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 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.
10. Covalima is one of the thirteen districts of East Timor and is comprised of five sub-districts namely, Suai Sub-District, Tilomar Sub-District, Fatumean Sub-District, Fatululik Sub-District and Zumalai Sub-District.

11. Between January 1999 and October 1999 the Laksaur Militia group operated throughout Covalima District. It comprised of hundreds of members. The Laksaur Militia operated in collaboration with units of the TNI and the POLRI in Covalima. During this period members of the Laksaur Militia carried out acts of violence directed against civilians who were perceived to be members or supporters of FALINTIL (Forças Armadas De Libertacao Nacional De Timor Leste: Armed Forces for the Liberation of East Timor), supporters of independence or linked to or sympathetic to the independence cause. The attack included acts of intimidations, threats, unlawful detention, arsons, murders, forcible deportation and other acts of persecution.
12. Damaio Da Costa Nunes aka Damianus was a Platoon Commander and/or a member of the Laksaur Militia group, and he carried out his militia activities jointly with other members of the Laksaur Militia and members of the TNI.

#### **IV. STATEMENT OF FACTS**

##### **Murder of Jaime Da Costa Nunes**

13. Jaime Da Costa Nunes, was a known supporter of independence. In 1999, Jaime Da Costa would go to villagers to encourage them to vote for the independence of East Timor. Members of the Laksaur militia were aware of the independence activities of Jaime Da Costa Nunes, and wanted to kill him.
14. On or about 24 June 1999 the male villagers of Mota Ulun including Jaime Da Costa Nunes were told by the village chief to go to the militia headquarters in Belulik Leten where the Laksaur militia were raising the Indonesian flag. At the militia headquarters, Jaime Da Costa Nunes was beaten by members of the Laksaur militia.
15. On or about 25 August 1999, Jaime Da Costa Nunes and another villager were tasked to deliver voting cards to all the villages in Fatumean. They were told to give the voting card to all clandestine members .
16. On or about 25 August 1999, Jaime Da Costa Nunes and the other villager left the Suai Church compound, where they were hiding and proceeded to Mota Ulun, Belulik Leten. On or about 26 August 1999, they arrived in Mota Ulun Sub Village, where they delivered the cards to Raimundo Mali and Martino Do Rego before they proceeded to Aisik Village.
17. On 26 August 1999, members of the Laksaur militia including Damaio Da Costa Nunes went to the home of Jaime Da Costa Nunes looking for him.

18. On or about 27 August 1999 about 7 o'clock in the morning, Jaime Da Costa Nunes was hiding in the bushes in Aikfotu area in Mota Ulun sub-village. Members of the Laksaur militia group including Damaio Da Costa Nunes , Jose Pereira aka Manek Pahak and Manuel Luan together with a villager were walking down the road when Damaio Da Costa Nunes saw Jaime Da Costa Nunes hiding. Damaio Da Costa Nunes and the other militia members present were all armed with swords.
19. Damaio Da Costa Nunes dragged Jaime Da Costa Nunes out of the bushes and onto the pathway. Damaio Da Costa Nunes then held Jaime Da Costa Nunes tightly across his body while Jose Pereira aka Manek Pahak aka Manek Casa cut him across his forehead. Damaio Da Costa Nunes then held Jaime Da Costa by the arms whilst Jose Pereira aka Manek Pahak aka Manek Casa stabbed Jaime Da Costa Nunes. Damaio Da Costa Nunes then pushed Jaime Da Costa Nunes into the bushes. Jaime Da Costa Nunes died as a result of his injuries.
20. After the killing of Jaime Da Costa Nunes, Damaio Da Costa Nunes ordered all the villagers from Mota Ulun not to use the pathway where the killing had taken place.

#### **Murder of Albino Nahak aka Albino De Neri**

21. After the announcement of the results of the popular consultation members of the Laksaur Militia commenced the forcible transfer and/or deportation of the civilian population in and around Cova Lima District to West Timor. The militia also went to the mountains to track down civilians who were hiding there who were then forcibly transferred or deported to West Timor.
22. Sometime in September 1999, members of the Laksaur Militia ordered villagers to go to West Timor. On or about 6 September 1999, Albino Nahak aka Albino De Niri was together with several other villages waiting by the side of the road in Suai for transportation to go to West Timor.
23. Whilst the villagers were waiting by the side of the road, members of Laksaur militia Baltazar Da Costa Nunes aka Baltazar Moruk and Damaio Da Costa Nunes arrived on a motorcycle. Baltazar Moruk and Damaio Da Costa Nunes were armed with a gun and a knife respectively. When the militia arrived, Damaio Da Costa Nunes identified Albino Nahak aka Albino De Niri as a pro-independence supporter.
24. Damaio Da Costa Nunes then handcuffed Albino Nahak aka Albino De Niri's hands behind him and took him away on the motorcycle. Albino Nahak aka Albino De Niri was made to sit in between Baltazar Moruk and Damaio Da Costa Nunes on the motorcycle and they drove away. Albino Nahak aka Albino De Niri was never seen again. Sometime after 6 September 1999, family members of Albino Nahak aka Albino De Niri were informed that he had been killed.

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25. On or about 15 October 1999, family members of Albino Nahak aka Albino De Niri located his remains in Legore Village in Suai Sub-District and buried them

### Murder of Jose Dos Reis

26. Jose Dos Reis was a clandestine supporter of Falintil and provided assistance to Falintil who were hiding in the mountains. The militia became aware of the clandestine activities of Jose Dos Reis. During the month of April 1999, members of the Laksaur militia were looking for Jose Dos Reis. Sometime in April 1999, members of the Laksaur Militia found Jose Dos Reis at his house and arrested him. He was taken to the Militia Headquarters in Legore. Later, on the same day, Jose Dos Reis was returned back to his home by members of the Laksaur militia.
27. On or about 5 September 1999 members of the Laksaur militia went to Mata Air village, where they ordered all the villagers to leave the village and go to West Timor because the militia was going to burn down all the houses. All the villagers fled from their homes and sought refuge in the Electrical Compound in Mata Air Village. At the material time, Jose Dos Reis and his family were hiding in the house of a villager, Victor Laku.
28. On or about 7 September members of the Laksaur militia including Damaio Da Costa Nunes arrested Jose Dos Reis from the house of Victor Laku and took him to the house of a TNI member, Rahul Halek, which was next to Victor Laku's house. There, Jose Dos Reis was tied up and interrogated as to why he had not left East Timor and gone to West Timor. Jose Dos Reis told the militia that East Timor was his land and he would live or die only in East Timor. Jose Dos Reis was then severely beaten by the militia.
29. Jose Dos Reis was then carried and placed inside the truck. Some members of the militia and TNI present got into the truck and drove away, and the others followed the truck on motorbikes. They were going in the direction of Maucatar village.
30. En route to Maucatar Village, the truck stopped. Members of the Laksaur Militia including Damaio Da Costa Nunes dragged Jose Dos Reis out of the truck and took him to a nearby corn plantation.
31. At the plantation, Damaio Da Costa Nunes stabbed Jose Dos Reis in his chest with a knife and Simao Nahak, a TNI member, hit him on his back with his rifle. Jose Dos Reis died as a result of the attack.

## 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*
  - (ii) 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 Damaio Da Costa Nunes

Counts 1 to 3

**Count 1. Crime Against Humanity: Murder**

By his acts or omissions in relation to the events described in paragraphs 13 to 20 (inclusive), **Damaio Da Costa Nunes** is responsible for the murder of Jaime Da Costa Nunes, on or about 27 August 1999 in Mota Ulun Village, Covalima District as 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 he is individually responsible under Section 14 of UNTAET Regulation 2000/15.

**Count 2. Crime Against Humanity: Murder**

By his acts or omissions in relation to the events described in paragraphs 22 to 25 (inclusive), **Damaio Da Costa Nunes** is responsible for the murder of Albino Nahak aka Albino De Niri, on or about 6 September 1999 in Suai Sub-District, Covalima District as 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 he is individually responsible under Section 14 of UNTAET Regulation 2000/15.

**Count 3. Crime Against Humanity: Murder**

By his acts or omissions in relation to the events described in paragraphs 26 to 31 (inclusive), **Damaio Da Costa Nunes** is responsible for the murder of Jose Dos Reis, on or about 7 September 1999 in Maucatar Village, Covalima District as 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 he is individually responsible under Section 14 of UNTAET Regulation 2000/15.

**VIII. LIST OF VICTIMS**

The list of victims and the list of evidence, which form part of this indictment are attached as Annex "A" and Annex "B" respectively.

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## 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      day of December 2002



**Siri Frigaard**  
Deputy General Prosecutor For Serious Crimes