

Documents from the Indonesian Ad Hoc Tribunal for East Timor
Defendant Adam Damiri Judgment
J U D G M E N T

NO. 09/PID.HAM/AD.HOC/2002/PH.JKT/PST

"FOR JUSTICE, BASED ON THE ONE AND ONLY GOD"

Human-Rights Ad. Hoc Court at Central Jakarta Human-Rights Court, presided and ruled over the criminal case of Grave Human Rights Violations in East Timor at the first instance according to the Regular Procedure, has pronounced the judgment as follows, in the case of the Defendant:

Full Name : ADAM R. DAMIRI
Place of Birth : Jakarta
Age/ Date of Birth : 54 years/ 20th of November 1949
Sex : Male
Nationality : Indonesian
Address : Komplek MABES TNI, Jati Karya,
(Bekasi)
Religion : Islam
Occupation : Member of TNI-AD
(The Indonesian Army)
Rank/NRP (Soldier's Registration
Number : Major General of the TNI-AD
NRP 25109
Post : Asops Kasum TNI/ Former
PANGDAM IX/ UDAYANA
(Military Territorial Commander)
Education : AKABRI Darat (the Indonesian Armed
Forces Academy- the Army)

The Defendant has never been detained;

The Defendant was defended by the Team of Attorneys: HOTMA SITOMPUL, SH, and associates, on the 10th of July 2002, and the Team of Ad vocation for TNI Officers and the Team of Ad vocation for POLRI (the Indonesian Police) Officers; Col. TNI. CHK. AD. SETIAWAN, SH., MBA., and associates, on the 8th of July, 2002;

The Human-Rights Ad. Hoc Court:

After reading the dossiers related to the case;

After reading the Decision of the Head of the Central Jakarta Human-Rights Court , No. 09/PID.HAM/AD. HOC/2002/PH.JKT.PST, dated on the 2nd of July 2002, on the appointment of the Panel of Judges to preside and rule over the case;

After reading the Decision of the Head of the Panel of Judges No. 09/PID.HAM/AD.HOC/2002/PH.JKT.PST, dated the 4th of July 2002, on the settlement of court hearing sessions;

After listening to the reading of the Indictment (Surat Dakwaan) by the Ad. Hoc Public Prosecutor, Case Registration Number: 09/HAM/TIM-TIM/07/2002, dated the 1st of July 2002;

After listening to the reading of the Objections (Surat Keberatan) by the Attorneys of the Defendant, on the 17th of July 2003;

After listening to the reading of the Replies (Surat Tanggapan) of the Ad. Hoc Public Prosecutor, dated on the 24th of July 2003;

After reading the Intermediate Decision (Putusan Sela) No. 09/PID.HAM/AD.HOC/2002/PH.JKT.PST, of the Panel of Judges in the court hearing on the 31st of July 2002, in the order as follows:

1. Declaring the Objections of the Team of Attorneys of the Defendant could not be accepted.
2. Declaring the Indictment of the Public Prosecutors of the Ad. Hoc Court read on the 10th of July 2002, has met the requirements and therefore has been accepted as the source of the examination of the case;
3. Declaring the Human-Rights Ad. Hoc Court to continue the examination of the case of the Defendant, ADAM R. DAMIRI;

After hearing:

The Criminal Indictment of the Ad Hoc Public Prosecutor, read on the 5th of June 2003 with the order of Indictment as follows:

C H A R G E S

The Panel of Judges of the Human-Rights Ad. Hoc Court at the Central Jakarta Human-Rights Court presided and ruled over the case, to decide:

1. Declaring the Defendant ADAM R. DAMIRI has not been proven guilty of committing Grave Human Rights violations as stated in the First and Second Indictments (Vrijspraak);
2. Declaring the evidence in the form of sharp weapons and homemade firearms to be destroyed;
3. Letters in the form of photo-copies and video-cassettes to be presented as evidence for other cases (reserved at the Secretariat of Human Rights Task Force of RI Attorney General Office);
4. Impose the financial charge of the court to the state;

Considering, after hearing the Plea of the Defendant read before the court pleading the panel of Judges to decide the charges indicted on the Defendant have not been legally and convincingly proven, therefore to free the Defendant of all charges, and after hearing the Plea of the Team of Attorneys of the Defendant, thoroughly explained in the Defense (Pleidoi) read on the 1st of July 2003 which mainly stated that the Panel of Judges to decide:

1. Declaring the Defendant has NOT been legally and convincingly proven guilty based on the law, of committing criminal acts of Grave Human Rights Violations as charged in the Indictment of the Ad. Hoc Public Prosecutors;
2. Declaring, therefore FREE the Defendant of all charges indicted by the Ad. Hoc Public Prosecutor;
3. Restoring the honor, rights and dignity of the Defendant to the rightful status prior to the

case;

4. Imposing the financial charges of the court to the state;

Considering, in accordance with the Indictment of the Ad Hoc Public Prosecutor dated on the 1st of July 2002, Case Registration Number: 09/HAM/TIM-TIM/07/2002, the Defendant has been charged with indictments as follows:

FIRST:

That the Defendant ADAM R. DAMIRI as the Military Territorial Commander (PANGDAM) IX/ UDAYANA assigned since the 15th of June 1998 until the 27th of November 1999, during the unconfirmed days and dates between April 1999 and September 1999, at the Military Territorial Command Headquarters (KODAM) IX/ UDAYANA in Denpasar, Bali, or at least, in a place within the jurisdiction of the Republic of Indonesia, in which the Human-Rights Ad. Hoc Court at the Central Jakarta District Court has been authorized to preside and rule over the case of the Defendant, based on the article 2, of the Presidential Decree {KEPPES (sic!)} No. 96 of the year 2001 dated the 1st of August 2001 on the Change/Amendment of the RI Presidential Decree No. 53 of the year 2001 on the establishment of the Human Rights Ad. Hoc Court at the Central Jakarta District Court. That the Defendant as the Military Commander or the one who effectively acted as the Military Commander, knew, or based on the condition of the time, should have known; that the troops under his effective command and control, had been committing or just committed grave Human Rights violations, in the form of murders, as part of the spreading and systematic attacks directly aimed at civilians, as the result of the lack of adequate control, while the Defendant did no adequate and necessary actions within his power to prevent or to stop the crime, nor hand over the perpetrators to the authorized officials for examinations, investigations and prosecutions of the crimes committed by the Defendant in ways as follows:

I. That the Defendant as the PANGDAM IX/ UDAYANA, who had duty and authority, among others:

a. As the Commander in Chief:

- Maintain and improve disciplines, regulation and order, of all the soldiers under his commands.
- Maintain and improve the technical skills of the soldiers.
- Improve the welfare of the soldiers and their families.

b. As the Commander in Chief of Operations:

- Organize security operations within his area of jurisdiction.
- Organize and carry out duties in the Garrison (Garnisun).
- Lead and coordinate MUSPIDA (the Local Community Leaders) under his jurisdiction.
- Control the management of territorial establishment.

That as the PANGDAM IX/ UDAYANA, the Defendant ADAM R. DAMIRI, supervised several Military Post Command (KOREM), including; KOREM 164 Wira Dharma, East Timor.

While KOREM 164 Wira Dharma, East Timor, supervised 13 Military District Command (KODIM), including:

- KODIM Liquisa;

- KODIM Dili;
- KODIM Covalima

II. On the 6th of April 1999, in Liquisa, the Pro-Integration's Merah Putih (Red and White) Group led by Manuel Sausa and Jose Affat, carrying sharp weapons and firearms, joined in by about 100 (one hundred) members of TNI soldiers, made the attacks against civilian refugees sheltering at Liquisa Church and the residence of Pastor (Father) Rafael Dos Santos. Among the TNI members who joined in the attacks include:

1. JOSE MATHEUS
2. TOME DIEGO
3. ABILIO ALVES
4. CARLOS (DANRAMIL/Military District Commander of Maubara)
5. ANTONIO GOMES
6. ISAK DOS SANTOS
7. GEORGE VIEGAS
8. MAURISIO
9. JEFERINO
10. ZACARIAS
11. MANUEL MARTINS
12. JACOB

The result of the attacks was that more or less than 22 (twenty two) civilians died, including:

1. JACINTO DA COSTA
2. AGUSTINHO
3. JOAMICO
4. ABRAO DAS SANTOS
5. AGUSTO MOUZINHO
6. AMEKO DAS SANTOS
7. NARSIZO
8. HERMINO DAS SANTOS
9. FERNANDO DAS SANTOS
10. LAURINDO DAS PEREIRA
11. MERIKI DAS SANTOS
12. MANUEL LISBRA
13. VICTOR DA COSTA
14. ALBERTO OLIVEIRA
15. AMANDIO CESAR DAS SANTOS
16. CESAR DAS SANTOS
17. JHONY MAU SAKO
18. LAURINDA DAS SANTOS
19. AGUSTINO DAS SANTOS
20. SANTIAGO
21. The Grave of an anonymous Victim of Liquisa incident, at Maubara cemetery.
22. The Grave of an anonymous Victim of Liquisa incident, at Maubara cemetery.

III. On Saturday, the 17th of April 1999, AITARAK and the Pro-Integration Group organized a big rally in front of the East Timor Governor Office, attended by East Timor Governor Abilio Jose Osorio Soares, Dominggus Soares, Mathius Mai, Jose Da Silva, Tavares as the Commander of PPI, and Eurico Guterres as the representative of PPI and the second speaker, who, through live-broadcast on Dili radio, delivered, among others, "commandoes," such as follows:

- All CNRT leaders should be exterminated/ killed

- Pro-Independence people should be killed
- Kill Manuel Viegas Carascalao
- Carascalao family should be killed

After the rally ended, they made spreading and systematic attacks, first, on the residence of Leandro Isaac, after doing abuses and burning properties at the house of Leandro Isaac, they continued by attacking the house of Manuel Viegas Carascalao on Jl. Antonio De Carvalho No. 13, Dili, in which Manuel Viegas Carascalao sheltered refugees from around Dili, including from Maubara, Liquisa, Turiscal, Alas, and Ainaro, who reached more or less than 136 (one hundred and thirty six) people, the attacks were committed by Aitarak, the Pro-Integration Militia, and members of TNI troops using automatic guns, as well as sharp weapons of various kinds. The assailants include:

1. JOSE MATHEUS
2. THEOFILO DA SILVA
3. ANTONIO BESKAU
4. ANTONIO GOMES
5. MIGUEL
6. DUARTE
7. CARLOS AMARAL
8. BALITZAR

The result of the attacks was that several victims died, including:

1. MARIO MANUEL VIEGAS CARASCALAO (MANELITO)
2. RAUL DAS SANTOS CANCELA
3. ALFONSO RIBERIO
4. RAFAEL DA SILVA
5. ALBERTO DAS SANTOS
6. JOAO DOS SANTOS
7. ANTONIO DOS SOARES
8. AGUSTINO B. X. LAY
9. CRISTANTO DAS SANTOS
10. EDUARDO DE JESUS
11. JUANIRO PEREIRA
12. CESAR DOS SANTOS

IV. - After the announcement of the People's Consultation/ Ballot on the 4th of September 1999, which confirmed the loss of the Pro-Integration party, the resentment of the Pro-Integration party led to the tortures and murders of the Pro-Independence people.

- The refugees kept coming to shelter at POLDA (the Provincial Police Headquarters) in Dili, Dili harbor compound, and other places considered safe by the refugees.
- The coming refugees could not be differentiated as those from the Pro-Integration or those from the Pro-Independence, as in the chaotic situation, the masses crowding the harbor struggled to find their way to immediately leave East Timor. Moreover, the occurring sound of repeated gunshots created panic among the refugees crowding the harbor.
- The incident made some refugees run towards Diocese Dili located right in front of Dili harbor.

On Sunday, the 5th of September 1999, Diocese Dili (the office of Bishop Bello) was attacked by the masses of the Pro-Integration, started with the physical clashes when the Pro-Integration Group checked on every youth of the Pro-Independence trying to leave East Timor by ships through Dili harbor. The clashes quickly spread along the Kelapa (Coconut)

Beach (outside Dili Harbor) towards the gathering place of the Pro-Independence youth sheltering at Diocese Dili. The Pro-Integration youth, along with members of TNI troops coming from various places throughout Dili, made the attacks against the Pro-Independence youth resulting in the unconfirmed number of victims, an estimated 20 people died in the incident including a person named NUNU.

5. That on Monday, the 6th September 1999, members of the Pro-Integration people crowded around Ave Maria Catholic Church, in Suai, joined in by members of TNI troops, including:

1. Colonel HERMAN SEDIONO (Covalima Regent)
2. Major AHMAD SAMSUDIN (Chief of Staff of KODIM Covalima/ KASDIM)
3. Captain SUGITO (Sub-district Military Commander/DANRAMIL)
4. Second Sergeant AMERICO SERANG, a member of KODIM Covalima
5. Second Sergeant ALARIO PEREIRA, a member of KODIM Covalima
6. Chief Private ALFREDO AMARAL, a member of KODIM Covalima

Made the attacks against the Pro-Independence Group sheltering inside the Ave Maria Church, Suai, causing more or less than 27 people died, including 3 (three) priests who were;

1. Pastor TARSISIUS DEWANTO
2. Pastor HILARIUS MADEIRA
3. Pastor FRANSISCO SOARES

(According to the reports on the grave excavation and autopsies made by the Forensic Department of the Faculty of Medicine, University of Indonesia/FK.UI No. TT.3002/SK:II/XI/1999)

6. That the acts of attack resulting in the deaths of several civilians became part of the spreading and systematic attacks aimed directly at East Timor civilians, and therefore they were considered as Grave Human Rights violations.

7. That the Defendant as PANGDAM IX /UDAYANA knew or, based on the situation at the time, should have known, that some of the TNI members on duty in East Timor had committed Grave Human Rights violations, but did not try to prevent or stop the act of attacks or hand over the perpetrators to the authorized officials for examinations, investigations, and indictments.

The actions of the Defendant have violated the Regulation Article 42 paragraph (1) a and b jis, Article 7 b, Article 9 a, Article 37 Law No. 26 of the year 2000 on Human Rights Court.

SECOND:

That Defendant ADAM R. DAMIRI as the Military Territorial Commander IX/ UDAYANA, who had been assigned since the 15th of June 1998 until the 27th November 1999, in the times and places as mentioned in the FIRST Indictment, the Defendant who knew, or based on the condition at the time, should have known, that the troops under his command and control had been committing or just committed Grave Human Rights violations in East Timor area, which were considered as crimes against humanity in the form of abuse of a certain group of people or an organization established on similarities of political understandings, race, ethnic, culture, religion, sex, or other basis, which have been universally acknowledged as the acts that violated the International Law as the result of the lack of adequate control over the case, while the Defendant did not make adequate and necessary actions within his power to prevent or stop the crimes, or hand over the

perpetrators to the authorized officials to do the examinations, investigations and indictments, in which actions, the Defendant had committed in ways as follows:

1. That the Defendant as the PANGDAM IX/UDAYANA, who had the military power in East Timor province, had duty and authority, among others:

a. As the Commander in Chief:

1. Maintain and improve discipline, regulation and order, of all the soldiers under his commands
2. Maintain and improve technical skills of the soldiers
3. Improve the welfare of the soldiers and their families

b. As the Commander in Chief of Operations:

1. Organize security operations in his area of jurisdiction
2. Organize and carry out duties of the Garrison
3. Lead and coordinate MUSPIDA under his jurisdiction
4. Control the management of the territorial establishment

As the PANGDAM IX/UDAYANA, Defendant ADAM R. DAMIRI, supervised several KOREM, including KOREM 164 Wira Dharma, East Timor.

While KOREM 164 Wira Dharma, East Timor supervised 13 KODIM, including:

5. KODIM Liquisa;
6. KODIM Dili;
7. KODIM Suai;

2. On the 6th of April 1999, in Liquisa, the Pro-Integration Group's Besi Merah Putih led by Manuel Sausa and Jose Affat, carrying sharp weapons and firearms, joined in by about 100 (one hundred) members of TNI army, attacked civilian refugees sheltering in Liquisa Church and the residence of Pastor Rafael Dos Santos. Among the TNI members who joined in the attacks, include:

1. JOSE MATHEUS
2. TOME DIEGO
3. ABILIO ALVES
4. CARLOS (DANRAMIL of Maubara)
5. ANTONIO GOMES
6. ISAK DOS SANTOS
7. GEORGE VIEGAS
8. MAURISIO
9. JEFERINO
10. ZACARIAS
11. MANUEL MARTINS
12. JACOB

As the result of the attacks, there were injured victims from the tortures, and on the part of the Pro-Independence, there were as many as 21 (twenty-one) people wounded, including:

1. FRANSISCO DAS SANTOS
2. JOAO PARERA
3. JOAMICO
4. JOSE RAMOS

5. JOSE NUMES SERRAO
6. LUCAS SOARES
7. MATEUS PANLERO
8. LUCAS DAS SANTOS
9. RICARDO RODRIQUES PEREIRA
10. LAKUMAO
11. JANUARY
12. JOAO DAS SANTOS
13. JOAO KUDA
14. ARMANDO
15. ANTONIO
16. LUIS
17. EMILIO
18. SEBASTIAN
19. RAMERIO
20. MATIUS ALVES COREIRA
21. FELIS

3. On Saturday, the 17th of April 1999, Aitarak and the Pro-Integration Group organized a big rally in front of the East Timor Governor's Office, attended by East Timor Governor Abilio Jose Osorio Soares, Dominggus Soares, Mathius Mai, Jose Da Silva, Tavares as the Commander of PPI, and Eurico Guterres as a representative of PPI and the second speaker in the event, who, through live-broadcast in Dili radio, delivered, among others, "commandoes" as follows:

1. All CNRT leaders should be exterminated/ killed
2. Pro-Independence people should be killed
3. Kill Manuel Viegas Carascalao
4. Carascalao family should be killed

After the rally ended, they made spreading and systematic attacks, first, at the residence of Leandro Isaac, and after doing tortures and burning properties at the residence of Leandro Isaac, they continued to attack the residence of Manuel Viegas Carascalao on Jl. Antonio De Carvalho No. 13, Dili, in which Manuel Viegas Carascalao sheltered refugees from around Dili, including from Maubara, Liquisa, Turiscal, Alas and Ainaro, who reached more or less than 136 (one hundred and thirty six) people, the attacks committed by AITARAK, the Pro-Integration troop, joined in by members of TNI army, using automatic shotguns also sharp weapons of various kinds. Among those who joined in the attacks, include:

1. JOSE MATHEUS
2. THEOFILO DA SILVA
3. ANTONIO BESKAU
4. ANTONIO GOMES
5. MIGUEL
6. DUARTE
7. CARLOS AMARAL
8. BALTIZAR

As the result of the attacks, there were wounded victims, the tortures by the Pro-Integration party victimized, among others:

1. VICTOR DOS SANTOS (APIN)
2. ALFREDO SANCHES
3. FLORINDO DE JESUS
4. BETINDO MBOQUEQUE

5. JOAO JUNIOR

6. NIKI

4. - After the announcement of the People's Consultation/ Ballot on the 4th of September 1999, which resulted in the loss of the Pro-Integration party, the resentment of the Pro-Integration party led to tortures and murders of the Pro-Independence people.

- The refugees kept coming to shelter at POLDA Headquarters' compound in Dili, Dili Harbor compound, and other places considered safe by the refugees.

- The coming refugees could not be differentiated as those from the Pro-Integration or those from the Pro-Independence, as in the chaotic situation, the masses crowding the harbor struggled to find their way to immediately leave East Timor. Moreover, the occurring gunshots had increased panic among the refugees crowding the harbor.

- That incident made several refugees run towards Diocese Dili located right in front of the Harbor.

On Sunday, the 5th of September 1999, Diocese Dili (the office of Bishop BELLO) was under attacks by masses of the Pro-Integration, started with the physical clashes when the Pro-Integration Group conducted checks on every youth of the Pro-Independence trying to leave East Timor by ships through Dili harbor. The clashes quickly spread toward the street alongside Kelapa Beach (outside Dili harbor), leading to the gathering place of the youth from the Pro-Independence party sheltering in Diocese Dili. The youth of the Pro-Integration, joined in by members of TNI troops from throughout Dili led (sic) to a number of wounded victims, including:

1. LILI, who was about 10 years old
2. NELIO MASQUITA
3. DACOSTA REGO
4. NONATO SOARES
5. JOAO BERNANDINO SOARES

5. On Monday, the 6th of September 1999, there were attacks and burning of properties at Diocese Dili and the residence of Bishop Carlos Felipe Ximenes Bello, SDB, committed by the Pro-Integration Group, joined in by members of TNI troops, during which time, there were a large number of civilian refugees sheltering at Diocese Dili and the residence of Bishop Carlos Felipe Ximenes Bello, SDB.

6. The acts of attacks that led to the killings of civilians were parts of the spreading and systematic attacks aimed directly at the East Timor civilians and were considered as Grave Human Rights violations.

7. The Defendant as the PANGDAM IX/UDAYANA knew, or based on the situation at the time, should have known that some members of TNI on duty in East Timor had committed Grave Human Rights violations, but did not try to prevent or stop the attacks, or hand over the perpetrators to the authorized officials to do the examinations, investigations, and indictments.

The Defendant has violated the regulation Article 42 paragraph (1) a and b jis, Article 7 b, Article 9 h, Article 40 of the Law No. 26 of the year 2000 on Human Rights Court.

Considering, in the effort to prove the indictments, the Ad. Hoc Public Prosecutor had

presented and had shown before the court, the evidence, which were sharp weapons and homemade firearms, also letters in the form of photo-copies, and a video-cassette, and visum et repertum (autopsy) reports;

Considering, besides that, the Ad. Hoc Public Prosecutor had also presented 30 witnesses, including a de charge witnesses, also 6 expert witnesses to appear in court, whose names were proposed by the Attorneys of the Defendant, as well as by the Ad. Hoc Public Prosecutors, they are namely:

Witness 1 MANUEL VIEGAS CARASCALAO
Witness 2 Lieut. Gen. (Ret.) KIKI SYAHNAKRI
Witness 3 Maj. Gen. ZAKI ANWAR MAKARIM
Witness 4 Lieut. Col. TNI. LILIK KOESHADIYANTO
Witness 5 Col. TNI. M. NOER MUIS
Witness 6 Brig. Gen. TNI. TONO SURATMAN
Witness 7 Gen. TNI. (Ret.) WIRANTO
Witness 8 Lieut. Col. In. ASEP KUSWANI
Witness 9 LEONITO MARTINS
Witness 10 Lieut. Col. In. SOEDJARWO
Witness 11 Col. In. (Ret.) Drs. HERMAN SEDYONO
Witness 12 Maj. In. SUGITO
Witness 13 AKBP. Drs. ADIOS SALOVA
Witness 14 a de Charge BRIPKA Police MAKARAU
Witness 15 a de Charge Maj. In. SALMON MALAVE
Witness 16 a de Charge Police Capt. JOHN REA
Witness 17 a de Charge YAYAT SUDRADJAT
Witness 18 Capt. In. DJOKO WALUYO
Witness 19 RAFAEL DOS SANTOS (his testimony was presented through a teleconference on 23rd of January 2003)
Witness 20 Asst. to the 1st Lieut. (Peltu) CARLOS AMARAL
Witness 21 Sgt. Maj. TNI. RAYMUNDO DOS SANTOS
Witness 22 Maj. In. HARTONO, former Section Chief (Kasi) of Operations, KODIM Dili.
Witness 23 Brig. Gen. TNI. WIDYA BAGYA
Witness 24 I KETUT MURTIKA, SH.
Witness 25 Brig. Gen. Drs. G. M. TIMBUL SILAEN
Witness 26 Mgr. CARLOS FILIPE XIMENES BELLO SDB
Witness 27 ABILIO JOSE OSARIO SOARES BAP
Witness 28 AKBP Police Drs. HULMAN GULTOM
Witness 29 Air Force Maj. Gen. (MARSDYA) TNI. (Ret.) TAMTAMA ADI
Witness 30 Lieut. Col. Drs. GATOT SUBIYAKTORO

The Expert Witnesses are as follows:

Witness 1 Dr. A.S.S. TAMBUNAN, SH.
Witness 2 Prof. Dr. MULADI, SH.
Witness 3 Dr. DODI HARYADI
Witness 4 Brig. Gen. TNI. (Ret.) PLT. SIHOMBING, SH. LLM.
Witness 5 Prof. H. A. S. NATABAYA, SH.
Witness 6 SAJIDIMAN SURJOHADIPRODJO

Considering, besides the testimony of the witnesses, the testimony of the Defendant had been heard before the court.

Considering, the Ad Hoc Public Prosecutor had presented witnesses who made their testimony under oath based on their respective religion, mainly stated as follows:

Witness 1 MANUEL VIEGAS CARASCALAO

- That the witness was assigned as a member of the East Timor's Provincial Legislative Council (DPRD TK. I) since 1980 until 1992, from GOLKAR Faction.
- That the incident on the 17th of April 1999, at the witness' residence happened when at that time, there were 136 refugees coming from several areas, among others, from Samin, Ainaro and Maubara.
- That they took refuge because they were attacked, some were threatened to be killed, so they ran away to Dili, as they felt they were safer in Dili;
- That the witness' observation was that they were attacked by Militia, there were several groups of Militia, but the witness did not know exactly which groups committed the attacks;
- That at the time, the witness had gone to pick up his wife at the airport, the witness received a phone call from his son Manelito from home, the witness received the information through his hand phone that they were already inside the house;
- That through the radio in his car, the witness heard the ongoing rally in front of the East Governor Office, in which the witness heard the threats made by Eurico Guterres, who said: "Kill anyone who refuse Integration. Kill them all, including the Carascalao family";
- That the voice in the radio was the voice of Eurico Guterres, because the witness had often listened to Eurico Guterres talking, the witness has recognized his voice for a long time;
- That upon hearing that the witness' house was under attack, before going home, the witness went to the residence of DANREM (Military Post Commander) Tono Suratman, because he was the highest-ranked officer of the Military authority in the area, in the witness' opinion, DANREM had the obligation to defend everyone, but DANREM Tono Suratman refused while laughing and mocking, and at that time, the DANREM was accompanied by Basilio Araujo, the witness said if he could not give the protection, the witness asked for a weapon to defend himself;
- After the witness was rejected by DANREM Tono Suratman, the witness decided to go home to observe the situation, on the way to the witness' house, near the Traffic Office, the witness saw an Officer stood by the sidewalk, and 2 (two) Police Trucks, the witness then asked for help to the officer and the police, but they said nothing nor made comments;
- That when the witness continued his trip to the witness' house, and passed by the Bishop's residence, the children gathering at the Bishop's residence invited the witness into the Bishop's house and the witness was told not to go into his house because the people in the witness' house were all killed by the Militia;
- That about 3 or 4 days the witness took shelter at POLDA, and when the witness went home, the witness saw all were destroyed, there were no more properties that could be secured, all the valuables were all looted;
- That the witness saw there were blood marks on the walls, also outside the house in the front yard and there were bullet holes on the walls;
- That the distance between the witness' house and the Governor's Office where the big rally took place, was about 500 meters;

- That based on the testimony of the people who were attacked, there were assailants who were not East Timor people, they looked like the Military, there were the Military in the Militia;
- That the dead casualties were more than 10 people, the witness did not know where they were buried, they were usually thrown into the sea or buried in mass burials;
- That the refugees had stayed in the witness' house for over a month, the witness often met people on the streets who seemed to have no food nor shelters, so the witness said that rather than living on the street, it was better to stay at the witness' house for he had a rather large backyard;
- That to accommodate the refugees, the people and also Indonesians in Dili had come distributing food, but they never said from whom;
- That during the incident the witness left his house at around 11 o'clock in the morning, besides the refugees who stayed in the house, there were the witness' son, aunt, grandchild, friends, Javanese, his son's school friends; international and Indonesian journalists, and the attacks led to the death of his son Manelito Carascalao;
- That in the witness' house, there were so many blood marks; in the study, in the dining room, in the bed rooms, in the living room, on the walls, on the floors, all over the place;
- That the condition of his son; his body had so many holes, his throat was severely cut almost completely, there were bullet wounds, trace of machete wounds in the legs, cuts and bruises all over his face, his body was handed over by the police to the witness, 4 days after the attack;
- That there were 136 refugees taking shelter at the witness' house, and after the attack, there were only around 60 people who survived;
- That the Militia was established by KOPASSUS (the Army Special Force), the witness did not know who were the people, who gave money to the Militia, in the witness' opinion, they could be KOPASSUS or the government;
- That Carlos Pereira was the witness' nephew who joined the Militia, and as the uncle, the witness never got in touch with him again;
- That the witness mentioned that the Militia was supported by the Military, because without such support from the Military, the Militia would not be capable of doing anything, that the Militia was established, in the witness' opinion, to force or put pressures on people to accept Integration, but failed because they used violence;
- That there were Militia from CNRT or FALINTIL, but it was more likely that they were from FALINTIL, as the Militia members were former FALINTIL;
- That the Militia's ideology was enforcing Integration, the witness was ready to settle it through peaceful referendum, when KOPASSUS had not made the moves of violence, people were ready to accept Integration, as if normally observed, livelihood in Indonesia was not difficult;
- That the Militia's activities were financed by KOPASSUS or officials who worked together with them such as the Governor, the Mayor, the Regent and so on. After United Nation's troops entered East Timor, there had been proves that Rp 1,988,000,000,- was withdrawn and signed by Dili Mayor's wife for social activities, while there were no such activities anymore;

- That many people of the Pro-Integration never approved of the use of violence, they proposed that referendum be conducted in peaceful ways, at the time, they were almost successful, but when KOPASSUS started their works, they failed, then many of them retreated;
- What caused the witness to change from a Pro-Integration to that of Pro-Referendum, were the witness' experience since 1975, the witness joined the Pro-Integration movement because so many FRETILIN people were killed, and the witness was against such murders. In Bacau, the witness saw a member of the Military killed a woman just for her earrings, then when the witness and one of his friends stated their objections, his friend was sent to Kupang, and was detained;
- That during the big rally in front of the governor's office, there were no people of Pro-Independence who attended, in the witness opinion, if there were people of the Pro-Independence, they would have been killed;
- That the witness heard in the radio that Eurico Guterres delivered his speech at the East Timor Governor office's front yard, telling people to kill anyone who refused Integration, Mario Carascalao and Manuel Carascalao should all be killed;
- That before the witness joined TNI to fight for Integration, the witness was a Pro-Independence, but changed because there were Pro-Independence people who used violence like KOPASSUS who did the unreasonable killings the witness could not be approve of. That the witness saw that after KOPASSUS came into East Timor, they conducted the same violence, the witness could not accept that his relatives and son were brutally murdered;
- That the witness did not know the members of TNI, namely; Theovillo Da Silva, Antonio Bescau, Antonio Gomes, Miquel, Duaerte, Carlos Amaral, Baltisar;
- That the witness said that Tono Suratman was a murderer, the witness considered Tono Suratman a murderer, but did not mean that he had killed people, Tono Suratman allowed people to do the killings;
- That the witness had been invited to East Timor POLDA to meet the Defendant in relation to the attacks on the witness' house;

Witness 2 Lieut. Gen. TNI Ret. KIKI SYAHNAKRI

- That the witness had become the Commander of the Military Emergency Authority in East Timor since the 9th through the 27th of September 1999;
- That the witness as the Commander of the Military Emergency Authority and the Defendant/ PANGDAM UDAYANA had coordinative relationship because at the time, PANGDAM UDAYANA established a Command Post (Posko) in Kupang for a close coordination over the refugee matters;
- That the basis of the establishment of the Military Emergency, was a Presidential Decree (KEPPRES) on the 6th of September 1999, and the witness was appointed as the Commander of the Military Emergency Authority based on the Law No. 23 of the year 1959, in East Timor, during the time when the local government could not function, during mass disturbances, or during events that threaten the country's sovereignty, in which the state of the Military Emergency should be implemented;
- That the incident on the 6th of April 1999, when a riot occurred in Liquisa, the official

statement of KOREM 164 Wira Dharma said the number of victims was 5 (five), then Bishop Bello said the number of victims was 25, due to this different information, TNI Commander sent a team to East Timor to reconfirm the correct number of casualties, and Inspector Gen. TNI. MARSDA (Lieutenant General in the Air Force) Tamtama Adi was appointed chief of the team sent to East Timor;

- That it is true that East Timor had been the spotlight of the world, so every incident, especially when there had been dead casualties, would be widely concerned and become the spotlight of the world;

- That after becoming the Commander of the Military Emergency Authority, the witness' duty was to stop the violence there, then develop conducive condition to continue the process of People's Consultation/ Ballot, the witness should design, in accordance with the operational concept, the demarcation line on the highway between Dili and East Same to separate the Pro-Independence and the Pro-Integration Group, but this concept of solution had never been completed because on the 14th of September 1999, United Nations (UN) had already issued the UN Security Council's Resolution No. 1264, which authorized the Multinational Forces to be assigned in East Timor;

- That to reduce the level of violence, the witness made 3 (three) concepts of approach; the first was the persuasive approach, the witness called both parties, the witness contacted FALINTIL sheltering at Dare, the uphill side of Dilli which was in the control of the Pro-Integration, the witness also provided rice for the Pro-Independence, the second was that the witness made preventive efforts by proposing the advancement of the liquidation of KOREM 164 Wira Dharma to ABRI Commander, because the KOREM had 2 (two) Battalions of local/native soldiers, and the third was making repressive measures;

- That the witness divided East Timor into 3 (three) sectors, which were East Sector, West Sector, and Dili as the Special Sector, then sub-sectors were established so that every Company (Kompi) Commander had to be responsible for a relatively small area;

- The result of the witness' observation as the Commander of the Military Emergency Authority after the witness made the sky observation over the towns, was that the badly burnt were Dili, then Manatuto, parts of Maliana and Suai, while the rest of the towns were still intact;

- That the Defendant asked for back-up personnel for East Timor, then MABES TNI-AD (the Army Headquarters) sent 2 (two) brigades, but the witness forgot when the date of the sent off the troops was, but it was in August 1999, the 2 (two) brigades consisted of 6 (six) battalions while each battalion consisted of around 650 personnel;

- That the Multinational Forces' troops arrived on the 20th of September 1999, led by Gen. Peter Kosgrove, the Multinational Forces were to aid TNI;

- That after the transfer of Commands by KOOPS NUSRA, in this case, was PANGDAM UDAYANA, effectively started on the 5th of September 1999, and up to the time when the witness came to East Timor, there had been a drop of escalation, and the property burnings were far declining;

- That the Battalion of East Timor native soldiers, the liquidation of 2 (two) Battalions of soldiers, was fairly large, they wanted to fight against the existence of the Multinational Force troops, if they had not been liquidated, and they were there at the time of the arrival of the Multinational Force troops, conflicts would have occurred;

- That the involvement of the East Timor natives in the framework of winning the Pro-Integration was true, but their involvement in the violence in Liquisa after which the witness

stayed for 2 (two) days to clarify the victims, was not confirmed, the witness could not find their involvement;

- That the Military Emergency Command was established on the 7th of September 1999, and on the 8th of September 1999, the witness arrived in East Timor and in the evening of the 9th of September 1999, the witness took over the authority from PANGKOOPS NUSRA (Commander of the Military Operations of NUSA TENGGARA), the witness made the operational concept by drawing the demarcation line, but on the 14th of September 1999, the UN Security Council's Resolution was already issued, assigning the Multinational Force troops to enter East Timor;

- That the witness on the 9th and the 10th of September 1999, made sky observations over the burnt/ devastated East Timor;

Witness 3 Major General TNI. ZAKI ANWAR MAKARIM

- That the term Militia was known after the UN came into East Timor, before that, the term Militia was known during the 1975 era, to explain those who were the supporters (partisan) and no longer exist, they fought for Integration, and dissolved in the community into civil servants, soldiers, officers, and so on;

- That in 1975, Portugal left 27 thousands firearms which were distributed to political parties in a rally in Dili town, and it happened before Portugal left East Timor;

- That after the Tri-partite Agreement was signed, the civil servants, doctors and teachers were gone, all of them had made the exodus, the institution still in function in East Timor was UNAMET, but the Governor was still there, the Regents were there, the sub-district Chiefs were still there, but all of them were almost completely functionless as the conflicts had already heated up;

- That the Tri-partite Agreement or New York Agreement was signed on the 5th of May 1999, but the UN Advance Team had already made the entry since April 1999, followed by the arrival of UN troops reaching around 5,000 personnel, in East Timor;

- That the witness had met Bishop Bello, to discuss inputs over the best solutions that could be made, then the witness invited the leader of PMI (Indonesian Red Cross) Tony Pavler, and had discussions with them, there were 3 (three) important events/incidents in April 1999, and before that, in March 1999, there was a massacre of the Pro-Integration in Ermera area;

- That on the 21st of April 1999, the Peace settlements was in the process, and total Reconciliation should be implemented, then PANGDAM and DANREM made the preparations and summoned the conflicting parties;

- That since the announcement of Option II, the situation in East Timor had heated up, and Indonesia only had 3 (three) months to make the preparation for the People's Consultation/ Ballot, therefore the PANGDAM/ the Defendant advised that it was necessary to immediately achieve total reconciliation, and asked the TNI Commander to be involved in the matter;

- That PANGDAM had the duty to maintain the overall security, to report issues that needed further handling so that the Central could take immediate actions to keep the whole territorial region. During the time of before the People's Consultation/Ballot, as well as during the People's Consultation/ Ballot, the function had changed, PANGDAM/ the Defendant had the function of preparing a certain area to succeed the People's Consultation/ Ballot, embracing all people's potentials including those from the two conflicting parties to

ensure that the People's Consultation/ Ballot could be held on time.

- That on the number of casualties, Bishop Bello reported there were between 20 and 25 victims, Bishop Bello said at least 15 people died and the other 10 severely injured, while the official report received by TNI stated 5 (five) deaths, according to Bishop Bello, the victims were those from the Pro-Independence, while the TNI confirmed the victims were from both parties;

- That since President B.J. Habibie announced the Option II, the political condition had heated up, there were burning of properties, the witness observed that the underdog (sic) was seen in April, in March through April, the Pro-Integration people were driven out of Liquisa Regency, and from Batu Blater area, there were 800 families who escaped to NTT (East NUSA TENGGARA);

- That resulting from the witness' investigation, the troops in Liquisa isolated the kampongs to prevent conflicts as a small conflict could quickly spread out onto the other kampongs throughout Liquisa, they took guard in the kampongs, made roadblocks, and the police tried to mediate the two conflicting parties to initiate negotiations;

- That in the witness' opinion, the People's Consultation did not fail, on the other hand, it was successful, according to a representative of UN who met the witness, the People's Consultation in East Timor was one of the best People Consultation/ Ballot ever held in the world, because 98,7 % of the people participated by giving their votes, while the implementation was safe, on time, and the result was announced;

- That Indonesia had proposed to UNAMET as the representative of UN, not to set up its Command Post (Pos Komando) in the Base Area of the Pro-Independence, and set it up in the neutral area instead, so that both parties could file reports to UNAMET, but UNAMET set its Command Post in the Pro-Independence Base, and it was guarded by the Pro-Independence, so none of the Pro-Integrations would dare to enter;

- That the second suggestion was that UNAMET should not recruited its local staff only from the Pro-Independence Group, those from the Pro-Integration should also be accepted, it is the fact that the 4,000 recruited local staff were students and those from the clandestine network, it had become the embryos of the growing resentments;

- That the peace agreement on the 21st of April 1999, was attended by Bishop Bello, Bishop Basilio Narsimento, representatives of KOMNAS HAM (National Commission for Human Rights), such as; Joko Sugianto, Kusparmono Irsan, and Marbun, PANGDAM UDAYANA/ the Defendant, Gen. TNI. Wiranto, DANREM Tono Suratman, Manuel Carascalao, Leandro Ishak (sic), Joao Tavares, and the witnesses in the peace agreement were Gen. TNI. Wiranto and Bishop Bello;

- That the peace agreement on the 21st of April 1999, was approved by Xanana Gusmao, as basically Xanana Gusmao had already given his approval by signing the peace agreement documents, and with the signature of Xanana Gusmao, the Pro-Independence Group were sure to attend the peace meeting;

- What was meant by kantongisasi ("pocketing/sacking") was that an armed force group should be isolated in a certain area, PANGDAM/ the Defendant's idea at the time was that every armed force group was put into a pocket/sack, then it was socialized through KOMNAS HAM and UNTAET, and the witness had seen himself that the kantongisasi concept of PANGDAM managed to pile up some 1,000 weapons, though the Pro-Independence refused to hand in their weapons;

- That the witness did not know the 12 members of TNI, who, in the indictment, were

accused of committing the attacks at the residence of Pastor Rafael Dos Santos;

- That the witness saw that in the house of Pastor Rafael Dos Santos, the bullet holes stuck in the window frame were fired from inside the house, the witness tried to prove whether they ever seized the guns, and in accordance with the reports, whether they were fired from inside, it was the fact that the ditches came from the bullets of organic guns, 7,62 caliber, from G.3 guns, NATO standard, while TNI guns at the time, were M. 16s with FNC;

- That PAM SWAKARSA were just ordinary people's organization, if in America there were the 'neighbor watch', in Jakarta they were called Siskamling, while in East Timor, due to the forced exodus to flee their homelands, in the kampongs they established the organization similar to Siskamling called PAM SWAKARSA;

- Because they were not familiar with agriculture, the Governor or the local government provided rice aids for their food;

- That WANRA was the official organization under TNI territorial supervision, so the KOTER (Territorial Commands) supervised WANRA, and throughout Indonesia there were 400 thousands WANRA, every KODIM had WANRA, they received special allowance from DEPHAN (the Ministry of Defense);

- That the Defendant/PANGDAM was informed that some people were crowding the residence of Manuel Carascalao, the witness remembered DANDIM (Military District Commander) had offered the security protection for the residence, but it was turned down, then the police offered the protection, but it was also turned down;

- The efforts of the security authorities were adequate, but as Manuel Carascalao refused to trust the security officials, all the efforts were turned down;

- That the Defendant's duties as PANGKOOPS (Operational Commander) during the time before the People's Consultation/ Ballot, could not be carried out as the Defendant/PANGDAM had to embrace both parties, there should be no Intelligence Operations, Territorial Operations, or Combat Operations, there were only security operations to ensure the People's Consultation/ Ballot could be carried out on time, but when the situation had heated up, the KOOPS (Operational Commands) were continued again;

- That for the witness' testimony, the Defendant stated no objections, only added that MABES TNI considerations not to appoint PANGDAM UDAYANA as the Commander of the Military Emergency Authority, was because PANGDAM UDAYANA had a wide range of responsibilities that covered four provinces, West Nusa Tenggara, East Nusa Tenggara, Bali and East Timor, so it was necessary to appoint the Commander of the Military Emergency Authority who had the full power and authority to use the law instruments applied in Military Emergency situations, which were not accessible in the law instruments of civilian authority, whereas PANGKOOPS was posted as PANGDAM in the transfer of KODAL (Control of Command) from the police;

Witness 4 Lieut. Col. LILIK KOESHADIYANTO

- That the witness was assigned at KODIM Suai, on the 29th of August 1999, as acting Commander of the KODIM, based on the instruction of PANGDAM XVI (sic) UDAYANA, and at the time the Mass for Peace was held at Ave Maria Church, attended by Bishop Bello and UNAMET representatives, MUSPIDA and representatives of Anti-Integration as well as Pro-Integration groups;

- That in the Mass for Peace, the two conflicting parties agreed on the implementation of the

People's Consultation/ Ballot and would accept whatever result of it, whether it would be won by the Pro-Integration group, or it would have be won by the Anti-Integration group;

- That the worth noting events that happened during his post as the acting DANDIM of Suai included the Mass for Peace held at Ave Maria Church on the 29th of August, 1999, then on the 30th of August in which the People's Consultation/ Ballot was held, and on the 3rd of September 1999, whereas the peace settlement was made at the Regent's residence between the Pro-Integration and the Anti-Integration groups, on the 4th of September 1999, was the announcement of the People's Consultation/ Ballot, on the 5th of September 1999, was the evacuation of UNAMET personnel, during which as many as 3,130 personnel were flown in helicopters to Dili. Then on the 6th of September 1999, a clash occurred between the Anti-Integration and the Pro-Integration Group at Ave Maria Church, and on the 8th of September 1999, he was called back to Dili;

- That the incident at Ave Maria Church was reported by the witness to DANREM, then the witness coordinated with KAPOLRES (District Police Commander) to further investigate the incident at Ave Maria Church, then the witness secured around 800 people, the Anti-Integration people at MAKODIM (Military District Headquarters) who were threatened by the Pro-Integration Group;

- That the witness saw masses rushed out of the church, ran in all direction trying to safe themselves while screaming, some were wounded, who were then rescued, the witness did not know whether they were the Pro-Integration or the Anti-Integration groups, then the witness prevented and hampered other masses trying to force their way into the church;

- That the situation when the witness arrived was not conducive, the non-native residents who were not East Timorese had all gone out of East Timor, while most of the civil servants were also gone to take refuge, the remaining authorities were the Kovalima regent, DANDIM, and KAPOLRES, and on the 4th of September 1999, residents of Kovalima regency from the uphill villages went to downtown Suai, around 50,000 people who were frustrated, angry and hungry went to meet DANDIM, KAPOLRES, and the regent asking aids of transportation to leave for (sic) East Timor area;

- That in the witness' opinion, the refugees taking shelter at the church were from both sides, the Pro-Integration as well as the Anti-Integration, the people accommodated in the church were protected by the Pastor;

- That UNAMET had given aids, and provided food for 2,000 refugees in the church; the incoming aids were in the form of rice, medical supplies, milk and other necessities, that the water condition was bad, the water in the area was scarce, and it was all sucked up into the church;

- This condition led to resentment among Suai residents who suffered due to the scarce water and food, while in the church, the water and food were abundant. This condition was likely to cause frictions among the conflicting groups, then the witness advised the regent to mediate a peace agreement, and that was done by the regent by organizing the Mass for Peace;

- That the strength of KODIM included around 300 personnel, divided into 6 (six) KORAMIL (Sub-district Military Command), the members under the witness' supervision were about 30 personnel, while the others secure the vital installations such as PLN (the state-owned electricity company), TELKOM (the state-owned telecommunication company), the airport, gas stations, DOLOG (the state Logistics Depot), and so on;

- That the People Consultation / Ballot on the 30th of August 1999, was planned to start at 09.00 in the morning, however, it already began at 06.00 in the morning, and the witness

received reports that at around 03.00 and 04.00 o'clock, the physically handicapped people, and the blinds were gathered to make their votes in the People Consultation/ Ballot at 06.00 o'clock that morning, and they were guided, one by one, to vote for the Anti-Autonomy;

- That the Police could provide security protection during the voting of the People Consultation/ Ballot, only from a radius of between 50 and 100 meters, while TNI were present some 500 meters away;
- That many people reported on the cheatings during the voting of the People Consultation/ Ballot to the Police and KPS (Committee for Peace and Stability);
- That the witness himself had complained to UNAMET that the voting of the People Consultation/ Ballot was not fair, not democratic, not honest, and full of fraud, the witness had handed over the facts on the frauds to UNAMET, but UNAMET contradicted him, and stated that the People Consultation/ Ballot was done in democratic ways;
- That one example of the undemocratic performance was that the Ballot Boxes (Kotak Suara) were not opened at the TPS (Polling Places), but they were piled up, and brought to Dili on helicopters without escort;
- That the witness saw that the masses outside the church compound reached around 5,000 (five thousands), and those who took refuge inside the church were around 2,000 people;
- That Ave Maria Church was not a place listed by MUSPIDA to accommodate refugees, as the church is a holy and sacred place, and not all people could enter the place;
- That the incident concerning the riot at Ave Maria Church, Suai, was reported by the witness to DANREM, and DANREM had made reports to the Defendant, then the Defendant issued instructions to prevent further spreading of the riot, and make thorough investigation over the incident;
- That the witness had asked for additional personnel, but as the back up personnel were still on the way, the request had yet to be accommodated;
- That the victims resulting from the clash, at the time, reached 27 people;

Witness 5 Brigadier General TNI. M. NOER MUIS

- That the witness had been assigned as DANREM 164 Wira Dharma since the 13th of August 1999, until the 7th of September 1999, during the time of the Military Emergency, the witness was still in the post of DANREM, in which the witness supervised 13 KODIM;
- That the worth noting events happened during his assignment as DANREM in East Timor were that during the campaign, a clash occurred between the Pro-Independence and the Pro-Autonomy on the 27th of August 1999;
- That the Campaign Stage ended at the time of the voting of the People Consultation/ Ballot on the 30th of August 1999, in reports from all regencies and communities, they mentioned the violations and cheatings by UNAMET during the People Consultation/ Ballot, which was planned to be announced on the 7th of September 1999, but then advanced on to the 4th of September 1999, then on the 5th of September 1999, the control of commands was transferred from POLRI (the Indonesian Police) to TNI, on the 6th of September 1999, a turmoil erupted at Ave Maria Church, and on the 7th of September 1999, the Military Emergency was implemented;

- That in the clashes at Diocese Dili, the witness did not know for sure how many victims there were, but the witness reported directly to PANGDAM IX UDAYANA, through the radio about the incident;
- That resulting from the clashes at Ave Maria Church, Suai on the 6th of September 1999, there were 27 victims, after receiving reports from DANDIM Suai, the witness reported it to PANGDAM IX UDAYANA/ the Defendant;
- That the Defendant, as PANGDAM IX UDAYANA, made instructions to secure the area, investigate the incident, prevent further riots;
- That the witness had received an STR (Confidential Telegrams) No. 549, 3-8-1999, with the content of instructions to stand by the troops under the witness' control as DANREM, not all troops were equipped with organic weapons, only certain troops were;
- The witness gave instructions to his subordinates through the radio, the written ones were sent through STR dated the 6th of September 1999, and the witness' instructions started to take effect along with witness (sic), as the witness saw and knew that;
- That in the transfer of KODAL Command, there were back up troops consisting of 1 (one) SSK (Company-Level-Squad) with 100 personnel arrived on a Hercules plane, and additional troops which arrived one after the other through the sea, consisted of more or less than 2 (two) of the Brigade-Level-Units;
- That the Commander in Chief of the operations at the time was the Defendant himself as the Commander IX UDAYANA;
- That the number of refugees at the time reached around 300,000 people, they fled to NTT, Kupang, Bali, Flores, and some to Jakarta;
- That according to reports from KODIM, there were no involvement of the members of POLRI and TNI in the turmoil at the residence of Bishop Bello, according to the reports, the members of TNI were the ones who secure Bishop Bello;
- That the turmoil that erupted on the 6th of September 1999, at Bishop Bello's house, according to reports, was because the Pro-Integration people had found Ballot Boxes in Bishop Bello's house and also piled up Ballot forms (kertas suara) there, regulation stated that Ballot Boxes and the vote counting were determined by UNAMET, not at the Diocese, this caused the losing people angry, and then the turmoil erupted;
- That the incident at Ave Maria Church, Suai, in DANDIM reports, happened because in the Ave Maria Church, Suai, there were so many Pro-Independence masses taking refuge, when the Pro-Integration people were passing in front of the church, there were shots coming from inside the church, then the clashes erupted;
- That the native/local members of POLRI, as well as TNI, were allowed to participate in the People Consultation/ Ballot, as based on the regulation resulting from the Tri-partite meeting in New York, the native people who were 17 years old or over, were allowed to participate in the People Consultation/ Ballot's voting;
- That the mass departure of refugees happened after the announcement of the People Consultation/ Ballot on the 4th of September 1999, then TNI personnel prepared ships and helicopters to transport the refugees;
- That the soldiers under the witness supervision as DANREM at KOREM included 2 Organic Battalions consisted of around 7,000 up to 7,500 personnel, while Territorial

Battalion had around 4,500 people;

- That the witness was responsible to the Defendant as PANGDAM IX UDAYANA, the PANGDAM was responsible to the control commander of TNI troops, in this case, was TNI Commander;

- That in the reports from DANDIM of Dili, after the riot at the residence of Bishop Bello, the Pro-Integration found stored Ballot Boxes kept in (translator: unfinished paragraph, page 29 of the text);

- That the reason that led to the attacks at Bishop Bello's house, according to DANDIM report, was because Bishop Bello, since the beginning, was never neutral, as a religious shepherd he was partial, and took sides of the Pro-Independence, the churches accommodated only the Pro-Independence. Bishop Bello often complained about the Pro-Integration, but never complained about the Pro-Independence, after the announcement of the People Consultation/ Ballot, Bishop Bello became the most wanted man, and after the incident, they found Ballot Boxes at Bishop Bello's house;

- That the incident at Bishop Bello's house resulted in dead victims, and wounded ones due to tortures, then the witness sent troops and the witness ordered immediate investigation with the coordination of POLRI;

- That after the Tri-partite Agreement on the 5th of May 1999, it was settled that the security matters were in the hands of POLRI, the People Consultation/ Ballot would be held by UNAMET without taking sides, and would be carried out in democratic manners;

- That stages in the People Consultation/ Ballot were;

- Registration Stage;

- Campaign Stage;

- Quiet Day Stage;

- Voting Stage;

- People Consultation/ Ballot Stage;

- That when the People Consultation/ Ballot's announcement was advanced from the earlier planned on the 7th of September 1999, to the 4th of September 1999, the witness strongly opposed it, then the witness reported it to the Defendant, while according to the UN delegation, possible disturbances would occur if the announcement had been made on the 7th of September, then PANGKOOPS/ the Defendant coordinated with Ian Martin and made reports to his superiors;

- That based on the agreement, both parties/groups practiced an arm truce, but the group which implemented it was only the Pro-Integration who stored away their weapons, including the TNI organic weapons, Portugal guns, homemade firearms, and sharp weapons, but the Pro-Independence refused to put away their weapons;

- That WANRA were armed, but after completing their guard duty at their posts, the weapons were handed over to KODIM, and after the Registration Stage of the People Consultation/ Ballot, WANRA were sent home to their kampongs to make their votes;

- That there was a connection between WANRA, KAMRA, PAM SWAKARSA, and the Pro-Integration, as the members of the organizations were the people who were residents, so they were socially related;

- That there were burning of properties in the towns, alleys and residential areas, and in several areas, there were the burning of houses and motorcycles, the burning of properties also happened in the last day of the Campaign Stage on the 27th of August 1999, and after the announcement of the People Consultation/ Ballot, the Pro-Independence joined in by burning down the vital installations, but INTERFET troops just kept quiet;
- That on the 7th of September 1999, there were the mass departure of refugees to NTT, and within the 3rd week, on the 21st of September 1999, East Timor was officially handed over to UN;

Witness 6 Brigadier General TNI. TONO SURATMAN

- That the witness had been assigned in East Timor as many as 6 (six) times, in 1978, 1983, 1989, 1995, 1998, and the last time when he was the Commander of KOREM 164 Wira Dharma since the 10th of June until the 13th of April 1999, supervising 13 KODIM;
- That the witness duty as DANREM were first, improving the discipline of TNI troops in East Timor, second, improving the skills of the soldiers, and third, improving the welfare of the soldiers assigned in East Timor;
- That the witness gave instructions on the security measures as requested by POLDA, over the arrival of foreign visitors and delegates who made the visits to East Timor;
- That during the time of his assignment in East Timor, there were two incidents concerning clashes between Pro-Integration and the Pro-Independence masses, at the residences of Pastor Rafael and Manuel Carascalao;
- That the witness had been to the crime scenes, at the residence of Manuel Carascalao right after the riot, the witness did not see bullet ditches/holes inside the house and the casualties were between 10 and 12 people, the victims mostly suffered dagger cuts and stabs, and all were sent to the hospital;
- That the witness had observed the residence of Pastor Rafael Dos Santos, and in accordance with KODIM reports, the victims were 5 (five) people;
- That PAM SWAKARSA was not under the command of TNI, while TRIBUANA Task Force was a unit assigned under the witness' control;
- That the witness did not know whether or not PAM SWAKARSA had firearms, but the witness heard that the firearms that were left by Portugal numbered around 27,000, these could be in the hands of both groups, so if they were armed, they were not from TNI;
- As DANREM 164 Wira Dharma, the witness was responsible to Defendant Maj. Gen. TNI. Adam R. Damiri, as PANGDAM UDAYANA at the time;
- That every development of situation in progress in the witness' area, was reported in words and in writing to the Defendant;
- That as DANREM, the task-forces in BKO Operations (Troops Reinforcements sent in from outside the Territorial Commands), under the witness control, were, among others: Unity Task Force, Territorial Task Force, and TRIBUANA Task Force, who were responsible to DANREM through DANDIM;
- That PAM SWAKARSA was established as a form of the people's spontaneous response due to intimidations by CNRT assisted by FRETILIN who were armed, so they insisted on

securing their areas and kampongs, which were far from the security authority which were the police or TNI;

- That WANRA was supervised by TNI in accordance with the Law No. 20 of the year 1982 on Defense and Security, a WANRA received a monthly salary of Rp. 150,000,- and 18 kg of rice. WANRA members were averagely between 35 and 45 years old, they were assigned at KODIM, and were given limited trainings, such as trainings in salutation service, guarding and securing areas surrounding KORAMIL, they did not have firearms, but could be authorized to use firearms by KODIM, and WANRA had the status of civilians, recruited from the native residents of East Timor, they were responsible to DANDIM or KORAMIL, in accordance with their assignments;

- That BESI MERAH PUTIH (Red and White Iron), AITARAK and LAKSAUR were united in the Pro-Integration Group, they made and established the organization for the call to defend the Red and White, not only the Pro-Integration that established such groups, the Pro-Independence also established their own groups;

- That on the incident at the residence of Manuel Carascalao, the witness received reports from KODIM Commander saying that on 17th of April 1999, there was a big rally in front of the East Timor Governor Office, after the big rally, the Pro-Integration people organized a parade, at the time they passed in front of Manuel Carascalao's house, the clashes erupted at Manuel Carascalao's house;

- That resulting from the incident, 12 (twelve) people died, and the wounded were between 20 and 30 people, all were handled by the police;

- That in the incident at the houses of Rafael Dos Santos and Manuel Carascalao, as they were in progress, were reported by the witness to the Defendant as PANGDAM UDAYANA, and the Defendant gave instructions which were to assist the police;

- That the big rally on the 17th of April 1999, was a big rally of the Pro-Integration Group originated from 13 regencies, who were present in the front of East Timor Governor's office to determine their loyalty to the Unity of the Country of the Republic of Indonesia;

- That as far as the witness remember, after the big rally, the term Commander always turned up, and the mentioned Commander in East Timor was not meant as a leader of a squad with complete automatic and organic weaponry, but it was a term of East Timor people to describe Joao Tavares as the Commander of PPI;

- That based on the Tri-partite agreement on the 5th of May 1999, the security maintenance were in the hands of the police, while TNI went back into the Barracks, which could be called as kantongisasi (the pocketing/sacking), in which TNI had no rights to carry out activities, while the police were assisted by the International Police;

- That Manuel Carascalao had come to the witness' house, he came, not for assistance, but for weapons, because his house was under the attacks of the Pro-Integration;

- That the witness took parts in the efforts to have meetings on peace settlements for 3 (three) times, the first was in October 1998 in Dare, at the residence of the Pastor, which was attended by the Bishop and the provincial MUSPIDA leaders, and the second was on the 21st of April 1999, which was attended by the two conflicting parties, and the third was in Jakarta, on the 18th of June 1999, in which the two groups attended with efforts to reach peace settlements;

- That after the announcement of Option I and Option II, the situation which formerly relatively conducive or securely controlled, changed drastically, there were the acts of terror

and intimidation by the Pro-Independence;

Witness 7 General (Retired) TNI. A.D. WIRANTO

- That the witness had several times been assigned in East Timor, in security operations in East Timor, also as a staff officer who assisted the operational activities there, the witness had been assigned in East Timor when he was still ranked a Captain, as well as when he was already a General;

- That as the ABRI (Indonesian Armed Force) Commander at the time, the witness always received reports from Defendant Adam R. Damiri, as PANGDAM UDAYANA, on East Timor situation;

- The witness had seen the Special Report No. R. 184/lapsus/IV/1999, but the witness did not remember whether or not he had read it, the reports the witness received, were of various types, such as Intelligence Reports, Logistic Reports, Operational Reports, Special Reports, Daily Reports, Weekly Reports, and all directly went into the existing Staff System in MABES TNI Headquarters;

- That based on the Special Report No. 184/lapsus/IV/1999, the witness immediately sent a team of investigation led by the Inspector General of MABES TNI to East Timor, and for the back-up, there was no special coordination between the security officials and the Pro-Integration party, during which time, it was not yet outlined in the Tri-partite Agreement, and it was still based on the situational security operations in East Timor against FRETILIN, which was considered as the insurgent group in East Timor;

- That in April 1999, the witness received reports from the Team of Investigation of MABES ABRI, just arrived from Liquisa, that the repeated shootings involving the two conflicting groups did not involve the security officials;

- That the security officials then carried out security measures by doing the clean-up (membersihkan), clean-up was meant as securing the place of the shootings, and finding the wounded to be evacuated;

- That the reports received by the witness from the team of investigation of MABES ABRI on Liquisa case, said that the incident in Liquisa happened on the 4th - the 5th of April 1999, when the Anti-Integration groups besieged and attacked the Pro-Integration people, and destroyed the house of Antonio Lopez De Cruz, on the 5th - the 6th of April, the Pro-Integration Group from Maumere, that made their revenge by attacking the Anti-Integration, was termed as the shooting contacts;

- That at the time, the Anti-Integration and the Pro-Integration had conferred at the Parish House, but had failed to reach agreements, instead, it turned into distorted fights causing 5 people died and 20 others injured;

- That the witness considered that a sensitive matter, because it had caused victims, and to clarify matters, the witness immediately sent a team led by TNI Inspector General, and emphasized that PANGDAM Maj. Gen Adam R. Damiri and KAPOLDA (the Police Chief) of East Timor, to thoroughly investigate the background and perpetrators in the incident, then in April, the witness went to East Timor to settle the matters;

- That the witness as MENHANKAM (the Minister of Defense and Security)/ PANGAB (ABRI Commander), at the time, the post of MENHANKAM, in its official relation with POLRI, was to assist the President in the guidance (pembinaan) of the ABRI force on behalf of the country's Defense and Security, the witness was responsible to the President;

- That in matters concerning the guidance of ABRI force, its trainings, equipments, and finance, the witness was assisted by KASAD (the Army Chief of Staff), KASAL (the Navy Chief of Staff), and KASAU (the Air Force Chief of Staff), while the operational matters of the force were handled by PANGDAM, who was the Commander in Chief;
- That PANGDAM, besides carrying out the operations, was also authorized, through KASAD, to carry out the guidance and usage of the Army Squads within their jurisdictions or Strategic Compartments;
- That the witness, as ABRI Commander at the time, received reports from PANGDAM, such as Reports on Logistics, Intelligence, Daily Operations, and so on. The reports could be handled on behalf of PANGDAM, by his assistances or his Staff;
- That East Timor conditions between April 1999 and September 1999, the Liquisa incident on the 3rd, 4th and 5th of April 1999, and the incident at the residence of Manuel Carascalao on the 17th of April 1999, were reported by the Defendant/PANGDAM to the witness as the ABRI Commander/PANGAB, and the reports were brought into the Staff Meetings at MABES Headquarters level;
- That the content of the reports on the clashes between the Pro-Integration and the Anti-Integration groups, were meant that they attacked each other, the Pro-Integration Group from Maubara revenged by attacking Liquisa, finally the peace meeting was arranged at the Parish House, which failed to reach agreements, then somebody unintentionally fired his gun, and that led to repeated attacks on each other that cause victims;
- As it was a sensitive matter, the witness brought it into the Staff Meeting, and his decision to send the team of investigation to PANGDAM and KAPOLDA to thoroughly investigate the incident, and take actions against those who were guilty, were reported by the witness to President B. J. Habibie;
- That in PANGDAM/ the Defendant's reports to the witness/ PANGAB, there was no mentioning on the involvement of ABRI, it had been only concluded that security officials were present at the area, and there were accusations that the security officials were involved in the shooting contacts;
- That the security officials did not take sides of the Pro-Integration, but they made the decision based on the government's policy that East Timor was a legitimate part of the Republic of Indonesia, so anyone who did not approve of the Integration would be against the government's policy;
- That both parties, the Anti-Integration and the Pro-Integration were armed, FRETILIN group had two forces, which were political and military forces, both were led by Xanana, they were equipped with armory left by Portuguese and the weapons seized from TNI, and they also got the armory from illegal flights, that cruised around the area every night, while the Pro-Integration made homemade firearms to defend themselves;
- That during the incidents in Liquisa and at the house of Manuel Carascalao, the control of the security authority was in the hands of PANGKOOPS NUSRA who was PANGDAM/ the Defendant, as that time was before the People Consultation/ Ballot;
- That the incident at Diocese Dili on the 5th of September 1999, was reported by PANGDAM/ the Defendant to the witness, and the witness himself made the rechecks through the telephone to PANGDAM/ the Defendant, as well as KAPOLDA;
- The content of the reports included that the clashes between the two parties, were then spread to the Parish House and the Diocese. The mass clashes had involved some 400

masses of the Pro-Autonomy and the Pro-Anti (sic) Integration, sheltering at Bishop Bello's residence;

- That there were many Ballot Boxes stored up at Bishop Bello's house, then the attacks just happened, that led to the mass clashes involving both parties;

- That TNI and POLRI troops were mobilized to stop the turmoil, then evacuated the people to the safe places at MAKOREM and MAPOLDA Headquarters, Bishop Bello was secured at MAPOLDA in Dili, and then was flown to Baucau on a POLRI helicopter;

- That the masses committed the attacks because they were disappointed to the Bishop as he was not neutral, he even took parts in the activities concerning the Pro and Contra-Integration matters;

- That the incident at Ave Maria Church, Suai on the 6th of September 1999, was also reported to the witness, the mass clashes occurred around the church area, the witness had emphasized that firm actions should be taken against the perpetrators and preventive measures were made to avoid the spreading onto other areas;

- That concerning the incident at Diocese Dili on the 6th of September 1999, the security control was in the hands of PANGKOOPS NUSRA or the Commander of Nusa Tenggara Commands and Operations, who was PANGDAM UDAYANA/ the Defendant;

- That what was meant by the clean up were, among others, after the incident at the residence of Manuel Carascalao, as there were several connotations of meaning, in the point of view of a security official who saw, witnessed and tried to break up the mass fights involving both parties, a clean-up would likely to discover dead victims;

- That the number of native East Timor who became members of TNI was fairly large, especially in the Battalion 744, which was established in East Timor and mostly accommodated East Timor youth;

- That there were no special instructions nor overall Policy of the government or of the witness as PANGAB at the time, to make a total destruction of East Timor, or to disturb the People's Consultation/ Ballot, because if those were the government's policy or the witness' decision, there would have been no People's Consultation ever happened in East Timor, and it would have been turned back into the area of civil war;

- That when the decision on the Options was announced by RI (the Republic of Indonesia) President, the witness believed that considerations over the International Politics and National concerns were more important rather than those over the conditions in the field;

- The witness was an assistant of the President, the decision was surely in the hands of the President, the witness had advised the President, and larger considerations would be always more dominant rather than smaller risks in making the decisions;

- That the witness had described several possibilities to the president at the time the decision on the Options was made, among others, it would be difficult for the generally uneducated people (masyarakat terbelakang) to have an understanding on such an abstract concept;

- That at the time, there had been considerations on such risks, then the witness made a contingency plan to face the worst situation possible, whoever would have won, the Pro-Independence or the Pro-Integration;

- That there were back-up troops sent to East Timor from places throughout Indonesia, and were gathered in East Timor reaching over 6 (six) Battalions, or approximately 6,000

personnel, and up to the time of the People's Consultation/ Ballot, there were 7 Battalions maintained there;

- That the native East Timor people recruited in 1978 were assigned into Battalions 744 and 745;

- That the intelligence reports had revealed the overall view, and also field evaluation that the People's Consultation/ Ballot would be probably won by the Pro-Integration, and plans had been made, whichever of the two groups would have won, overseeing the possibilities;

- That the witness had instructed that TNI and POLRI should be neutral, should not take sides, and should take firm actions in accordance with the law, against whoever violated the law, no exceptions, whether they were from the Pro-Integration or from the Pro-Independence, the instructions were written and recorded on video, and the video had been handed over to KPP HAM (Commission of Inquiry of Human Rights Violations);

- That after the Tri-partite Agreement, the Indonesian Authority had to be responsible on security matters throughout the People's Consultation/ Ballot, it was a very difficult task, because after 23 years being in war with FRETILIN, all of a sudden, just in a brief moment, they had to be placed as the party with respected rights in the People's Consultation/ Ballot, to be socialized with, in peace, and to be treated as brothers;

- That after that, the government issued the Presidential Decree No. 43 to appoint MENKOPOLKAM (Coordinating Minister for Politics and Security) as the Coordinator, therefore it was the form of making the security as comprehensive and integrated activities;

- That there had been a letter from Australian Prime Minister JOHN HOWARD to the RI Government, requesting that there should be time for the East Timor people to ruin (merusakan, sic) the Special Autonomy;

- The Defendant was not appointed as the Commander of the Military Emergency Authority, not because of his incapability, but because the Defendant, as PANGDAM IX UDAYANA, should maintain security in his area. Therefore it was considered better to appoint another high-ranked officer who could keep up with the development of operations in East Timor, a professional officer who had the ability to control the emergency situations;

- That on the transfer of KODAL Command, as at the time, the evaluation of MABES TNI/DEPHANKAM said that the KODAL Command, which was in the hands of POLRI was no longer effective, the handling of commands and control by POLRI could no longer provide the safe, orderly and controlled environment in the area. The incidents in 4 (four) regencies could have spread out onto the other 9 (nine) regencies;

- That the frauds committed by UNAMET had been reported in stages from the bottom up to the decision makers in the national level, the reports were received in writing as well as in words, they had even been discussed in the international level;

- That the Foreign Minister and the President had interfered to get clarification on the frauds committed by UNAMET and its elements;

- That in response to the matter, UN assigned 3 (three) Rapporteurs to thoroughly examine the facts of the reports, and then make comprehensive report on that;

- That the frauds were confirmed by UN, but such frauds were not dominant nor significant to change the winning figures, and the vote counting was done transparently and open to public, so there was no need to hold it up as the process of the People's Consultation/ Ballot was already completed;

- That the witness had instructed to take firm actions against violators who were members of TNI in East Timor, then the witness sent the Assistant of the MABES TNI Intelligence to East Timor to reconfirm whether or not there were TNI soldiers involved, and the witness heard that PANGDAM/ the Defendant had punished the officers who allegedly involved in the seizure of a journalist's camera;
- That the transfer of KODAL Command was started on the 5th of September 1999, and during the time the witness had finished his inspection in Dili, he met Bishop Bello and Ian Martin, and the witness decided that the transfer of KODAL Command should be done immediately, then when he arrived in Jakarta, the witness reported to the President and the President approved his decision, then the transfer of KODAL Command effectively started on the 5th of September 1999, at 19.30;
- That the transfer of KODAL or the transfer of Command Control was authorized to coordinate various activities within the area, carried out by various institutions;
- That the responsibility of the commands were regulated in the Military as "One Step Down and One Step Up", a Commander, one step down, should be responsible over the instructions/orders he gave to his subordinates, but should not be responsible over the acts he did not order/instruct;

Witness 8 Lieutenant Colonel TNI ASEP KUSWANI

- That the witness was a DANDIM (KODIM Commander) of Liquisa since 1997 until September 1998, and the main duty of DANDIM was doing the territorial maintenance and assisting DANREM 164 Wira Dharma;
- That the number of members of KODIM Liquisa was 40 personnel, 10 of the members of KODIM Liquisa were natives, and KODIM Liquisa supervised 3 KORAMIL, which were KORAMIL Liquisa, KORAMIL Batublete and KORAMIL Maubara;
- In the incident at the residence of Rafael Dos Santos, that on the 6th of April 1999 between 06.00 and 08.00 a.m., there were not yet signs of crowding masses, just between 08.00 and 09.00 a.m., a squad of police had been present to secure the area;
- That at 10 o'clock in the morning, after the police were there, masses began to crowd the area, then the witness reported to DANREM, the number of masses had increased again at between 11.00 and 12.00 noon, then WADANREM (Deputy DANREM) arrived in Liquisa, and the witness reported the situation to him;
- That around 12.00 noon, at the KODIM Headquarters, gunshots were heard, roughly coming from the direction of the residence of Pastor Rafael Dos Santos, then the witness ordered Joko Waluyo to rescue the pastor, then brought him to KODIM, along with 10 other people and a nun;
- That the incident at the residence of Pastor Rafael Dos Santos caused 5 people died, and more or less than 20 people wounded;
- Those who were present at KODIM, on the 6th of April 1999, as the incident was happening at Pastor Rafael Dos Santos's house, were the witness himself, the Regent, KAPOLRES, WADANREM, and Lieut. Col. TNI. Yayat Sudrajat;
- That none of the KODIM members were armed, as the weapons were still locked up in the storeroom. The weapons in the possession of KODIM were SS1 and SS2 guns and 10 pistols;

- That the witness did not know for sure whether the refugees sheltering at the residence of Pastor Rafael Dos Santos were of the Pro-Independence or the Pro-Integration Groups, all the witness knew was that they were masses;
- That the witness received reports that on the 5th of April 1999, CNRT group burnt down Pukelara kampong;
- That on the 6th of April 1999, during the incident, when the witness was still at KODIM Headquarters, the witness heard the screams: "Attack! Attack!" The ones who committed the burning were said to be hiding in Pastor Rafael Dos Santos's house, and the officers initiated a talk with the pastor over the handing over of those who were hiding inside, to be legally processed further;
- That the distance between KODIM Headquarters and the scene of the crime at Pastor Rafael Dos Santos's house was between 50 to 60 meters, as from the front-stairs at MAKODIM, the house of Pastor Rafael Dos Santos could be clearly seen;
- That there were efforts to make peace to calm down the situation, such as promoting a disarmament, but those who handed over their weapons were only the Pro-Integration Group, the Pro-Independence Group refused to hand over their weapons;
- That the Defendant as PANGDAM UDAYANA, during the time, had made a visit to KODIM Liquisa, and the Defendant had made a visit to Dili to supervise the DANDIM officers;
- That the steps taken by MUSPIDA to prevent the clashes from spreading out were by making anticipations by working with the police, and as those were criminal procedures, it was up to the police to determine their own measures;
- That the refugees sheltering in the church compound and the residence of Pastor Rafael Dos Santos reached around 1,300;

Witness 9 LEONITO MARTINS

- That the witness was posted as Liquisa Regent since 18th of June 1994 until the 4th of September 1999;
- That the announcement of the People's Consultation/ Ballot on the 4th of September 1999, was advanced from the earlier planned on the 7th of September 1999;
- That right after the result of the People's Consultation was announced, the witness went straight to Atambua, the winning people went hiding in the woods, the losing people from Liquisa and Maubara regencies tried to get out of the regencies. The witness tried to arrange boats to transport the refugees from Liquisa regency, and around 40,000 people could be transported out;
- That on the 6th of September 1999, clashes erupted at the residence of Pastor Rafael Dos Santos, it was not in the church located at the same compound, around 50 meters away from the Pastor's house;
- That the clashes occurred between the Pro-Independence and the Pro-Integration Groups, the witness, at the time, was at KODIM office, the witness looked out through the window, and saw that the clashes erupted at the Liquisa Church compound, in front of the house of Pastor Rafael Dos Santos;

- As the witness went home to the witness' house, there were people taking refuge at KODIM, the witness saw soldiers escorted 2 (two) pastors, who were Pastor Rafael Dos Santos and his assistance, along with 3 (three) other young men;
- That in the afternoon the witness got information that the clashes caused 5 (five) people died and 20 others injured;
- That the witness saw the dead victims with wounds all over their bodies, including the severe cuts on the cheeks and noses;
- The 5 (five) dead victims, the witness saw each of them with his own eyes, when he was inside a car. That the incident concerning the clashes had been reported by the witness to East Timor Governor through the regional government's Public Relation Office on the 6th of April 1999;
- That TNI and PAM SWAKARSA were not related, PAM SWAKARSA only maintained the security in villages in East Timor, as the villages in East Timor were not orderly organized, and they maintained the security in their own areas from lootings and burnings;
- That PAM SWAKARSA were not trained by the Military and the witness never saw TNI joined in the shootings against the Pro-independence;
- That there were quite many PAM SWAKARSA in Liquisa, as they were members of former political parties, so that in a meeting, the governor supervised them to continue PAM SWAKARSA to maintain security in the area, as in the village levels, the violence had increased, while what were meant by the former political parties were, among others: APODETI, UDT, KOTA TARABALISTA, and so on;
- That around 09.00 in the morning, Eurico Guterres came from Dili to meet the witness at the witness' house;
- That at around 10.00 that morning the witness arrived at KODIM Liquisa to meet DANDIM to discuss and talk about events happening at the witness' house, then WADANREM arrived at KODIM office to inform them about Jacinto, the police's most wanted man, who was apparently hiding at the Pastor's house;
- That in the meeting with MUSPIDA of Liquisa Regency at KODIM office, it was agreed to send over a police named John Rea to negotiate with the Pastor, but as John Rea just got out of the front stairs of the KODIM office, gunshots were heard, so John Rea canceled the visit to the Pastor's house;
- That the incident in Liquisa Church compound was related to the prior incidents happened on the 3rd of April 1999, when there were threats by the Anti-Integration groups at Dato village, which managed to reach settlement, then on the 4th of April 1999, clashes erupted again, but could be settled again by MUSPIDA, then on the 5th of April 1999, the occurring clashes worsened, there were attacks on Pukalara kampong, in which there were burning of properties, and a woman named Faulina was slashed by the Anti-Integration Group, another person who was a civil servant from the Public Works Office named Annanias was held at the house of the Village Chief;
- That when the team of investigation from MABES TNI came to Liquisa, they did not question the witness, but directly questioned the religious figures;
- That the witness looked out of the window of KODIM office toward the scene of the crime, at the time when the police were trying to break up the fights, but the witness did not see soldiers, and the witness saw 3 soldiers escorted Pastor Rafael Dos Santos to enter

KODIM through the back entrance of KODIM office;

- That when the witness was at KODIM office, the witness heard shots coming from downstairs area, and somebody ran out while screaming "Sia teteo to lara!" which meant They fired from inside, the witness heard the words from someone in the masses who ran out;
- That people said that those who were sheltered at Pastor Rafael Dos Santos's house carried sharp weapons, bows and arrows, and spears;
- That BMP (BARISAN MERAH PUTIH (sic)) was the organization of people who wanted to defend the Red and White, and they existed in kampongs in East Timor, they wanted the Red and White flag to keep flying in East Timor;
- That on the 7th of April 1999, the witness and MUSPIDA came to the TKP (the crime scene), at the house of Pastor Rafael Dos Santos, but the witness did not come inside, only watched through the broken glassed windows, then the witness said to the representatives of MUSPIDA to immediately make the repairs so that the pastor could stay there again for the sake of the religious community;
- That Jacinto was a man who was trusted by CNRT in Liquisa, in the local government's structure, he was a village chief, and in the party, he was the leader;
- That the witness did not see or hear that the one who led the attacks at the residence of Pastor Rafael Dos Santos was DANRAMIL Maubara;
- That the People's Consultation/ Ballot was held on the 30th of August 1999, and was planned to start at 7.00 in the morning, however, it already started at 5.00 o'clock in the morning, then there was a village woman saying her card was already punched, then there was an Australian journalist who brought and punched voting cards;

Witness 10 Lieutenant Colonel TNI SUDJARWO

- That the witness was a Commander of KODIM 1627 Dili since the 6th of August 1999, until the 17th of September 1999, for 29 days;
- That when the witness started his assignment as the KODIM Commander, the witness said to KODIM members who were mostly East Timor natives, to hope for the best result of the People's Consultation/ Ballot as expected by the government and UN, and accepted the result as it was;
- That the announcement of the result of the People's Consultation/ Ballot on the 4th of September 1999, the witness said to the members, should be accepted as it was, as the result was approved by UN;
- That the witness made approaches to the two parties, and it was true that the Pro-Integration masses had a close relationship with the authority, then when the witness met the Secretary General of CNRT, Jose Paloso, the witness said to him to avoid attacking each other, and promote mutual respects;
- That since the announcement of the People's Consultation/ Ballot and before the People's Consultation/ Ballot, fights often occurred between the two groups;
- That at 14.30 p.m. WIB (Western Indonesia Time) on the 5th of September 1999, riot erupted at Diocese Dili, the witness received reports on the incident from BABINSA (Law

Enforcement Officials posted in villages, and affiliated with the Civilian Administration), then the witness reported it to DANREM, and DANREM gave the instructions to handle the matter by coordinating with POLRI, hampering the masses trying to force their way into Diocese Dili to prevent it from spreading out, and helping the police in the fieldwork;

- That Diocese Dili was the entrance of all the refugees from West Timor as well as from other areas, the witness immediately departed for the TKP and instructed Sergeant Arnold Raja to bring 15 members to the TKP to assist the police officers;
- That the incident at Diocese Dili caused 3 people wounded, one of the victims was Monato Soares, a former member of the Army, who worked there;
- That the victims suffered severe cuts and the witness saw broken glasses and the garage burnt down;
- Before the court, the Ad Hoc Public Prosecutor presented the evidence which were the weapons, the witness said that the firearms were not from KODIM or KORAMIL, the witness explained that those firearms were seized by TNI from FRETILIN, KODIM only had firearms typed SP 1, SP 2, M 16, and FN 46 pistols, and the witness also recognized the bullets as those with 5.8 caliber;
- During the People's Consultation/ Ballot, there were increasing tensions among people due to the frauds committed by UNAMET personnel;
- That the People's Consultation/ Ballot was held on the 30th of August 1999, and was announced on the 4th of September 1999 at between 8 and 9 in the morning, the winner was the Pro-Independence Group, while the loser felt disappointed;
- That TRIBUANA Task Force was assigned in BKO operations under KODIM 16277 Dili, their tasks were to gather information from the surrounding area, to assist the execution of the People's Consultation/ Ballot to ensure it would be held successfully and safely, also to assist in carrying out tasks on territorial supervision at KODIM;
- That the witness, after coordinating with the police, had established places for refugee shelters, which were the offices of the Military and Police institutions, the governor's office, the harbor, and KORAMIL posts;
- That the organic troop of KODIM Dili consisted of 380 personnel, including 99 civil servants, divided into 4 KORAMIL, the witness supervised 10 men from TRIBUANA Task Force troop, and from Battalion 521, there were around 600 personnel already assigned in 67 posts;
- That during the turmoil in Dili and at the residence of Bishop Bello, Battalion 744 were posted in Ubis and made no move anywhere;
- That Bishop Bello requested assistance in transporting refugees, not to the witness, but to the superior officials;
- That during the incident, Bishop Bello went out of the house escorted by two civilians, then they were greeted by Captain TNI Hartono and the Assistant to the 1st Lieutenant (PELTU) Ade Suherman, then they were escorted into a police car and then under DANREM instruction, were brought straight to MAPOLDA Headquarters;
- That the witness' KASDIM (the KODIM Chief of Staff), who was assigned at KODIM for over 10 years, could make distinctions between those who were the Pro-Independence members, and the others, who were the Pro-Integration ones;

- That among the shelters for refugees were KODIM office, Dili port, and the governor's office, as there were refugees everywhere;
- That AITARAK group established in Dili, the witness did not know whether AITARAK group or the other groups were involved in the riots;
- That the witness did not know what caused the turmoil, but after the incident, the witness anticipated those happened because of the disappointment over the result of the People's Consultation/ Ballot, the witness hampered the masses coming from Liquisa, the witness had predicted there would be attacks at places whereas the witness applied security precautions, however, the attacks occurred in places he unpredicted;
- That on the 4th and 5th of September 1999, General Wiranto came to Dili, the witness was instructed by DANREM to secure the airport and the place where General Wiranto conducted briefings;
- That KODIM jobs after the People's Consultation/ Ballot would be providing the security evaluation for foreigners and Indonesians, securing vital installations such as PLN, TELKOM, the airport, the sea port and DOLOG storage houses;
- That the security maintenance conducted by TNI were for the physical facilities, but police jobs were carried out by POLRI, with TNI backing up the police work;
- That in the incident on the 5th of September 1999, the witness was at KOREM Headquarters, the witness reported to DANREM and was not authorized to file reports to the Defendant;
- That around 90% of the members of KODIM Dili were East Timor natives;
- That the witness never heard any member of KODIM or KOREM did the attacks at the residence of Bishop Bello;
- That the witness had secured state-owned money worth approximately Rp 43 billions, and additional properties;

Witness 11 Colonel TNI (Ret.) HERMAN SEDYONO

- That the witness was Covalima Regent since 1988 until 1994;
- That before the People's Consultation/ Ballot was held, the situation was safe, but around May 1999, the government announced the grant of the 2 (two) Options to East Timor people;
- That after Options were announced, UNAMET personnel came to Covalima, Suai, while the Pro-Independence group was already existed in Covalima Regency, the Pro-Integration Group were just established in July 1999;
- That the witness knew the leader of the Pro-Integration was Olivio Moro, while the Anti-Integration was led by Manuel Cordoza;
- That in the witness' efforts to socialize the People's Consultation/ Ballot, the witness and the whole authority officials, called on people to participate in the voting of the People's Consultation/ Ballot, and the village chiefs to register their residents;
- That the witness as PANGDAM called on TNI to be neutral, and took no sides on either one of the groups;

- That on the 6th of September 1999, there were attacks of the Pro-Integration Group against the Pro-Independence Group, at Ave Maria Church compound;
- That the residents taking refuge at Ave Maria Church reached around 2,000 people, the witness had seen them, and had helped by providing food and other necessities for them;
- That other refugee shelters were SMPN II public school, SD Mata Air elementary school, and the Public Works Office building;
- That at the time, the witness made coordination with POLRES, to place a guarding post outside the church, and the witness made requests to the pastor to allow POLRES members to stay on guard, but he refused;
- That in a provincial MUSPIDA meeting, a call had been made, that during the People's Consultation/ Ballot, many people who lived in uphill villages would go downtown for the voting, during which time, the witness offered to accommodate them at SMPN I public school; when they arrived, the witness would pick them up along with the Pastor, but finally they preferred to shelter at the churchyard;
- That to anticipate the situation during the People's Consultation/ Ballot, the witness always coordinated with church leaders, the witness organized meetings on peace settlements, collective masses were held to prevent unwanted problems;
- That the witness organized the collective masses, during which, the security officials were called on to hand in their weapons, but those collected were only from the Pro-Integration Group, the Pro-Independence Group never handed in their weapons, peace efforts were also done through traditional approach, besides that, the witness established KPS (Commission for Peace and Stability);
- That in the incident on the 6th of September 1999, at Ave Maria Church, between 12.00 and 13.00 in the afternoon, the witness arrived in Suai from Atambua at 4 o'clock at dawn, with the rented vehicles to transport refugees;
- That the witness went to the TKP (the crime scene) with DANDIM, and KAPOLRES, but the witness could not get into TKP, from where he stood, the witness saw TNI officers from KODIM, the witness stayed there until 5 o'clock in the afternoon;
- That around 7 o'clock in the evening, the witness got reports that there were victims, and a few days later, the witness knew that Pastor Hilario, Pastor Fransisco, and Pastor Dewanto died;
- That Olivio Moro was present at the scene, but the witness did not know what he was doing there, the witness only saw that he repeatedly shouted;
- That the corpses were brought to the border area in Atambua region, some 30 kilometer distance from Suai;
- That in May 1994, in Dili, a briefing was organized by the Defendant as PANGDAM to direct the witness, and besides the Defendant, the ones who spoke in the briefing were East Timor Governor and a staff official from DEPLU (the Foreign Ministry);
- That the Governor's briefing included that the existing PAM SWAKARSA should be activated, and there would be compensations for their families, PAM SWAKARSA was activated to maintain security in their own areas;
- That during the People's Consultation/ Ballot, there were people's protests coming almost

everyday, complaining the frauds, for example, the election that was planned to start at 08.00 a.m., but was already started at 06.00 a.m., and the police officers could not get near the polling places, the police were only allowed to stand guard at around 50 meters away, the people also protested to the fact that the local staff of the election were mostly the Pro-Independence members;

- That the witness saw a nun was rescued into the house of a KODIM member, the one who secured her was KASDIM, who managed to secure between 700 and 800 people;

- That in the crime scene the witness never met Captain TNI Sugito, DANRAMIL of Suai;

- That the situation of Suai after the announcement of the People's Consultation/ Ballot, was that many people in the kampongs cried, while the people at the church screamed, and many people rushed to the refugee command posts to demand transportation to leave the area;

- That MUSPIDA had set up refugee centers for emergency to be established as refugee shelters;

- That for the witness' testimony, the Defendant had responded and explained that there was no Regent to Commander Command Line, the existing one was Regent to Governor Line;

Witness 12 Major Infantry SUGITO

- That the witness had been assigned to East Timor in 1976, 1979, 1993 and the last one was his assignment as DANRAMIL of Suai, Covalima Regency, since the 16th of June 1992 until the 20th of September 1999;

- That when the turmoil erupted in Suai, the witness was not present, as he was in search for borrowed vehicles in Atambua to evacuate refugees;

- That the witness saw, at the KORAMIL office, there were around 1,000 refugees, and when the witness arrived at KORAMIL, the on-duty officer reported to the witness that there were repeated shootings at Ave Maria Church around 10 o'clock that morning;

- That the witness had members to accompany him to TKP, there, the witness saw corpses lying all over the place, then the witness along with 4 other men there, loaded the corpses onto a Panther van, then the witness went back to KORAMIL;

- That the witness counted the corpses up to 27, mostly had severe cuts, among the corpses were those of the 3 priests'; who were Pastor Hilario, Pastor Fransisco, and the witness forgot the name of the last one;

- That as far as the witness knew, the three pastors had severe machete cut wounds, in the hands, there were rather deep cuts, then there were those on the stomachs, and necks;

- That the 27 corpses were buried in mass burials in Alas village, within the Indonesia border, the village was chosen, because if they chose the East Timor area, they would be attacked by unidentified assailants;

- That the 27 corpses were buried piled up into 3 (three) graves;

- That around the 4th of September 1999, there was a briefing held by DANDIM, then after the briefing, the witness make anticipations to prevent further riots;

- That the refugees were sheltered inside the fenced churchyard, and besides that, there was a security post guarded by 10 personnel from BRIMOB (the Mobile Brigades), as

anticipations in securing the gate for the people's entrance and exit;

- That the witness had heard about a group called BESI MERAH PUTIH (Red and White Iron), but who led or supervised them, the witness did not know;
- That the refugee shelters were at the offices of KODIM, POLRES, KORAMIL, and schools nearby KODIM, and some took refuge inside the church at their own initiatives, as the church was a protective shelter for them;
- That the refugees at Suai church reached around 5,000 people, and the refugees were already there since before the People's Consultation/ Ballot, the reason they took refuge in the church, the witness personally did not know, as the refugees did not come from Suai district, but from other areas within Suai Regency;

Witness 13 AKBP (Adjutant to the Chief Police Commissioner) ADIOS SALOVA

- That during the incident in April 1999 in Liquisa, the witness was posted as KAPOLRES of Liquisa;
- That the conflict at Liquisa Church happened at around 12.00 to 12.30 p.m. WITA (Central Indonesia Time);
- That the result of the meeting held at KODIM, was that the requirements proposed by the Pastor had been accepted, then John Rea was assigned to inform the Pastor that all the requirements proposed by the pastor were approved, and then John Rea would pick up Jacinto, but just as John Rea was ready to go, gunshots were heard;
- That in the reports received by the witness, the refugees sheltering at the Pastor's residence reached around 2,000 up to 3,000 people;
- That the witness assigned 60 members to isolate of the refugees reaching thousands in number, and due to the lack of personnel, the witness asked for back-up personnel to KODIM;
- That the meeting between MUSPIDA and WADANREM at KODIM was dismissed after the shots were heard, the witness departed for TKP;
- That after the shots were heard, the masses were provoked, finally they rushed into the church compound, then the witness and TNI members joined in to chase them away;
- That when the witness was present at the TKP to organize and supervise his men, the witness saw that the ones who made the attacks used daggers and machetes;
- That the turmoil caused 5 (five) people dead and around 25 others wounded;
- That Second Sergeant (SERDA) Sofyan was shot during the attacks at the Pastor's house, SERDA Sofyan was a member of KOPASSUS (the Army Special Force). The witness only requested back-up from KODIM;
- That MARSDYA (Lieut. Gen. of the Air Force) TNI Tamtama Adi, who was the Inspector General of MABES ABRI, made a visit to Liquisa to investigate Liquisa incident, the witness reported the incident at the Liquisa Church compound to the Inspector General of ABRI;
- That the admittance of KAMRA (Community Security Guards) was carried out by KOREM then was handed over to POLRI, and KAMRA under the witness' coordination

reached 60 personnel;

- BMP was an organization of people who wanted to defend Integration, its leader in Liquisa was ARNOLD SOUSA;
- That the witness, at the time, saw Pastor Rafael and his staff when they were at KODIM office, the members of KODIM were the ones who rescued Pastor Rafael Dos Santos;
- That the witness had organized 'weapon sweepings', which were difficult to be applied to the Pro-Independence, as they ran away into the woods and joined FALINTIL, so the weapon sweepings were mostly applied to the Pro-Integration;
- That what was meant by back-up was requesting additional force/personnel to East Timor POLDA, because the lack of force situation required additional back-up force;
- That inside the Pastor's house and in the backyard near the storeroom, they found machetes;
- That due to the crowding masses inside and outside the Liquisa Church compound, the witness had predicted of the coming clashes, therefore the witness requested KODIM to back them up;
- That the witness met Eurico Guterres at about 8 o'clock in the morning of the 6th of April 1999, when the witness was on the way to POLRES, the witness told Eurico Guterres don't mess up around here, just leave it to me;

Witness 14 BRIPKA Police MAKARAW (a de charge Witness)

- That the witness was assigned at the INTELPAAM (Intelligence officer) of East Timor POLDA, in the incident in April 1999, the witness was present at the Governor's office observing the ongoing big rally of East Timor people, which was the Rally of PAM SWAKARSA of East Timor;
- That on the 5th of September 1999, the incident was first occurred at Diocese Dili, when a group of masses came into Diocese Dili, then fights erupted between the masses inside the Diocese Dili and those crowding outside;
- That in the Diocese Dili's surrounding area, there were the army troops securing MAHKOTA TIMUR (Eastern Crown) Hotel, as there were many UN Police and UNAMET personnel sheltering there;
- That the witness saw the masses arrived at Bishop Belo's house, then the witness reported to the command post saying that the masses had rushed into Bishop Belo's house, then about five minutes later, the soldiers arrived in 2 BRIMOB cars and 1 (one) ABRI Hino car, then around 20 minutes later, POLRI members arrived, then they blocked the entrance to the residence of Bishop Belo's, as the crowding masses could not be hampered;
- That as the witness was the first one to arrive at Bishop Belo's house, the witness rescued Bishop Belo, and the fence of Bishop Belo's house collapsed when the masses' pushed their way in;
- That there were Guarding Posts established in the area surrounding Bishop Belo's house, the witness knew that they were permanent guarding posts, that were already set up, not only for the People's Consultation/ Ballot events;
- That the refugee centers established by the security Authority include the offices of the

Governor, KOREM, KODIM, and POLRES, the seaport, and the airport;

- That the incident at Bishop Belo's house caused a sick child died;
- That the witness saw at the TKP in Diocese Dili, there were Ballot Boxes scattering all over the place, the witness saw and carried them away himself. There were some Ballot Boxes inside Bishop Belo's house but not too many in amount;
- That the witness heard from the direction of Bishop Belo's house, the screams and cries for help from women and children, even from some men, they were civilians;
- That on the 17th of April 1999, the witness saw the participants of the Big Rally carrying homemade firearms and painted red-and-white sticks, and the big rally was televised through the state TV, TVRI;
- That after the rally, there was information that members of PAM SWAKARSA would organize a parade around Dili town, then the witness was instructed to stand guard on the considered unsafe positions. The big rally was attended by thousands of people;
- That the refugees taking shelters in the harbor reached hundreds of thousands;

Witness 15 Major TNI. SALMON MALAVE (a de charge Witness)

- That the witness was assigned as the Chief of Staff of KODIM 1627 Dili to assist carrying out duties at KODIM and its internal affairs;
- That on the 5th of September 1999, when the witness and DANDIM were in DANDIM's office, an intelligence officer from KODIM reported that at Diocese Dili, clashes erupted among groups of people;
- That the witness was assigned to secure the established refugee centers, the security maintenance at Diocese Dili and the residence of Bishop Belo were not accommodated because the places were not included in the listed refugee centers. The listed refugee shelters were the offices of the Governor, KODIM, KORAMIL, POLRES, POLDA, and the harbor;
- That on the 5th of September 1999, clashes occurred at Diocese Dili and on the 6th of September 1999, at 10.30 a.m., clashes occurred at the residence of Bishop Belo, in the middle of a mass ceremony, during which, no security officials were present to guard the mass ceremony;
- That the house of Bishop Belo was not accommodated with security precautions as in accordance with the agreements concerning the People's Consultation/ Ballot, the first ones should be protected were UNAMET personnel, then the refugees, and the vital objects in Dili, so the Bishop's residence was not in the priority list;
- That anticipating the incident at Diocese Dili from spreading toward the residence of Bishop Belo, in front of Bishop Belo's house, 2 (two) trucks of soldiers were assigned, but the reports from PASIOP (Officers in Charge of the Operation?) said that Bishop Belo requested the troop to be withdrawn because at 7 o'clock the next morning, a mass would be held, so the troop should be withdrawn;
- That KODIM Dili got BKO operation from KOSTRAD (the Army Strategic Reserve Command) with the force consisted of 680 personnel divided into 3 (three) KORAMIL with 67 posts, and under the witness' KODIM, 97 % of its members were East Timor natives;
- That the result of the witness' monitoring, none of the TNI members involved in the

attacks, and the witness never heard that TNI supplied weapons to AITARAK;

- That reports from PENERBAD posts stated that clashes occurred at Bishop Belo's house, then 1 (one) KIJANG KOMANDO van was sent to hamper them, then DANDIM requested back-ups from KOREM, and KOREM sent 2 SSP troops to the TKP and then the riot inevitably dispersed;

- That the guns owned by KODIM, among others, were SP 1, M 16 and pistols, actually the SP 1 had 39 bullets, the M 16 had 18 bullets, and there were 31 pistols;

- That the witness carried the corpse of the son of Manuel Carascalao, onto the funeral van, and the witness saw that the back of the corpse was wet with blood from machete cut wounds, not bullet wounds;

- That the Sector Commanders in East Timor were divided into several sectors, which were East Sector, Central Sector and West Sector;

Witness 16 Adjutant to the Police Commissioner JOHN REA (a de charge Witness)

- That on the 5th of April 1999, the witness made the investigation and knew there were abuses committed by Dato Village Chief Jacinto and his men, and the witness was informed that Jacinto was sheltered in the house of Pastor Rafael Dos Santos;

- That on the 6th of April 1999, after the morning call, KAPOLRES Liquisa received a phone call from a nun requesting security precautions at the Liquisa Parish House area, then POLRES Liquisa sent one platoon of POLRI members;

- That the witness heard there were masses crowding around the Liquisa Church compound, and a few hours later, the number of crowding masses had increased, then POLRES Liquisa requested assistance to East Timor POLDA to aid them with one platoon of BRIMOB to back up POLRES, then a platoon of BRIMOB was sent led by IPDA (Second Police Inspector?) Frans Salamali;

- That the witness heard from KAPOLRES that KASAT SABHARA (the Chief of SABHARA Squad) had negotiations with the pastor, requesting the pastor to hand over Jacinto, but the pastor refused to do it;

- That due to the unsuccessful effort, KAPOLRES instructed the witness to once again negotiate with the pastor asking him to hand over Jacinto and his men;

- That accompanied by IPDA (Police) Frans Salamali, the witness met the pastor, the witness requested the pastor to hand over Jacinto who committed crimes against his own people, to be legally processed, and the pastor said he would be concerned if Jacinto should be handed over, the witness assured that Jacinto would be legally processed, after that the pastor offered to hand in the evidence, which was a kelewang (a single-edged sword), and asked to just let the man and the others stay, the witness said that the evidence and the men were needed for the legal process;

- That the ones who fired the tear gas were the members of BRIMOB, who were, in the security procedures, equipped with tear gas;

- That the witness received instructions from KAPOLRES to go back to Pastor Rafael Dos Santos's house to inform him that his requests would be accommodated, but before the witness had a chance to inform him, the gunshots were heard;

- That the witness received the corpses loaded onto a vehicle from KAPOLRES and DANDIM of Liquisa who stood next to the vehicle;
- That the witness brought the 5 (five) corpses loaded onto a truck to Liquisa Hospital for autopsy;
- That the pastor made three requirements, first, Jacinto, the Chief of Dato Village, would be handed over, but he should be received by MUSPIDA, in this case, was the regent, second, the masses crowding the pastor's residence should be removed from the area, and third, Jacinto would be legally processed, not at POLRES Liquisa, but at East Timor POLDA, but one of the requests proposed by the pastor, was rejected by the regent;
- That the witness heard that Pastor Rafael Dos Santos was rescued by members of KODIM;
- That the investigation of the TKP, discovered organic guns, the witness found sharp weapons, homemade and organic firearms in the house of Pastor Rafael Dos Santos;
- That the witness knew in the next day, that the 5 (five) corpses were buried by the district chief, in Maubara district;
- That for the 4 (four) suspects of the violence case in Liquisa, their investigation process were carried out at East Timor POLDA and they were detained at East Timor POLDA;

Witness 17 Colonel TNI AD (Army) YAYAT SUDRADJAT

- That the witness had been assigned in East Timor in between the years of 1982 and 1999, and in April 1999, the witness was assigned in Dili as the Commander of TRIBUANA VIII Task Force with 116 member troop, the witness' assignment as the Commander of TRIBUANA VIII Task Force was from February to September 1999, and that was under the instruction of TNI Commander;
- That the 115 (sic.) members of the witness' troop were assigned in KODIM throughout East Timor, started from the most Eastern side, which was Los Palos, then Bako, Manatuto and Samai, in all the 13 regencies, only 3 (three) regencies did not assign members of his troop, which were Ambena, Suai and Ailiu;
- That the witness' duty as the Commander of TRIBUANA VIII Task Force was to assist DANREM 164 Wira Dharma, in monitoring the situation in East Timor area to promote conducive condition in the efforts to initiate reconciliation and peace between the Pro-Independence and the Pro-Integration during the People's Consultation/ Ballot, so there were no assignments like the prior ones such as combat operations, the task he was responsible to, was to complete the People's Consultation/ Ballot in accordance with the government policy at the time;
- That before the witness' departure for East Timor, the President of the Republic of Indonesia B.J. Habibie, at that time, presented the Options for East Timor area, which were Special Autonomy Option, or East Timor separation from Indonesia;
- That the witness duty was to make efforts so that the two conflicting parties could be united to participate in the process of the People's Consultation/ Ballot, and its execution would be free from conflicts;
- That the witness knew the incidents which happened in East Timor, in April, the incident in Liquisa victimized 5 (five) people, and the incident in Dili, during the April 1999 incident in Liquisa, the witness was assigned by DANREM to prevent the worse situation in Liquisa,

and only in May 1999, the witness sent members of the troop to Liquisa, then there were members of the witness' troop in BKO operation under DANDIM of Dili;

- That the Defendant Maj. Gen. TNI Adam R. Damiri was not the witness' direct supervisor, but the witness was under his direct instructions in the organizational line;

- That in East Timor, the conflict was between the Pro-Integration and the Pro-Independence, the Pro-Independence still had the armed force called FRETILIN, and they intimidated people from the Pro-Integration, and that happened on and on, the aim was to find solutions, so the two conflicting parties could be united to succeed the People's Consultation/ Ballot;

- That in the operational duties, the witness was responsible to DANREM 164 Wira Dharma;

- That during the incident in Liquisa, the witness did, not only the monitoring, the witness was present at the scene as it was happening, and clearly saw that none of the TNI soldiers or members of POLRI joined in the attacks;

- That on the 6th of April 1999, to Liquisa, the witness brought 3 (three) members of TRIBUANA Task Force, and they had weapons, and one of the witness' troop members named Sergeant Sofyan was shot in the leg; when he was at the back of KODIM office;

- That in the middle of a meeting attended by the witness, representatives of KODIM, KAPOLRES, and Liquisa regent, gunshots were heard from the direction of Pastor Rafael's house, then the witness ran out, and on the street, the witness saw people attacking each other with machetes, then the witness helped the victims, which made his clothes stained with blood, and the witness also helped carrying a young child who had been carried by the mother who was severely wounded from machete cuts, the child fell and broke an arm, then the witness secured the child to a safer place;

- The riot at Diocese Dili, the witness saw after it happened, he met Dominggus Sakera, then the witness accompanied Dominggus Sakera to pick up important documents in Diocese Dili, that time, the Diocese was already in a mess, and at the right side where the parking lot was, a car was burning, then the witness drove Dominggus Sakera to the house of Gunawan in Komoro;

- That when the witness entered Diocese Dili, the witness saw it was still on fire, but he did not see blood stains, and the witness saw the police and KODIM officers sealed up the place to secure the area surrounding Diocese Dili;

- That as the attacks on the residence of Bishop Belo were in progress on the 6th of September 1999, the witness was present at KOREM housing compound, approximately 2 kilometers away, then the witness went to the scene;

- That the information on the incident at Pastor Rafael's house was taken from reports from John Rea, DANDIM and KAPOLRES, and from talks with WADANREM, it started with the crowding of masses who were the Pro-Independence Group taking refuge at Pastor Rafael's house, one of whom was Jacinto, then the Pro-Integration masses demanded Jacinto to stand trial for the crimes he had committed;

- That the witness acknowledged from John Rea reports, that the negotiation requesting the handing over of Jacinto was not yet succeeded, Jacinto was not handed over by Pastor Rafael, who then required that the handing over of Jacinto would be done as long as he was brought to East Timor POLDA;

- That it was decided at the time that the requests of Pastor Rafael would be accommodated, which meant that if Jacinto was handed over, he would be legally processed at East Timor POLDA, the witness offered himself to initiate the negotiation with Pastor Rafael, urging him to hand over Jacinto, so the situation would calm down and the people could all go home;
- That the witness had heard about BMP, AITARAK and PAM SWAKARSA, which were established by people, while PAM SWAKARSA was established to secure the local areas, and was approved by PEMDA (the local authority);

Witness 18 Captain TNI. JOKO WALUYO (a de charge Witness)

- That the witness had been assigned at KODIM Liquisa since 1994 until 1999;
- That on the 6th of April 1999, turmoil and mass clashes erupted at the house of Pastor Rafael Dos Santos, the witness heard shouts demanding the handing over of Jacinto;
- That DANDIM ordered KODIM members to stay put as there were crowding masses, so that they should stand by, in case POLRI needed them, they would have been ready;
- That the witness assisted the police to secure the pastor and other people in the Parish House compound, as the police had been at a loss on what to do, the witness brought 8 (eight) of his men to pick up the pastor and brought him to KODIM;
- That besides Pastor Rafael Dos Santos, those who went along with them were Pastor Joseph and Sister Flora;
- That according to the information, the victims of the clashes at the house of Pastor Rafael Dos Santos were 5 (five) people died, while between 22 and 25 people wounded, the dead victims, the witness heard, were buried in Maubara;

Witness 19 RAFAEL DOS SANTOS

- That on the 5th of April 1999, the Militia made a move to Liquisa, then the leader of the Pro-Independence and the people from several kampongs who were Pro-Independence made an ambush against the Militia, but as they met the Militia, other Militias were seen with the police and TNI;
- That during the day the Pro-Independence people were shot at, it caused 2 (two) of them died, and a few others wounded in the shootings;
- That incident caused the people, including men, women, children, old and young to run toward the church and the Parish House compound, the Militia started their moves from KODIM Liquisa, then entered the house, the Militia shot dead Hermin who was running towards Maubara field;
- That on the 5th of April 1999 in the morning, members of KORAMIL and Militia gathered in the front yard of KODIM Liquisa, in the center of town area, then on the 6th of April 1999 morning, Militia surrounded the church compound;
- That 2 (two) officers, DANYON (Battalion Commander) Lopez and Fransiscus came to the church, then Eurico Guterres also arrived there at 10 o'clock that morning then entered the Parish House to have a dialog to look for solutions, but it did not work out;
- That around 12 o'clock noon, there arrived 5 (five) more officers, one of them was John

Rea, from the POLRES Liquisa, to have a dialog, but the witness did not what resulted from the dialog;

- That around 13.00 in the afternoon, the shootings started around the church compound, then some of the people in the Parish House, the pastor's residence and outside were repeatedly assaulted with sharp weapons, by the Militia, because the people inside the pastor's house refused to go out, then tear gas was shot into the pastor's house;
- That the people inside the pastor's house ran outside, the men were attacked with sharp weapons by the Militia, but they let the women go;
- That because he could not stand the tear gas, then the witness also rushed out of the house, and when the witness was at the door, a militia man tried to shoot the witness, but the gun was stuck, because it was stuck the man threw away his gun, then picked up a machete and initiated an attack toward the witness, but the witness was rescued by an officer from KODIM Liquisa;
- That the witness saw and heard about 1 (one) hour of shootings at Liquisa Church compound committed by KODIM and the police;
- That in the afternoon, 2 (two) people were shot dead, one of them was the Head of Liquisa Animal Husbandry;
- That one of the persons who do the shootings was a member of KORAMIL Maubara named Antonio;
- That the witness saw with his own eyes that those who made the attacks on the church compound and the Parish House was BMP Militia, KODIM soldiers, the police and BRIMOB, the witness could make distinctions between militia, soldiers and the police, as for over 10 years the witness had lived in the parish, had socialized with the police, soldiers and people who were his religious community;
- That on the 6th of April 1999, the witness saw with his own eyes that there were attacks, happened at around 13.00, at the Parish House compound and those who made the attacks were BMP Militia, along with soldiers from KODIM Liquisa and the police;
- That the one under attacks was the witness' house, and the witness himself saw through the glassed window in the house, that people outside made the attacks at the Parish House;
- That the witness saw people who were outside were repeatedly slashed with machetes by the militia;
- That on the 6th of April 1999, around 10.00 that morning, Eurico Guterres arrived at the Parish to mediate the dialog with the parish pastors, so that the masses crowding the Parish House could be urged to leave for home, but the efforts did not work out;
- That at the time the shootings started, Eurico tried to push his way inside the Parish House as many people in the house refused to come out, from outside the house people shouted telling people to go out of the house, then from the glassed window, the witness saw with his own eyes that the tear gas was shot into the house;
- Because he could not breathe, then the witness ran outside, and rescued by 4 young men, and brought to KODIM at around 17.00 in the afternoon;
- Just as the witness made his departure to KODIM, in the yard of the Parish House, the witness saw 2 (two) corpses were just laid there;

- Around 5 o'clock in the afternoon, arrived at KODIM, DANDIM Lieut. Col. Asep Kuswani, Lieut. Col. Salova, and Maj. Irwan, then Lieut. Col. Asep Kuswani said that it was already safe, then in the pastor's house they found 5 (five) unidentified corpses;

- That when the witness came back to the Parish House, the witness saw the pastor's house was already completely destroyed, nothing left, the witness' bedroom was destroyed, and blood stained all over the place, in the house, on the corridors, in the bath room, blood also stained all over the floor;

- That the shooting started outside the pastor's house, at the time, there were no shots fired from inside the pastor's house;

- That the police shot the tear gas into the house through the windows, the police who shot the tear gas were those who were outside the pastor's house;

- That the witness unmistakably saw Tomi Diego, a member of KODIM Liquisa fired shots, he was an East Timor native from Liquisa Regency;

- That the driver of Eurico Guterres was a member of the KOPASUS army special force, the witness took a good look at the driver when he was parking his car on the roadside, the witness could make the distinction between East Timorese, Javanese and people from outside East Timor, and the driver was not East Timorese;

- That those who died, the witness heard, were around 20 victims, some were civil servants, others were private company workers;

- That the number of people taking refuge at the church compound reached around 2,000 (two thousands), they came from Liquisa and Maubara;

- That the refugees who sheltered inside the church were previously checked by the witness, those who carried machetes, daggers, or bows and arrows were sent home;

- That besides Tomi Diego, other soldiers who joined in the attacks were Roymundo, Jacob, and Isak Dos Santos, the witness' own nephew, who wore sarong and a head band, and carried an M 16 gun wrapped in a cloth;

Witness 20 PELTU (the Assistant to the First Lieutenant) CARLOS AMARAL

- That the witness was assigned as DANRAMIL Maubara since 1997 until 1999;

- That during the incident at Liquisa Church, the witness was not there, but he was on leave to Central Java started from the 28th of March until the 15th of April 1999, (the witness showed the on-leave permit document to the panel);

- That when the witness came back from his leave, SERKA (Chief Sergeant) Suparno reported on the Liquisa incident, it was reported that there were 5 dead victims who were brought to Maubara, and were buried at the Public Cemetery in Maubara, the funerals were attended by representatives of KORAMIL, District and MAPOLSEK offices;

Witness 21 RAYMUNDO DOS SANTOS SARMENTO (a de charge)

- That the witness was assigned to KODIM Liquisa, and when the Liquisa riot broke out, the witness still worked there, the witness' main duties were managing internal affairs, such as the correspondence;

- That on the 4th of April 1999, the witness was present at KODIM Liquisa receiving reports from KORAMIL over fights that occurred among the youth over the gambling in a cock-fight, on the 5th of April 1999, the witness received reports from DANRAMIL that turmoil and fires broke out, and on the 6th of April 1999, at around 6 o'clock in the morning, the witness was at KODIM, and at around 7 o'clock he did the morning call, then around 8 o'clock that morning, masses began to crowd;
- That the witness heard gunshots from the downtown area, in the direction of the residence of Pastor Rafael Dos Santos, and then the witness was summoned by Lieutenant TNI. Joko, along with several of his friends to go for the rescue of the pastor because the pastor was one of the area respected figures, and Lieutenant Joko told them that the rescue was ordered by the Commander;
- That the riot took place inside as well as outside the pastor's house, as there were officers who tried to break up the fights, the witness came only to rescue the pastor;
- That the witness escorted the pastor to KODIM, and when the witness arrived at KODIM, the pastor was directly greeted by DANDIM;
- That the turmoil victimized 5 (five) people died, and about 20 others wounded;
- That the witness heard when the tear gas was thrown/shot by the police, it was done to disperse the masses;
- That when the witness was escorting the pastor toward the exit, a man came aiming his gun at the pastor, then Lieutenant Joko shouted don't shoot! If you shoot him, I'll shoot you now, he shouted to the man who aimed his gun at the pastor;
- That according to reports, those who did the shootings, destroying, also kidnapping on the 5th of April 1999, were the men led by Jacinto, the Dato Village Chief, the one who was kidnapped, was Ananias, the kid of a civil servant assigned at KODIM;
- That as far as the witness knew, no members of KODIM made the attacks, and no Militia ever gathered at MAKODIM;
- That the background that led to the riot, was that the masses crowding outside the pastor's house demanded Jacinto, the Dato village Chief, to be handed over, then the clashes broke out with the people inside the church;
- That in accordance with the leaders' instruction, TNI should stand neutral and took no sides;

Witness 22 Major TNI. Infantry HARTONO

- That on the 5th of September 1999, during the mass clashes at Diocese Dili, the witness, along with several other KODIM members, and 2 platoons from YONIF (Infantry Battalion) 321/ Brawijaya assisted the police officers to prevent and end the mass riot at Diocese Dili;
- That the next day on the 6th of September 1999, the witness, along with the 2 (two) platoons of YONIF 521 (sic) / Brawijaya troop, made security precautions surrounding the house of Bishop Belo;
- That during the mass clashes at the house of Bishop Belo, the witness assisted the POLRI or BRIMOB officers to stand guard, secure and rescue people hiding in the house of Bishop Belo;

- That the witness never saw either TNI or POLRI members who were involved in the attacks on the house of Bishop Belo;

Witness 23 Brigadier General TNI. WIDHYA BAGJA

- That the witness had been assigned as KASETUM of MABES TNI;

- That the witness had handed over letters to the Attorney General Office (then the witness presented the photo-copies of the letters to the panel);

- That there were 2 kinds of letters, the incoming letters that had no original copies, only the photo-copies, and the outgoing letters that had the original copies, and there were the original copies of the letters from MABES TNI;

- The copies that were sent were exactly the same as those kept at MABES TNI, but the witness did not open the letters, and besides those letters, the witness never sent other letters to the Attorney General Office;

- That the letters reserved at KASETUM MABES TNI were those signed by KODAM, and the original letters were still reserved at KODAM, the witness never received original letters;

Witness 24 I KETUT MURTIKA, SH.

- That on the 10th of August 2000, the witness confiscated as many as 16 letters from MABES TNI, and the one who handed over the letters was a SETUM official at MABES TNI, Widhya Bagya;

- That the letters were handed over in the form of photo-copies, and according to the SETUM official, the original letters were reserved at KODAM UDAYANA, the witness never saw the originals, the letters, besides presented as evidence in the case, were also presented as evidence in other cases;

- That on the other evidence letters/documents, a team was authorized to make the confiscation;

- That the letters were handed over by the witness to the supervisors to be stamped by JAMPIDUM as the letters of evidence in the court, and the official who issued the confiscation permits was the Junior Attorney General (Jaksa Agung Muda);

- That the confiscation was authorized to a team, and when the confiscation was in progress, KASETUM MABES TNI Widhya Bagya was accompanied by 2 (two) officials, Major TNI. Kurniasih and Tobing, after that the official record was made;

- That for the testimony of the witness the Defendant declared no knowledge of the letters;

Witness 25 Brigadier General Police Drs. TIMBUL SILAEN (the testimony was read)

- That on the whole, POLRI acknowledged the terms BMP, AITARAK, MAHIDI and others as the organizations established by the Pro-Integration youth, as far as the witness observed, the organizations had no weaponry, but the inputs from the foreign journalist and reports from the subordinate officials, said that they were sporadically seen carrying homemade firearms, as well as organic guns;

- That to follow up the reports, or information, the witness instructed KAPOLRES to conduct "sweepings," the result was that some of the homemade firearms were confiscated by POLRES officers;
- That the case on the attacks at the house of Manuel Carascalao as it was happening, the witness was on a flight from Jakarta to Dili, he arrived in Dili at 13.00 WIB., in the airport, the witness received reports from WAKAPOLDA, and KAPOLRES Dili, that there were attacks at the residence of Manuel Carascalao, from the airport the witness went straight to TKP;
- That at the house of Bishop Belo, the witness met Bishop Belo, Manuel Carascalao, and Leandro Isak, they asked for protection at POLDA, then escorted by BRIMOB, the two Pro-Independence figures along with about 100 other refugees were secured at East Timor POLDA;
- That on the legal actions against the perpetrators, POLRI had conducted TKP processing, made visum (official record) reports, and arrested the perpetrators;
- That the attacks on UNAMET office in Bobonaro started with the fights between the Pro-Integration and the Pro-Independence that took place in front of UNAMET office, the Pro-Independence members ran towards UNAMET office, that made the Pro-Integration group throw things at UNAMET office, which broke the glass windows of the UNAMET office;
- That KAMRA was under the supervision of POLRI, in accordance with the Law that regulated it, KAMRA only managed, guarded, and made first precautions at the crime scene, if they became the members of organizations such as AITARAK, BMP or others, they did it outside the scope of KAMRA organization;
- That KAMRA were recruited by KOREM, from the first registration, up to the trainings were done by KOREM, their number reached around 1,000;
- That the witness received reports on the case over the attacks at Liquisa church, then the witness instructed WAKAPOLDA and several other KADIT officers to back up KAPOLRES Liquisa with the assistance of a BRIMOB Company from East Timor POLDA;
- That the reports the witness received stated that the crowding masses, and the occurring gunshots at the church compound made the preventive measures difficult;
- The measures taken after the incident were localizing the incident with TKP processing, then after the 5 corpses were discovered, requesting the visum reports to the hospital, securing the refugees, and making the arrests;
- That the attacks on Diocese Dili on the 5th of August 1999, at 14.30 WITA, started with the clashes occurring among the masses crowding the harbor, seeing the huge number of the Pro-Autonomy masses, the Pro-Independence party ran away towards Diocese Dili for protection, then the Pro-Autonomy masses pushed their way into Diocese Dili and committed the burning and destroying;
- That BRIMOB officers tried to hamper the approaching waves of masses by firing the warning shots, after the fire dispersed, the police made the entrance to the TKP, there were no victims, but rumors outside claimed that the victims were loaded onto trucks;
- That the attacks at the house of Bishop Belo on the 6th of September 1999, quickly spread out as the shootings continued, the Pro-Autonomy masses tried to burn down the Diocese, but they were chased away by BRIMOB, who put out the flame;

- That Bishop Belo was rescued by Major Carlo, and on the request of Bishop Belo, he boarded on a helicopter in a flight to Baucau, and for the rescue, Bishop Belo called the witness on the phone to express his gratitude;
- That in line with the plans in CABUT II and HANOIN LOROSAE II operations, the tasks of East Timor POLDA would be providing the security precautions in the evacuations of WNI (Indonesian citizens) and WNA (foreigners) out of East Timor after the People's Consultation/ Ballot;
- That the result of the People's Consultation/ Ballot was that the number of the votes for Option I reached 94,388 or approximately 21.5 %, while those who chose Option II were 344,58 (sic!) votes or 78.5 %;
- That East Timor POLDA was particularly different with other POLDA, as East Timor was formerly the area for 'operations', or the disturbed areas which continually had TATOLI IV Operations;
- That in the TATOLI operations, KAPOLRES was posted as WADAN (the Deputy Commander) of the Sub-sector under KODIM, this condition continued for a long time up to the time of the People's Consultation/ Ballot;
- That on the 5th of September 1999, during a visit of MENHANKAM (Minister of Defense and Security)/ PANGAB (ABRI Commander) and other officials to Dili, PANGKOOPS reported the situation to the minister, so since the 4th of September 1999, midnight, WITA, the transfer of KODAL Commands had been in the hands of PANGKOOPS NUSRA, the control was already in the hands of PANGKOOPS NUSRA, Major General TNI. Adam R. Damiri, after that, the transfer was made from PANGKOOPS NUSRA to the Commander of the Military Emergency Authority on the 7th of September 1999;

Witness 26 Magistrate CARLOS FILIPE XIMENES BELO (the witness testimony was read in court)

- That the witness became the Apostolic Administrator of Diocese Dili since the 13th of May 1983, and pentasbisan (the official ceremony) as the Bishop was made on the 19th of June 1988;
- That on the 3rd of September 1999, the witness went home from Baucau on a UNAMET helicopter arriving at around 4 o'clock in the afternoon, the witness saw between 60 and 70 refugees gathering at the compound, and on 4th of September the number had increased to 90, on the 4th of September 1999, the People's Consultation/ Ballot was announced, and through the evening, the number of refugees kept on rising, and by the 5th of September 1999, there were already 4,000 people;
- That on the 5th of September 1999, a meeting was held at the Commander's residence in Farol, attended by Gen. TNI. (Ret.) Faisal Tanjung, Gen. Wiranto, KAPOLRI, and Lopez Da Cruz, Salvador Soares, while from FPDK, there were Joao Tavares, Basilio Araujo, and Mario Sanchez, and from CNRT, MAUHUDU attended, while representatives of the church were the witness himself and Manuel Abrantas;
- The Minister of Political and Security Affairs, General TNI. (Ret.) Faisal Tanjung, said that the referendum had been completed and the Indonesian government fully accepted the result of the People's Consultation/ Ballot, though acknowledged the occurring frauds, the Indonesian government still accepted it;
- That Gen. TNI. Faisal Tanjung also said that if there were problems concerning groups of

people who refused to accept the result of the People's Consultation/ Ballot, it would be up to the East Timor people to seek solution;

- That General Wiranto said even though there had been a thousand of frauds, and the number votes for the Pro-Independence that reached 78 % was too high, the Indonesian government would have accepted it, and urged the church to make reconciliation and dialogs between the Pro-Independence and the Pro-Integration Group;

- That in the meeting, the witness asked 2 questions to General Wiranto, the first was that ABRI Community had sophisticated, highly-skilled intelligence, could they discover who did the night shootings in Dili? The second was that the witness requested TNI Commander Gen. WIRANTO to clean up the routes of Dili - Batu Gade, and Dili - Lauten from Militia groups and checking posts they established along the road, the two questions were not answered by General TNI. Wiranto, those words were just cynical criticism, they had been aware that there would be chaos when the church was urged to have reconciliation;

- That Joao Tavares refused to have reconciliation with FRETILIN, as FRETILIN were liars and murderers;

- That the witness went home at around 3 o'clock, then there was a phone call from General VICAR telling that CAMAR ECCLISIASTICA was surrounded by Militia, but the witness stayed home, and in the evening there were already 5,000 refugees;

- That on the 5th of September 1999, at around 5 o'clock in the afternoon, shots had been fired all through the evening, then on the 6th of September 1999, when the witness woke up at 5.00 in the morning, the witness saw in front of the house, there were 2 (two) trucks of KOSTRAD (the Army Strategic Reserve Command) soldiers, who said they were there to protect the refugees, then at around 6.00 that morning, the witness went out to ask for permission so that the refugees could go to the beach to urinate, but 15 minutes later the 2 (two) trucks just disappeared;

- That after breakfast the witness made a phone call to KAPOLDA Timbul Silaen, requesting trucks to transport the refugees from Dili to Baucau, KAPOLDA told the witness to directly call DANREM to be provided with trucks and protection, but DANREM said they had no vehicles available;

- That when a Lieutenant Colonel from KOSTRAD came to ask how he was doing, the witness asked him to provide the protection to avoid Militia attacks, then the witness heard from the children at the witness' house that when the Lieutenant Colonel went out and arrived at the end of the road, he shouted at the Militia waiting there, attack now; attack now otherwise I'd kill you;

- That around 4.30 p.m. they rode motorbikes around the house and threw stones onto the roof while repeatedly shouting;

- That as the shootings started, they began to throw Molotov bombs onto the veranda in front of the main entrance, after that there were shots fired at the witness from the four corners of the compound, the east, west, south and north, the witness saw glass windows were crashed, the refugees started to scream, women and children cried, the Militia shouted: "Sae, sae, sae!," which in TETUN language meant "Out, out, out!," there were, at the time, around 5,000 refugees;

- That the witness shouted to everybody to sit down in the garden, then the witness met several youth representatives of the Militia and asked them to put out the fire that started to spread up from the windows, they answered: "We have our leaders, so we can't do anything," at that time, the police arrived in a truck, and started to make actions to control

the situation, and sent the foreigners away toward a football field in front of the witness' house;

- That KAPOLDA then sent a jeep to carry the witness to POLDA, the witness left the refugees, and after that the witness could not recollect what happened;

- That in the talk between the witness and KAPOLDA at POLDA, KAPOLDA Timbul Silaen said to the witness: "Bishop, we had to take these actions, because when Timor people were in trouble, they always ran to the church, the pastors, or the nuns, and to prevent that, we have to do this;"

- The KAPOLDA at the time just kept giving instructions, not seriously. The children told him that the police themselves threw kerosene onto the flame;

- That KAPOLDA provided a helicopter and brought the witness to Baucau, and according to the witness' children, KOPASSUS were already there separating men and the women, and searched for activists;

- That the refugees seeking shelters in the witness' house came from various 'corners' (of the area), they said that the armed Military riding on trucks came to their houses, told them to get out leaving all of their belongings, then the Militia set their houses on fire;

Witness 27 ABILIO JOSE OSORIO SOARES (the testimony was read in court)

- That the witness was the former governor of East Timor before and after the People's Consultation/ Ballot, the Governor's duty was to carry out the governance, to develop the society, and have good coordination with related institutions, and usually, all the central government institutions in the provincial level assisted the governor in carrying out the tasks;

- That East Timor problems became complicated after the intervention of the International world, and on top of that was the engineering behind the Nobel Prize Award, given to Ramos Horta on the 12th of November 1992;

- That the witness had refused the implementation of the People's Consultation/ Ballot, instead he wanted reconciliation efforts, if necessary, be held in Australia by inviting East Timor prominent figures residing in East Timor, as well as outside East Timor, including Xanana Gusmao;

- That at the time, the witness instructed all regents to establish PAM SWAKARSA with the aim to prevent physical conflicts between people's groups throughout the regencies;

- That at the time nearing the People's Consultation/ Ballot, PEMDA (the Local Government) established 2 organizations:

1. FPDK (Forum for the Unity of Democracy and Justice)

2. BRTT (East Timor People Guard)

to organize all East Timor people down to the village level, and 75 % of East Timor people joined in the organizations.

- That during the People's Consultation/ Ballot, there were frauds committed by UNAMET officials, the witnesses from outside the TPS (Polling Places) were not allowed to observe in the voting, an example of UNAMET frauds was that the witness' parents were told to punch the cards to vote for the Pro-Independence;

- That in Suai Regency, in an UNAMET car imported from Portugal, driven by an

UNAMET personnel, during the election, they found ballot cards already punched on the Pro-Independence column, so the witness saw the process of the People's Consultation/ Ballot was flawed and full of frauds;

- That FPKD and BRTT protested to UNAMET, and UNAMET had admitted the fraud, but all of a sudden the announcement of the result of the People's Consultation/ Ballot was advanced onto the 4th of September 1999, instead of the earlier planned on the 7th of September 1999;

- That the advancement of the announcement of the People's Consultation/ Ballot from the 7th of September 1999, to the 4th of September 1999, led the people who were defeated into committing crimes such as the burning and destroying of properties, and the killing of people suspected as those of UNAMET team;

- That at the time, there was an opinion that ABRI had told people to take refuge, that happened not because ABRI told them to, but because they wanted to, and the burning of properties were committed by the people on their own houses and vehicles;

- That if there was members of ABRI who were involved, they were the East Timor natives who were frustrated over the disappointing treatment of the international world;

- That at the time, the witness knew on the murders and burning of properties when he received the information through the phone call from Jose Ximenes, the Head of the DLLAJR (Traffic and Land Transportation Agency) office, and the witness immediately informed the Defendant on the incidents;

- That in carrying out the governance in the province, there should always be coordination with related institutions especially MUSPIDA elements, and occurring problems would be discussed in the scope of MUSPIDA forums;

- That PAM SWAKARSA was officially established by PEMDA TK. II (Regency Level Government) based on a Governor's Decree, and PAM SWAKARSA organizations on the regency level were given new names by the PEMDA TK. II, such as AITARAK, BMP, MAHIDI, ABLAI or MAHADOMI;

- That PAM SWAKARSA assisted PEMDA TK. II in maintaining security and order in the community, besides the existing security authority;

- That the institution providing the supervision were the respective regent with the financial support from APBD (the local government budget plan);

- That the witness knew on the murders happened at the house of Manuel Carascalao, located next to his family home, while the murders in Liquisa were informed to the witness through reports from Liquisa regent, and the murder of Journalist Sander Robert Thones, the witness acknowledged through people's information;

- That before the People's Consultation/ Ballot, the witness had already known the possibility of the occurring clashes, and the witness had asked the security authority to make anticipation;

- That considering the possibilities, the witness instructed the establishment of PAM SWAKARSA due to the possible security disturbances in many areas, for the security maintenance during the People's Consultation/ Ballot, and for providing prepared personnel for security precautions at TPS, which were useless efforts;

Witness 28 AKBP Pol. (Assistant to the Chief Police Commissioner) Drs. HULMAN GULTOM (the testimony was read in court)

- That as KAPOLRES of Dili, the witness had duty to enforce the Law, to protect people, and to serve people in the POLRES Dili jurisdiction, and as KAPOLRES of Dili, the witness was responsible to East Timor KAPOLDA;
- That at POLRES Dili, there were assigned KAMRA recruited from East Timor KOREM, reaching 120 personnel, with the majority of them were East Timor natives;
- That on the 17th of April 1999, there was an official ceremony of the establishment of AITARAK, the ceremony was successfully held, and ended at around 11.00 WITA (Central Indonesia Time), and as the participants started to go back to their respective places, riots erupted in several places, among others, at the residence of Manuel Carascalao;
- That at the time, one platoon of BRIMOB arrived at the TKP when the riot was in progress, the riot could be immediately handled, but still caused victims, in which 13 people died, while 41 others were rescued at MAPOLRES Dili;
- That on the 17th of April 1999, riots occurred in 3 different locations so that the security forces were limited;
- That on the 4th of September 1999, the result of the People's Consultation/ Ballot was announced and it was won by the Pro-Independence Group, since the announcement, the Pro-Integration Group became disappointed and committed the crimes that scared people and made them seek shelters at Dili harbor;
- That as far as the witness knew, the attacks at Diocese Dili happened on the 4th of September 1999, started with the activities of the Pro-Integration that scared people, many of the people ran to Dili harbor for protection and refuge, and some others seek the protection at Diocese Dili;
- That after they knew that the Pro-Integration masses had attacked Diocese Dili, POLRES Dili could only send the 7-men force led by 2 KAPUSKODAL and KASATSERSE officers with the 5 members, the 7 POLRI personnel could not handle nor chased away the attacking masses reaching around 300 people;
- That the incident of the siege of Diocese Dili happened so fast, as when the back up forces arrived, Diocese Dili was already in flame, while the available firefighter trucks were not in use;
- That on the 6th of September 1999, right on midnight WITA, the Military Emergency Authority started to take effect, KAPUSKODAL was informed that the residence of Bishop Belo was under attacks, and at the time he arrived at the residence of Bishop Belo, POLRI troop led by Lieut. Col. J. J. Sitompul were already there to rescue Bishop Belo and the refugees sheltering at the residence of Bishop Belo, then brought them to East Timor POLDA;
- That in the TATOLI IV Operations, KAPOLRES was the WADAN (Deputy Commander) of Dili Sub-sector, while the Sub-sector Commander was DANDIM of Dili, and in the TATOLI IV Operations, POLRI, in the structural existence, was assigned to handle criminal cases so that the processing would not violate the Law, and the witness reported to KAPOLDA, while DANDIM to DANREM;
- That the incident was caused by the contradictory interests between the Pro-Integration and the Anti-Integration;

- That the peak of the disappointment of the Integration groups was at the time of the announcement of the result of the People's Consultation/ Ballot, when the Pro-Integration Group suffered a total defeat;

Witness 29 MARSDYA (Lieutenant General of the Air Force) TNI. (Ret.) TAMTAMA ADI

- That on the 15th of April 1999, the witness, as the TNI Inspector General, was appointed by MABES TNI as the head of the team to clarify and investigate the alleged involvement of TNI in the incident at Liquisa Church;

- That the information or news on the case had been confusing, there was information that in the incident at Liquisa Church located not far from KODIM, TNI joined in the attacks on the refugees sheltering at Liquisa Church;

- That the witness went to TKP in Liquisa on the 17th of April 1999, before investigating the TKP, the witness was escorted to (observe) the locations where the houses were burnt down in the incidents on 5th of April 1999;

- That after conducting the checks at the TKP, it was clear that the TKP was not the church, but the Parish House some 50 meters away, and none of the perpetrators were TNI, however, the officers were the ones who initiated peace and took part in the negotiations;

- That TNI joined in the attempts to break-up the fights, also to rescue Sister Flora, the pastor, and several young people;

- That there was a member of TNI, Lieutenant Sofyan, who got shot and then brought to the hospital, and the clashes caused 5 people died and 20 others wounded from machete cuts;

- That to obtain adequate data and information, the witness met the Regent, Sister Flora, DANDIM, and POLRES Liquisa officers, and people said the one who burnt properties was Jacinto;

- That according to the information the witness received, on the 6th of April 1999, there were efforts to make negotiations so that Jacinto, who had been hiding in the church compound, would turn himself in;

- That the witness had interviews with Sister Flora who also treated and took care of the victims, and according to Sister Flora, the victims were 5 people died and 20 others wounded from machete cuts;

- That the witness, after getting the clarification, concluded 3 points, they were:

1. The crime scene was not the church, but the Diocese;
2. The number of dead victims was 5, and the number of the wounded from machete cuts was 20;
3. The members of POLRI did not involve in the attacks, however, they were involved in the efforts to bring peace and security;

- That in the methods of investigation, the team consisted of 4 members conducted interviews and went to the crime scene;

- That MABES TNI got information, on members of TNI who allegedly joined in the attacks, from reports from NGOs, newspapers or other media coverage, and intelligence institutions, while the reports from Bishop Belo, the witness never read them;

- That the witness and the investigation team did not interview Pastor Rafael, but the witness and his team interviewed John Rea, and according to John Rea, he tried to negotiate for reconciliation but did not succeed;
- That Pastor Rafael had a pistol and aimed it at people, and he also mobilized the masses;
- That the witness knew Pastor Rafael had a pistol from DANDIM of Liquisa, Asep Kuswani;
- That the report made by the investigation team was considered as a Special Attention Report and it was not final;
- That the report on the investigation and clarification was sent by the witness to TNI Commander (MABES TNI), and the witness knew that TNI Commander followed it up as recommended by the team;
- That the witness was informed by sister Flora and the regent, that there were no involvement of TNI;
- That the Attention Report made by the investigation team was considered as report with special characteristics and sent to MABES TNI as unsealed letters;
- That the interviews were done verbally and had no official record;
- That on the 17th of April 1999, there were clashes at the house of Manuel Viegas Carascalao in Dili, but the witness was not assigned to investigate the incident in Dili, the witness received reports from DANREM of Dili over the incident at the house of Manuel Viegas Carascalao;

Witness 30 AKBP Police (Assistant to the Chief Police Commissioner) GATOT SUBIYAKTORO (the testimony was read in court)

- That the witness was the KAPOLRES of Covalima, East Timor from 1998 to 1999;
- That in the attacks at Suai Church compound, earlier in the day, the witness made some checks on problems concerning the refugees sheltering at the SMP II school building, the Public Works office, and POLRES barracks, the witness went to the regent's house to discuss occurring problems in handling the refugees, then came the Pro-Integration Group to meet the regent, and as far as the witness knew, the regent told them to avoid making unnecessary actions;
- That all of a sudden, gunshots were heard, and they were informed that at the church, clashes occurred, and that there were burning of properties, then the regent went straight to the location;
- That when the witness saw the crowding masses, and some of them from the autonomy groups pushed their way into the church while shouting words the witness did not understand;
- That the witness called for the members present at the POLRES to get to the location, and after the riot at the church had dispersed, out of the church, came around 250 people, mostly women, the witness then instructed to escort and secure the refugees to the shelters at MAKODIM, as well as at POLRES;
- That in the next day, on the 6th of September 1999, around 8.30 a.m. WITA, the witness' members reexamined the TKP, and reported that at the TKP, there were blood marks, and at

the remains of the fire, they found no corpses;

- That the information said the victims had been brought away on a truck by the Pro-Integration people, and the witness did not know where they brought them;
- That on the 7th of September 1999, started on midnight WITA, the Military Emergency was applied in East Timor;
- That the witness had been informed by DANDIM that KAPOLRES was the Sub-sector's WADAN (Deputy Commander) in TATOLI IV Operations, but when the operations started or ended, the witness did not know;

Considering the testimony presented in court from the expert witnesses, proposed by the Team of Attorneys of the Defendant, as well as from those proposed by the Ad Hoc Public Prosecutor, mainly explained as follows:

Witness 1 Dr. ARIFIN S. S. TAMBUNAN, SH. (Expert Witness)

- That "Command" was a Military term indicating the authority to have control on squad-troops, and have control to mobilize and plan the moves/actions of the subordinate officers, and also supervise the moves/actions of the subordinate officers;
- There were 2 (two) kinds of Commands, Control Command, and Supervisory Command. The authority over the control include giving orders and instructions to the subordinate officers;
- That in the case of neglecting the members allegedly violating the law, the Commander should be responsible for it;
- That in the TNI Doctrine, the Commander should be responsible over what his subordinate officers did, and what his subordinate officers did not do;
- That the Commander should be responsible as he was the controller and supervisor, and the Commander should be the center of the squads;
- That the command structure in ABRI/ TNI, starts top down from the TNI Commander, then Strategic Reserve Commands under him, the Chief of Staff of the Forces included the Operational Command, Strategic Reserve Commands, Tactical Commands, and Personnel Commands;
- That KODAM Commander was included in the Tactical Commands;
- That what was meant by "effective control" was that the Commander/officer could give orders or instructions to the concerned officers, and if there were troops that were assigned to assist him, he would also have effective control over them;
- That every incident that took place anywhere would be the responsibility of the state, because the state was responsible over the security and public order anywhere within Indonesian territory, including in East Timor;
- That terms of Human Rights violations were first recognized after the implementation of the Law no 26 of the year 2000, in which the Commander would be declared responsible if he knew his subordinate officers committed the violations, and he made no actions to prevent them or take no actions within his power against the subordinate officers;

- That in normal situation, PANGDAM was responsible to the TNI Commander, and in the supervisory matters, he was responsible to KASAD (the Army Chief of Staff);
- That according to the witness, all soldiers in one territorial command should be responsible to PANGDAM, and in the Military Law, verbal instructions were the same as the written ones;
- That when DANDIM and DANREM could not handle the situation, then PANGDAM should take over;
- That the role of TNI in the defense and security was to uphold and keep the country's sovereignty;
- That in the situation in which the country was in the civil law and order, the responsibility of the country's security and public order would be in the hands of POLRI, and when POLRI were incapable of handling it, then TNI had the obligation to assist;
- That in the case of the Military Emergency in KODAM territory, PANGDAM would be the commander of the Military Emergency Authority;

Witness 2 Prof. Dr. MULADI, SH (Expert Witness)

- That the witness had been to East Timor with a group of officials sometime in between August and September 1999, before the People's Consultation/ Ballot, at the time, the witness observed the internal tensions between the Pro-Integration and the Pro-Independence;
- That at the time, the witness stayed in the airport, the ones who came to Dili were only PANGAB, General Wiranto, and his officers, at the time the witness was the Minister of Judicial Affairs of the Republic of Indonesia;
- That the most noted event concerning East Timor was international pressure to bring to trial, the Human Rights violators in Indonesia;
- That frankly, the Human Rights violators were not only from the RI party, but also those from the East Timor party from the Pro-Independence, because in a conflict, the two opposing parties must have committed Human Rights violations, whether the indictments were of serious/grave Human Rights violations or of just ordinary crimes, they could be further tried, but the two parties interacted each other in the matter, including President Xanana Gusmao;
- That Indonesia had established Human Rights Court, not because of the International pressure, Indonesia established the Human Rights Court as a sovereign country, which had dignity to bring to trial its people, based on its own Law;
- That the responsibility of a Command would be the responsibility of a military commander against crimes committed by his troops, individually or collectively, under the effective control of the Commander, there were 2 (two) kinds of Command Responsibilities, the first was Direct Command Responsibility in the form of commissioned actions or active actions, such as terminate the soldiers or commit murders, the second was in the form of omission crimes, or in Indonesian language was termed as crimes of negligence (pembiaran), in which the commander who knew of the possible crimes made no preventive measures to stop the crimes, and if there were already committed crimes, made no effort to take the violators for further investigation and legal indictment;

- That there were judgments of the International Crime Tribunal over Command Responsibility cases such as Tokyo, Yugoslavia, and Rwanda cases, and there were doctrines or principles on the enforcement set forth by prominent figures, or the law experts, or based on the International Common Law (Hukum Kebiasaan Internasional), and General Principles of Law, moreover, there were the International Law Principles accepted by most civilized nations;

- That there were measures for the standards of commands:

1. The measure termed as the 'Power to Interfere' in which a commander had the authority to prevent a possible crime;

2. The measure termed as the 'Power to put to an End' over a crime in progress;

3. The measure termed as the 'Power to Refresh' by applying penalty in accordance with the formulation of the Article 26. Then there were the Subordinate-Supervisor relation, and the Commander-Force relation under his affirmative command, so there were the same quality relationships in the supervisory and the military terms;

4. The measure termed as 'Material Ability' which means every commander could use his power whenever he wants, then the right of the effective control is in a line of command called Circular Command, so even if he is not a Top Commander, he is in the position to influence decision making, the commander has the authority to give orders/instructions obligatory to his subordinates, he has the affirmative duty, he has the legal, as well as moral obligations to supervise and control his subordinate officers;

- That the elements of the Effective Control, for example, revealed in court hearings of a case in Tokyo, Japan, in which in a troop, there was a commander who was on trial for mass-rape crimes in Nanjing, but the commander, who was a logistics officer, could not be held responsible, he was free of charges because he did not have the effective power to influence the Commander, then the man moved to the Philippines to become a staff member of General Yamashita, in the post of an operational officer, it turned out the violence in the Philippines involved Japanese soldiers, therefore this man was held responsible because he was in the position of a policy maker, he was then an officer with effective and tactical powers;

- That the witness heard about the frauds committed by UNAMET as KOMNAS HAM had representatives there, the election staff were recruited from the Pro-Independence people, and the vote counting were not done in Indonesia, but they were done abroad;

- That Indonesia filed serious complaints on the matters, then 3 (three) prominent judges from England, Scandinavia and Netherlands were assigned to look over the matters, they concluded that there were possible frauds but the numbers were insignificant, the frauds were systematically executed;

Witness 3 Dr. DODI HARYADI (Expert Witness)

- That the witness' attention was the turbulence of the social behavior during the People's Consultation/ Ballot in East Timor, the witness tried to make analysis on the back ground of such social behavior;

- That the witness made the observations by keeping himself well informed on the case through mass-media;

- That the brutal actions as the characteristics of mass physiology, were caused by the

collective emotional loads that needed expulsions, or release, against obstructions, so the obstructions became the objects of emotional discharges of the masses;

- That the witness made a study on the characteristics of the East Timor population, historically, it was described that East Timor people were divided into sub-ethnics, which had been long socialized as having conflicts among the sub-ethnics, or the non-homogeneous society groups;

- That if the mass characteristics were situational or spontaneous, the change of behavior, which was previously controlled, could instantly change into the mass behavior that were difficult to anticipate and unpredictable;

- That when a certain number of individuals gathered and were in the collective emotion, that would be a predisposition to the possible mass behavior, there were External Condition that stimulate the emotion which was the trigger factor of collective behavior termed as the mass-behavior;

- That the back ground of the ethnical cultures of East Timor people, this condition alone, was already a predisposition of occurring conflicts, then the situational conditions during the mass behavior were considered as problematic, so the efforts to overcome the occurring mass-behavior in that mode, would be very difficult;

Witness 4 Brigadier General Retired TNI. AD. (Army) P.L.T. SIHOMBING (Expert Witness)

- That what was meant by the Command Responsibility would be the responsibility of a Commander based on Criminal, as well as Civil laws over crimes committed by his subordinate officers, and the Command Responsibility, in Indonesia, had been a new issue;

- That the Indonesian Law and Regulations were mostly the legacy on the former Dutch colonial government, designed to meet the interests of the colonial authority, so that the omission or the command responsibility offenses were not adequately accommodated in the Military KUHP (the Military Criminal Code) and in KUHP (the Criminal Code);

- The result of that was the commanders were seldom touched by Law, as all soldiers or commanders should be equal in Law;

- That the command responsibility should comply with the principles of the Military Doctrines, which exercised the Unity of Command through the Chain of Command;

- That the chain of command started from the top ranked, down to the lowest ranked positions, was nationally subjective, they were practiced, based on the command system of each country;

- That the background of the practice of the command responsibility, from the state point of view, was because the commander had been authorized with certain obligations which were not accomplished, so he made mistakes he should be responsible for, as due to his "wrong full act", the crimes committed by his troop members took place, so the responsibility should come from that;

- That the command responsibility of the command line could be stretched from the bottom up by complying with the elements as follows:

1. There should be provided evidence of grave Human Rights violations committed by his troop members, if there were none, there would be no command responsibility;

2. There should be the subordinate relation between the commander and the actors of the crimes, and the subordinate relation could be applied to the commander, not only to the one who held the command, so it could be applied to the direct commander, or indirect ones, that would be the point of decision, those who could be held responsible were every commander within the chain of command, from the lowest ranked, up to the highest one;

3. The commander did not act upon or failed to act upon the power authorized to him to stop (the crimes), or turn in the violators to the authority;

- That when the KODIM Commander did not take any actions, then he should be held responsible, then it could be investigated further up, that when the DANREM did not take adequate actions, he could be held responsible too, this could be done further up onto the top of the chain;

- That what was meant by the subordinate relation was the subordinate relation between the commander and the actors of the crimes, and the relationship should not be direct, it could be indirect ones, but it could not be stretched out to the sides, it could only stretched upwards;

- That the chain of command applied in TNI circle was regulated in the Law No. 20 of the year 1982, Presidential Decree No. 60 of the year 1983, Commander's Decree No. 8,9 and 10 of the year 1992, and in the Buku Petunjuk Lapangan Tingkatan Satuan-satuan (Guideline Book for Field Level Squads (?)), such as the Guideline Book of Ground Combat Operations, the Guideline Book of Merged Operations, and the Guideline Book of MABES TNI, but it was principally based on the Article 37 Paragraph 1, and the Paragraph 3 of the Law No. 20 of the year 1982;

- That the prime supervisory command had the duty to supervise TNI squads and elements, while the prime operational commands were the elements of executors of the military operations in Indonesia. But the prime supervisory command, at one time, could become the prime operational command, for example, KODAM, once, had become the prime supervisory command supervising squads at the time, and was responsible to the chief of staff, when it became the prime operational command, it was responsible to the Commander;

- That as the prime supervisory command PANGDAM had the duty to supervise the TNI elements or his line of officers to be ready for any task, and as the prime operational command, PANGDAM carried out instructions of the upper commands;

- That command squads were the principles applied universally in the Military, the national military should be obedient in carrying out the tasks in one command to avoid duplications, and to create the unity of efforts to carry out the main duty or other state obligations;

- That the acts of control were carried out after given orders or the execution of instructions from the upper commands, this control mode was one facilities of KODAL Commands in the military existence, the effective control could be confirmed whether or not the command was reported, that was the confirmation, for example, DANDIM received reports from DANRAMIL, so DANDIM was the effective controller, it could be observed through operational instructions, as there was the KODAL Command, so as long as the reports were made, the effective control was applied;

- That to claim the command responsibility, in practice, there should not be necessarily evidence from the court's decision, but the public opinion claiming the troop member's involvement in the crimes of grave Human Right violations, would be enough, it could be claimed without trial;

- That certain articles of the Humanitarian Law were in the competent Military Commander

Convention which applied the law to the subordinate officers, and this was the omission offense applied in the Humanitarian Law, while in the command responsibility, a commander would be in the right position to be the law enforcement officer as he was authorized to do that, however, the power was not adequately used on time, which led to the grave Human Rights violations committed by his subordinate officers;

- That for the civilians, the Humanitarian Law-based terminology were applied in various ways, while Combatants were the members of the armed forces or groups who spontaneously applied resistance against attacks from the opposing party;

- That whether or not Militia were Combatants, were depended on the prerequisites, whether or not the militia had a commander who was responsible over the actions of his men, or, whether or not the militia conducted military operations in accordance with the International Law;

- That Wanra as long as they were included in power structure they were included as Combatants, but if they were not included in the structure they were not Combatants;

- If Wanra committed crimes, if Wanra were included in the KODIM structure, the one who took responsible was the KODIM Commander;

- That in the element of the commander's knowledge of the grave Human Rights violations after the occurrence or those in progress, the commander should not be necessarily informed just through official reports of his subordinate officers, a newspaper coverage claiming the occurring violations, for instance, would be enough to be used as the evidence;

- That when there were newspapers reports on repeated pattern of the "wrong full acts", the commander should take immediate actions, the commander should instruct the competent elements to investigate and take legal actions;

- That in the 'superior order', in this position, the commander should still be held responsible, as in the execution of operations, the commander had to be responsible over 2 (two) things, first, he must ensure his subordinate officers could safely carry out their task, and second, the main duty should be accomplished, so there should have been guidelines on what the troop members could and could not do, though unfortunately, they had never been regulated;

- That concerning all the cases that took place in TNI circle, there was a telegram from ABRI Commander No. 10 of the year 1995, requiring every commander to hand over the legal cases taking place in their squad circles, to the investigators for follow ups;

- That the commander who had the control over the execution of an operation, should know everything that happened in the operation, so if there were violations he did not aware of, that means his control was not effective;

- That in the practice of Article 42, of the Law No. 26 of the year 2000, the first element was that there were the involvement of the troop members in the crimes, the second was there was the subordinate relation with the actors of the crimes while such subordinate relation should not be necessarily a direct one;

Witness 5 Prof. AHMAD SARIFUDIN NATABAYA, SH. (Expert Witness)

- That the witness took part in the preparation of the Law No. 26 of the year 2000, as the government found it necessary to have or apply the Law to seek settlements on East Timor cases;

- That the commander's responsibility according to Article 42 of the Law No. 26 of the year 2000 were the same as those in Article 28 ICC, so the command responsibility in the International Law practice were the same as those practiced in Indonesia;
- That a command was a legal authority or power given to the commander to give orders/ instructions to the soldiers under his command, or the person who hold the command responsibility;
- That the meaning of the Effective Command Control was, it could be executed effectively and 'de jure' had the power to give instructions to the sub organic level, there should be the Chain of Command, so the one who was responsible was the commander who was given the power to give direct orders;
- That in accordance with the Law, the person who could be held responsible for the command responsibility was the one who held the effective command;
- That each country had its own rule on the command responsibility as stated in the indictments on the Defendant, in the command responsibility regulated in the Article 42 of the Law No. 26 of the year 2000, it was clear that every country had its own rules on who should be effectively responsible, as in the military there was the Chain of Command in which the first one who should be responsible was the one who had 'de jure' and 'de facto' power to give direct orders to the subordinate officers;
- That based on the Den Haag Convention, a Commander should be responsible even over the actions of his subordinate officers;

Witness 6 Lieutenant General Retired TNI. AD (Army) SAYIDIMAN SURYO
HADIPROJO (Expert Witness)

- That the witness explained that in 1945, General Yamashita was held responsible over what the Japanese soldiers did in the Philippines at the end of the war, at the time, General Yamashita was the Commander of the Japanese Army in the Philippines, but the witness observed that it was the changes arranged by the English and American troops over the charges on General Yamashita, who was the offensive leader of Japan in the Malaysia peninsula, General Yamashita was blamed because the Japanese soldiers in the Philippines treated the allied troops' war prisoners inhumanly, which was considered as a violation of the Geneva Convention on the prisoners of war;
- That the Military Emergency was decided by the Head of State and the Government, as when the TNI Commander was present, he would hold the command, so in the conflicts such as these, it could happen that the police were under the command of the military;
- That a military commander should be a Military Officer who was authorized to hold the Military Command, the one who would effectively carry out the military control, which means that the person could effectively have control on the subordinate officers;
- That as an example, one infantry battalion had a Battalion Commander who supervised 4 up to 5 companies, the Battalion Commander had the effective control over the Company Commanders, that is why every execution of tasks should be assigned with official instruction, verbally, as well as in writing, from the Platoon Commander to the DANKI (Company Commanders), and this would be the effective control;
- That in the military world, there were rules to ban the demolition of civilians, the demolition of civilians would be against the military law, a serious violation of the principles of war;

- That Combatants were meant for all members of the military, wearing uniforms, carrying or not carrying weapons, and civilians could be considered as Combatants, for example, guerilla troops;

- That members of WANRA were in the TNI guerillas, like many of the territorial members during the subsequent fights for the Independence, WANRA became Combatants, but when they did not take part, they would be the Non-combatants, they were ordinary people or civilians;

Considering the testimony of the Defendant, Major General TNI. AD. (Army) Adam R. Damiri, which had been presented in court, mainly explained as follows:

- That the Defendant was assigned as PANGDAM UDAYANA since the 14th of June 1998 until the 27th of November 1999, or practically for 16 month;

- That the Defendant's duty as PANGDAM UDAYANA covered 2 (two) fields, they were;

1. As the KOTAMA (Commander in Chief), his supervisory duty was to maintain and improve the orderliness and discipline of the troops under his command, then maintain and improve the welfare of the soldiers and their families;

2. As the Commander in Chief of Operations, his duty were to organize operations within his jurisdiction and responsibilities, and then carry out the tasks of the Garrison, supervise the elements of TNI in his region, lead and coordinate the elements of MUSPIDA in his region, organize and carry out territorial operations, or territorial supervisions;

- That in accordance with the Chain of Command, the responsibility of the PANGDAM 'one step up' would be to the TNI Commander, while 'one step down,' he had the power of the effective command control on the KOREM Commander, who had control over the commander under him, the DANDIM;

- That as far as the witness knew, there were 2 (two) Options, the first Option was made in the end of 1998, which granted the rights of extended autonomy to the people of East Timor, while the second Option was released on the 27th of January 1999, stating that in case the people's choice was not the first Option, East Timor would be separated (from Indonesia) in reconciliation;

- That the instructions of TNI Commander to the Defendant were related to the implementations of the first and the second Options, in which the Defendant should provide conducive situation for the People's Consultation/ Ballot to be held safely, orderly, and successfully;

- That with the historical background of East Timor under Portugal's colonialism, among people often occurred clashes or prolonged conflicts that victimized people, therefore the measures taken by the Defendant would be making efforts to promote peace among the East Timor people;

- That on the 18th of April 1999, the Defendant along with KAPOLDA tried to call on prominent figures of the two opposing parties to initiate peace settlements, then on the 20th of April 1999, the TNI Commander came to East Timor to follow up the peace plan;

- That at the residence of the Commander, the two conflicting parties agreed to have peace settlements, then a concept of peace treaty was made ready for the signing, Xanana was the first who was asked to sign it, then the treaty was sent to the correctional institution he was

in, in Jakarta, after it was signed by Xanana, the treaty was then sent back to Dili, East Timor, Those who attended the meeting were General Wiranto, Bishop Belo, and representatives of both groups, the Pro-Integration and the Pro-Independence;

- That the Defendant, then, socialized the result of the meeting to all people of East Timor, and the Defendant also took follow-up precautions by gathering up the weapons, as agreed in the treaty, but the weapons were only turned in by the Pro-Integration, while the Pro-Independence refused to turn in their weapons;
- That on the 6th of April 1999, the Defendant received verbal reports from DANREM Tono Suratman over the mass riot erupted at the residence of Pastor Rafael Dos Santos, between the Pro-Independence and the Pro-Integration groups;
- That on the 17th of April 1999, the Defendant received reports from DANREM Tono Suratman over the mass riot erupted at the house of Manuel Carascalao;
- That the Defendant also received reports from DANREM Col. TNI. Noer Muis, over the mass riot at Diocese Dili on the 5th of September 1999, and at the residence of Bishop Belo on the 6th of September 1999;
- That the incident at Ave Maria Church on the 6th of September 1999, was also reported to the Defendant, the report said the mass riot occurred between the Pro-Integration and the Pro-Independence at Suai Church, causing a number of people died or injured;
- That the incident on the 6th of April 1999 which was reported to victimize 27 people and several others wounded, the incident at the house of Manuel Carascalao that victimized 12 people died, and the incident on the 6th of September 1999, were all reported to the Defendant;
- That the Defendant received reports that there were no TNI members who were involved;
- That after the government issued the decision of applying the Military Emergency, on the 7th of September 1999, PANGDAM/ the Defendant handed over all things related to the duty and responsibility over security measures in East Timor region, to the Commander of the Military Emergency Authority, Maj. Gen. Kiki Sahnakrie;
- That after the transfer, the Defendant as the Commander, had no more authority to maintain security or organize operations within East Timor region;
- That the Defendant never read the Special Report No. 184/Kep.Sus/IV/1999, signed by Brig. Gen. TNI. Mahidin Simbolon, the KASDAM of UDAYANA, the content of which, the Defendant was just informed of in the court;
- That it had become the regular procedure that every incident reported to the Commander through DANREM, the instructions from PANGDAM would be taking precautions to overcome the situation, prevent it from spreading out, avoid causing victims, secure the refugees, arrest and further question the perpetrators in accordance with the law, those were the instructions of PANGDAM which were the PROTAP (the regular procedure) of PANGDAM, and after that, control should be applied to the subordinate officers who received the instructions;
- That after the announcement of the People's Consultation/ Ballot on the 4th of September 1999, which was earlier planned for the 7th of September 1999, the huge mass unrest occurred as the result of the disappointment of East Timor people. Overseeing the developing situation, and the possibility of difficulties in handling the growing problems, the DANREM, KAPOLDA and UNAMET arranged a joined agreement to make efforts to

prevent the spreading out of the riot by a transfer of KODAL command, after that the Defendant reported the meeting to the TNI Commander, and on the 5th of September 1999, at 19.30 the transfer of KODAL started to take effect;

- That based on the transfer of KODAL command, the Defendant made instructions to his line of officers in Dili area to make preventive and other necessary precautions, the Defendant issued the instructions in written record;

- That the structure of KODAM IX UDAYANA, started with PANGDAM and KASDAM as the top echelon leaders, assisted by the Assistants to the Staff leader consisted of the intelligence, operational, personnel, logistics, and territorial staff, then the executive body of KODAM, with the executive elements in the hands of KOREM Commanders of NTT, NTB, Bali and East Timor;

- That the worth noting events were always reported by the Defendant to the TNI Commander, then the incident on the 6th of September 1999, at the Ave Maria Church, Suai were verbally reported by the Defendant to the TNI Commander, and as the Defendant recalled, the written reports were made by his staff to be sent to TNI Commander;

- That the reports received by the Defendant stated that the victims of the incidents at the Ave Maria Church, Suai, reached 29 people, including the three pastors;

- That the weapons in the possession of TNI for Infantry Battalion 744 and Battalion 745, TNI standards, were M-16 A-1, some used SS-1, then the artillery of Mortar-5 for the platoon level, Mortar-6 for the company level, and Mortar-8 for the battalions, pistols were authorized to leading officers and higher level ones, while the weapons for territorial squads were type SP-1 guns, the machine guns were organic guns, and some others used the M-16 A-1;

- That before the grant of Options, they faced the armed separatists, so every member of the TNI carried guns, but after the Options, the existing squads could no longer carry out operations, and should stand by in their military institutions, the infantry were not allowed to carry guns, while the members of KOREM and KODIM had to put their weapons in storage;

- That the leader of FALINTIL and CNRT was Xanana Gusmao, while the leader of PAM SWAKARSA and the Pro-Integration was Joao Tavares;

- The instruction of TNI Commander to the Defendant was that the Defendant should socialize Option I and Option II to all people of East Timor, and about the Tri-partite Agreement, the Defendant worked together with the Governor and KAPOLDA of East Timor to socialize the information on the Tri-partite Agreement and the People's Consultation/ Ballot to all the people of East Timor;

- The perpetrators of the repeated riots were not shot on sight as the shot on sight operation had its own procedure, they could not just do it, as it would not solve the problem, on the contrary, such actions would lead to bigger problems, if a riot could be dispersed by only warning shots, why using shot on sight procedure? Except in emergency conditions in which the threatening riot could not be dispersed;

- That the squad troops in BKO Operations under KOREM Wira Dharma consisted of 5 BTT Battalions: 1(one) Battalion accommodated between 700 and 750 personnel spread out into 13 regencies, except 1 (one) Battalion directly assigned to Dili to anticipate the possible attacks by FALINTIL from the southern parts of Dili town;

- That the Defendant was not appointed as the Commander of the Military Emergency

Authority because in MABES TNI Headquarters, when the Military Emergency status was applied to a certain area, the first one to be the Commander of the Military Emergency Authority would be the Commander of the military area or PANGDAM, but subsequent officers in line could also be appointed for the position, depending on the situation. The TNI Commander did not appoint the Defendant as the Commander of the Military Emergency Authority because KODAM UDAYANA already supervised 4 (four) provinces, with each of them having individual characteristics, and the growing situation in a certain area should be anticipated without neglecting the other 3 (three) provinces which needed the same attention, while the responsibility for the other 3 (three) provinces could not be transferred to officers other than PANGDAM;

- That the consideration of the TNI Commander to appoint Maj. Gen. TNI Kiki Syahnakri (sic), was because he had the adequate experience in East Timor, as Maj. Gen. TNI. Kiki Syahnakri was raised in Battalion 744, had become KASREM (the Chief of Staff of KOREM) and DANREM there, he had better experience than the Defendant, who domiciled in Bali at the time, while the Defendant should also accommodate the refugees leaving for NTB area;

- That to decide an area to be in the Military Emergency area needed certain requirements, the Government applied the Military Emergency with criteria such as the increase of escalation of the situation that needed to be handled with stronger legal instruments, then the local Government was no longer in function, even during a huge natural disaster, the Government could apply the Military Emergency;

- That the occurring burning of properties happened due to the disappointment of the people, the burning occurred sporadically, while the efforts to overcome the fires lacked adequate equipments, as up to the time of the Military Emergency there were still some of the burning of properties left. On the 4th of September 1999 the burning of properties spread out to other areas, not of because there were new fires, but because they had no equipments to put out the fires;

- That TNI and POLRI did not know who did the burning of properties while reports to the Defendant said most of the fires occurred because people burned their own houses or properties of others;

- That during the transfer of KODAL Command to the hands of Maj. Gen TNI Kiki Syahnakri, the number of victims of the riots between July and September 1999 reached 65 people died and 13 others injured;

- That the visit of the Inspector General TNI from MABES TNI to East Timor, the Defendant did not know, but in an letter, the Defendant made a visit to Dili dated on the 18th of April 1999, to check on the Liquisa incident and the one at the house of Manuel Carascalao, whereas at the time, he met the team led by the Inspector General TNI;

- That the perpetrators were arrested, as during the civil authority government, the case was handled by the police, in the Liquisa incident, the authority arrested 10 (ten) people, 6 (six) were handled by POLDA, 4 (four) were handled by POLRES, whereas the follow up procedure, the Defendant did not know, because they were already in the police process;

- That the locations for refugee shelters were already settled on, the first were the airport and the seaport, the second were the government and military institutions, all to facilitate the supervision, and no listed shelters at churches or convents, as churches and the parish houses were sacred places;

- That after the incidents, right then, the Defendant knew that there were refugees sheltering in churches and parish houses, because churches could not be used as refugee shelters;

- That WANRA, in accordance with the Law No. 20 of the year 1982, were the people who were trained to assist TNI in the security maintenance of an area, but not included in the organic TNI, while BABINSA were in the organic TNI;
- That the meaning of 'command' and 'effective control' were that the command and the effective control were the power and responsibility given to military commands in accordance with the levels of commands, in the effort to control the troops under the commands. That related to the effective command control on the PANGDAM level, he had the effective control only on DANREM, and DANREM had it on DANDIM, but PANGDAM had no effective control on KODIM members or on DANDIM, as in accordance with the Chain of Command;
- That the form of the concrete effective command control would be instructions, orders or whatever directions made within the power of the leader who was in the direct line with the persons one level under him, in the case was the DANREM, and PANGDAM also had the power to monitor DANREM, and PANGDAM also had the power to control and supervise them;
- That in an operation, in line with the Chain of Command, the command and the effective control, the instructions were given only to the DANREM, not directly to the troops in charge on the field;
- That in accordance with the Military Criminal Code, there were the rules regulating the members of the military who committed crimes, ANKUM stated that a case should be handled by the military police to further investigate the members who committed violations, then the case was handed over to the Military Prosecutor (Oditur Militer), who was also their supervisor, who then, as the PEPERA handed over the case to the Military Tribunal, based on the investigation;
- That based on the Tri-partite Agreement on the 5th of May 1999, it was determined that the responsibility of the security maintenance were in the hands of the RI Government, and the institution in charge was the police, then the People's Consultation/ Ballot was to be organized by UNAMET and several institutions under it, so in each of the stages of the People's Consultation/ Ballot, UNAMET was in function and was authorized to make evaluation to further determine whether it deserved continuance;
- That in the preliminary schedule, the announcement of the People's Consultation/ Ballot was to be made on the 7th of September 1999, and on the 7th of September 1999, all preparation would have been completed, and to anticipate that, MABES TNI had assigned 2 Brigades of TNI troops, but with the advancement of the announcement of the People's Consultation/ Ballot onto the 4th of September 1999, the 2 Brigades could not be assigned on time, as the brigades departed on ships which needed between 10 to 14 days to complete the trip;
- That the 2 (two) brigades consisted of more or less than 6 (six) Battalions with each of the battalions accommodated about 700 personnel, so there would be 4,200 personnel with the additional two brigades already in the Brigade Headquarters, each of which, accommodated 100 personnel;
- That the announcement of the result of the People's Consultation/ Ballot led to the disappointment of the people, as from the result of the monitoring, there were people's plan to express their complaints through a huge demo, then the prominent figures who planned the demo were summoned to POLDA to be given directions to express their concern and aspirations to the UNAMET office, in the evening, the Defendant met Ian Martin, and told him that the next day, several of the people's prominent figures who felt disappointed over

the result of the People's Consultation/ Ballot, would come to visit, and that he should receive them well and consider what they had to say;

- That seeing the chaotic situation after the announcement of the People's Consultation/ Ballot, KAPOLDA, DANREM, and UNAMET evaluated that the police and the authority could no longer overcome the riots, moreover the refugees sheltering in the listed centers reached hundreds of thousands in numbers, therefore, by a joined agreement, the transfer of KODAL Command took place, and fortunately the TNI Commander came to Dili on the 5th of September 1999. Then the Defendant reported on the plan of the transfer of KODAL Command to the TNI Commander, and after receiving the reports on the situation in the field, the TNI Commander decided the transfer of KODAL Command on the 5th of September 1999, at 19.30 WITA, when the Defendant took over the control on KODAL, and on the 6th of September 1999, on midnight, the status was changed into Military Emergency;

- That the organizational structure in the operations where KAPOLRES was the WADAN of the Sub-sector under DANDIM was during the TATOLI Operations, while during the Option II, the TATOLI Operations were no longer existed;

- As a professional soldier, the Defendant obeyed and comply with the policy of the leaders, one of which, the decision to appoint Maj. Gen. TNI Kiki Syahnakri as the Commander of the Military Emergency Authority, was well accepted and the Defendant never felt a failure, the TNI Commander had his own considerations for that;

- That since he dedicated himself in the TNI circle, the Defendant had received 7 (seven) awards from the government, and only 1 (one) the Defendant was most proud of, the SATYA SEROJA Award;

- That in line with the Government and TNI Commander's Instructions overseeing the Options and the People's Consultation/ Ballot, there was the statement on which they would stay neutral and took no sides of either group, and granted the political rights to all people of East Timor to determine their own future through the People's Consultation/ Ballot;

- That the meaning of an 'interference', was the involvement of 'outsiders' apart from their authorized function and tasks, for example, the UNAMET personnel, who were authorized to organize the People's Consultation/ Ballot with the neutral stance and open, honest approach, but the fact was that they often intimidated people, and their interference were clearly seen in the Kantongisasi of FRETILIN groups in which a number of foreigners were found, then in the shootings against TNI before the Tri-partite Agreement, during which, in the FRETILIN squads, they found Australian soldiers who carried, MT-5 guns, also they were found operating illegal flights often seen cruise along the coast of the southern East Timor;

- That UNAMET came into East Timor province between 2 and 3 months before the Tri-partite Agreement were signed on the 5th of May 1999;

- That to fill the gap after the authority applied the Military Emergency starting to take effect since the 7th of September 1999, on the strike of midnight WITA, while the Commander of the Military Emergency Authority had not yet arrived, the Defendant tried to make a call on all people of East Timor broadcasted through the state Radio, RRI, and this was reported to the Commander of the Military Emergency Authority to avoid being insolence;

Considering besides the testimonies of the witnesses made under oath, the testimonies of a de charge witnesses, and the testimonies of the expert witnesses, also the testimonies of

other witnesses were presented and read in court, there were the material evidence that were presented in court, they were:

1. 1 (one) bundle of the Visum et Repertum dossiers from No. 001/tt.3002/SK II/XI/1999, up to the Visum et Repertum dossiers No. 026/TT.3002/SK II/XI/1999, that had been legalized in accordance with the originals.
2. 1 (one) bundled book of dossiers of evidence in the form of photo-copies consisted of letters, which include:
 - 2.1. The Call of PANGDAM IX/ UDAYANA on the 7th of September 1999.
 - 2.2. - TR No: STR No. 551/1999 on the transfer of KODAL Command.
- TR No: STR No. 553/1999 on the transfer of KODAL Command.
 - 2.3. The plan of CABUT 2 Operation (Revised)
 - 2.4. The plan on the Actions facing the contingency past the People's Consultation/ Ballot in East Timor, Option I - failed.
 - 2.5. Written Instructions of MENHANKAM/ PANGAB No. Sprit-1798/PIX/1999 dated the 7th of September on the Military Emergency Authority Command.
 - 2.6. The reports on the development of situation from PANGDAM IX/ UDAYANA to the TNI Commander and KASAD (The Army Chief of Staff) from the 5th to 11th of April 1999, from the 12th to 18th of April 1999, from the 23rd to 29th of August 1999, and from the 30th of August up to the 6th of September 1999.
 - 2.7. The worth noting events after the registration, and campaign stages of the People's Consultation/ Ballot in the period of 28th of August up to the 4th of September 1999.
 - 2.8. The Guidelines on the Human Rights implementation, in the East Timor operation area.
 - 2.9. The Instructions of PANGDAM IX/ UDAYANA, No. Sprint-1000/VII/1998 dated the 30th of July 1998 on the Speech on Human Rights, and the reports on the presentation of the Speech on Human Rights in the DAM (Military Territorial Region) IX/ UDAYANA circle.
 - 2.10. Telegram No. STR-614/1999 dated the 17th of June 1999, on measures to ensure the security in East Timor.
 - 2.11. Telegram from KASAD No. STR-172/1999 dated the 5th of May 1999 on the instructions for the preparation of the plan on security.
 - 2.12. STR of PANGDAM IX/ UDAYANA No. 223/ 1999 dated the 30th of March 1999, on the chronology of the shootings at Maliobo Kampong, Maliana district on the 19th of March 1999, at 18.15 p.m. committed by GPK group, with victims include 4 people died and 4 other people injured.
 - 2.13. Observations (Not Visum et Repertum) of LETDA (Second Lieut.) Ckm. Maksun Pandelima on Sander Thones.
 - 2.14. Reports on the overall situation in East Timor.
 - 2.15. Directives No. 2/P/IX/1999, on the PDM (Military Emergency Authority) Commands in East Timor.

2.16. LAPSAR PANG Retired PDM, to MENHANKAM/ TNI Commander and the President.

2.17. Book on the Law No. 23 Prp of the year 1959, on the Emergency and the explanations.

2.18. Pocket Book on the requirements of the procedure of the usage of the Military Emergency Power in East Timor.

2.19. Pocket Book on the Authority and Restrictions on Emergency/ Military Emergency.

2.20. TNI Commander's Directives:

- No. 02/P/IX/1999, dated the 6th of September 1999, on the Military Emergency Authority Command in the area of East Timor.

2.21. Decisions:

- Skep/991/P/1998 dated the 30th of December 1998 on the Resignation and the Appointment of positions in ABRI (Indonesian Armed Forces) circle on behalf of Maj. Gen. TNI. I Gede Nyoman Arsana, and 99 other officers.

- Skep/821/P/IX/1999, dated 20th of September 1999, on the regulation over the usage of Power of the Military Emergency Authority in the East Timor area.

2.22. Instructions:

- Sprint/757/IV/1999 dated 15th of April 1999, on the Business Trip to East Timor, on behalf of MARSDYA TNI Tamtama Adi, and three other officers.

- Sprint 889/V/1999 dated 20th of May 1999 on the Special Tasks in assisting the works of the Independent Commission, on behalf of Maj. Gen. TNI Zacky Anwar Makarim and two other officers.

- Sprint 1096/VI/1999 dated 4th of June 1999 on Instruction on behalf of Maj. Gen. TNI Zacky Anwar Makarim and two other members of the TP40KTT.

- Sprint/1660/VIII/1999 dated 13th of August 1999, as the Security Advisor P3TT in Dili, East Timor, on behalf of Maj. Gen. TNI Zacky Anwar Makarim, and two other officers.

- Sprint/179/P/IX/1999 dated 7th of September 1999 on the Military Emergency Authority in East Timor area.

2.23. Telegrams and Telegraphed Letters

- TR/614/1999 dated 17th of June 1999, on the Security Assurance in East Timor.

- STR/675/1999, dated the 6th of July 1999, on the Decision of the people of East Timor.

- STR/551/1999, dated 5th of September 1999, on the Anticipation of the development of the situation in East Timor.

2.24. Situation Reports:

- STR/560/1999 dated 22nd of September 1999, on the Reports of the situations, Week IV, dated 14th until 20th of September 1999.

- STR/17/2000 dated 20th of January 2000, on Indications of worsening security situation in East Timor.

- R/33/X/1999, dated the 11th of October 1999, on the Reports of the development of situation in East Timor on 11th of October 1999.

2.25. Others (Special Reports)

- R/184/Lapsus/IV/1999, dated 7th of April 1999, on the Reports on fights between the Pro-Integration and the Anti-Integration masses in Liquisa Regency.

- R/02/X/1999, the Special Report dated 11th of October 1999, on the chronology of the shooting contacts of INTERFET against TNI and POLRI troops.

3. 1 (one) bundle of dossiers of evidence in the form of photo-copied documents, consisted of letters as follows:

- 3.1. Book of the Law No. 23, Prp, of the year 1959, on the Emergency Situation, including the explanations.
- 3.2. Copy of KEPPRES (Presidential Decree) Number: 43 of the year 1999.
- 3.3. Copy of INPRES (Presidential Instruction) Number: 5 of the year 1999.
- 3.4. KEPMENKO Number: KEP-13/MENKO/POLKAM/6/1999.
- 3.5. Plan of HANOIN LOROSAI Operation I - 1999.
- 3.6. Plan of HANOIN LOROSAI Operation II - 1999.
- 3.7. Plan of CABUT 2 Operation (Revised)
- 3.8. Plan on actions to confront the Contingency post the Decision of the people of East Timor Option I - failed, dated 30th of August 1999.
- 3.9. Guidelines on the implementation of Human Rights, in the East Timor operation area, dated 1st of August 1998.
- 3.10. Agreement on the Cessation of Hostility and efforts to promote peace in East Timor, dated the 21st of April 1999.
- 3.11. Statement of Stance of Diocese Dili and Diocese Baucau Bishops, dated the 21st of April 1999.
- 3.12. List of participants of the meeting of the Small Team on the grant of the special status with extended autonomy for East Timor, dated the 23rd of October 1998.
- 3.13. Letter of the Ministry of Foreign Affairs, Number: 960/PO/X/98/04, dated the 27th of October 1998 on the establishment of the Small Team to discuss the autonomy for East Timor, and prepare the government's basic positioning.
- 3.14. Memo of the ASMENKO I/ POLDAGRI to MENKOPOLKAM Number: M.53/Tim P4-OKTT/7/1999, dated 3rd of July 1999, on the overall view in case Option I failed.
- 3.15. STR of PANGDAM IX/ UDAYANA No. 223/1999, dated 30th of March 1999 on the chronology of the shootings at Mariabo Kampong, Maliana district, on the 19th of March 1999, at 18.15 committed by GPK, victims include 4 people died and 4 others injured.
- 3.16. Instruction of PANGDAM IX/ UDAYANA Number: Sprint/841/VII/1999, dated 21st of July 1999 on the distribution throughout the line squads, and the transport of ammunition/ grenades and the attachments.
- 3.17. Instruction of PANGDAM IX/ UDAYANA Number: Sprint/894/VII/1999, dated 30th of July 1999, the transfer of DANREM 164/ WIRA DHARMA, Tono Suratman to his new post/squad, as PAMEN DENMA MABESAD.
- 3.18. Instruction of PANGDAM IX/ UDAYANA Number: Sprint/1000/VII/1998, dated 30th of July 1998, on the lecture on Human Rights and the reports on the presentation of the lecture on Human Rights at the Military Region IX/ UDAYANA circle.
- 3.19. Telegraphed Letter of KASAD No. STR-172/1999, dated the 5th of May 1999, on the instruction for the preparation of the security arrangement.

- 3.20. Daily Instructions of KOREM Commander 164/ Wira Dharma, in the effort to set up security stability in East Timor, dated 21st of April 1999.
- 3.21. Directives/ Guidelines/ Instructions of KOREM 164/ Wira Dharma, dated the 27th of May 1999.
- 3.22. Telegraphed Letter Number: 159/1999, dated the 3rd of July 1999, of DANREM 164/ Wira Dharma for DANDIM 1627 up to 1639.
- 3.23. TR No. STR No. 551/1999, on the transfer of KODAL, also TR No. STR No. 553/1999, on the transfer of KODAL
- 3.24. Report on the development of situation of PANGDAM IX/ UDAYANA to TNI Commander and KASAD.
- STR/253/1999, dated the 5th until the 11th of April 1999.
 - STR/279/1999, dated the 12th until 18th of April 1999.
 - STR/550/1999, dated 23rd until 29th of August, 1999.
- 3.25. Telegraphed Letter No: STR-614/1999, dated 17th of June 1999, on the measures to provide security in East Timor
- 3.26. Pointers taken from the Decisions of MENHANKAM/ TNI Commander Number: Skep/728/P/VIII/1999, dated the 12th of August 1999, on the resignation and appointment of position in TNI circle, with the attachments.
- 3.27. Report on the retirement (purna tugas) of the Commander of the Military Emergency Authority, dated the 28th of September 1999.
- 3.28. Worth noting events within the post registration and campaign period of the People's Consultation/ Ballot of between the 28th of August up to the 4th of September 1999.
- 3.29. Pocket book of Regulations on the usage of Power of the Military Emergency Authority, in East Timor area
- 3.30. Pocket Book on the Authority and Restrictions in the Emergency/ Military Emergency conditions
- 3.31. Hand Grenades, made in Korea, brand: Hand Grenade Frag Delay K/5 Comp. B Lot. E. C. 82 H.6001 - 001. EC. 85 M.605 - 03
- 3.32. Ammunition 8,9 mm Caliber
- 3.33. Ammunition 9 mm Caliber
- 3.34. Ammunition 6,4 mm Caliber
- 3.35. Ammunition 7,9 mm Caliber
- 3.36. Ammunition 7,8 mm Caliber
- 3.37. Ammunition 8,3 mm Caliber
- 3.38. Ammunition 6,0 mm Caliber
- 3.39. Ammunition 6,6 mm Caliber
- 3.40. Ammunition 7,62 mm Caliber

- 3.41. Ammunition 9,1 mm Caliber
- 3.42. Magazine Shotgun type SS-1 PINDAD
- 3.43. GETME 63 Magazine
- 3.44. GETAU Shotgun/ G3 No. FMP 172322
- 3.45. MOUSER Shotgun Free Number Los Nomor: (sic)
- 3.46. SKS Shotgun No. OH.2289
- 3.47. Homemade Firearm
- 3.48. Homemade Pistol
- 3.49. Crime Scene Photographs Case File Number: 7 DHQ 99
- 3.50. Crime Scene Photographs Case File Number 30 DHQ 99

Considering that the court had been presented with parts of the firearms and ammunitions listed in the court record (Berita Acara Persidangan), and the Panel of Judges had instructed the Ad Hoc Public Prosecutor to play the video-cassette evidence presented by the victim witness Manuel Carascalao in the court hearing on the 20th of August 2001, and the video-cassette had been replayed in the court hearing on the 25th of February 2003, with main scenes as follows:

1. Showed Eurico Guterres is making a speech and cheered by the masses with yells and gunshots.
 2. Showed sometime later in the evening, when Eurico Guterres is making another speech and greeted by the cheering masses.
 3. Showed Witness Basilio Araujo
 4. Showed the Australian Foreign Affairs Minister, Alexander Downer
 5. Showed Eurico Guterres is making his speech for the third time
 6. Showed Prabowo handed over a banner to a TNI soldier.
 7. Showed for the fourth time, Eurico Guterres is making a speech, then is continuing by having the first and the second interviews:
 - Eurico Guterres is standing nearby TNI troops and then he is getting onto a red plate-numbered KIJANG van.
 - Eurico Guterres in the middle of the third interview and saying he will register for the People's Consultation/ Ballot, and if the People's Consultation/ Ballot turns out to be poorly organized, then he will organize a boycott.
 8. Showed AITARAK troop in black uniforms are running in all directions on the street.
 9. Showed an interview with a person who saw the murder of a journalist.
 10. Showed an interview with Dos Santos with the background of the crowding masses and a few foreigners.
- There are explanations on PANGDAM UDAYANA Maj. Gen. TNI Adam R. Damiri, and

some people's opinion on the People's Consultation/ Ballot.

11. Showed Eurico Guterres in the fourth interview.
12. Showed Eurico Guterres is being interviewed for the fifth time, and saying he and his troop is ready, and also showed an interview with PPI Commander Joao Tavares.
13. Showed Eurico Guterres is being interviewed for the sixth time.
14. Showed an interview with Guilherme Dos Santos.
15. Showed an interview with Joao Tavares, the Commander of PPI.
16. Showed corpses of victims in the house of Manuel Carascalao.
17. Showed KAPOLDA of East Timor, Timbul Silaen is walking.
18. Showed Eurico Guterres is making a speech.
19. Showed the traditional elderly people of East Timor, in a ritual of retaining blood from a slashed pig.
20. Showed Dos Santos is making a speech.
21. Showed a music and dance party, and people are dancing, one of them is Guilherme Dos Santos.
22. Showed a cock-fight game in the middle of the crowded audience of masses.
23. Showed the Ambassador at-large, Lopez Da Cruz.
24. Showed the East Timor Governor, Abilio Soares inside a building, with an Indonesian song is playing in the background.
25. Showed Eurico Guterres is signing a letter.
26. Showed an interview with the Ambassador-at-large, Lopez Da Cruz.
27. Showed an interview with the East Timor Governor, Abilio Osario Soares, and so on.

The Conclusion of the Panel of Judges was that the video-cassette mostly contained interviews, while according to Witness Manuel Carascalao, the video-cassette he presented was records of the Big Rally on the 17th of April 1999, in the front yard of the East Timor Governor's office, and of the attacks on the residence of Manuel Carascalao.

Considering that based on the testimonies of the witnesses who made their testimonies under oath, related to the testimony of the Defendant, and the evidence as mentioned before, therefore the facts were concluded as follows:

- It is the fact that the clashes and conflicts that occurred between April and September 1999 in Dili, East Timor, were related to the announcement of RI President on the grant of 2 (two) Options to the people of East Timor on the 27th of January 1999;
- It is the fact that after the long history of occurring violence in East Timor, President B.J. Habibie wished for the whole, comprehensive settlements for the people of East Timor, who

had been long involved in conflicts, therefore the RI President, B.J. Habibie, announced the grant of 2 (two) Options for the people of East Timor, which include:

1. Option I: The grant of a special autonomy to the people of East Timor, if the people chose the Option I, therefore East Timor would be a part of RI territory;

2. Option II: The choice to reject the special autonomy option, if this option was chosen by the people of East Timor, therefore East Timor would not be a part of RI territory;

· It is the fact that the offer of the comprehensive settlements over the problems regarding East Timor through the grant of the two options, was responded by the UN, by the enactment of the Republic of Indonesia - Portugal Agreement on East Timor, under UN's support, which was signed on the 5th of May 1999,

· It is the fact that from that point on, the implementation of the People's Consultation/ Ballot in East Timor was started with the Agreement initiated by UN, between RI and Portugal governments, signed on the 5th of May 1999 in New York, the 'New York Agreement' signed by Indonesia, Portugal and the UN, was known as the Tri-partite Agreement;

· It is the fact that the Tri-partite Agreement on the security maintenance of Indonesia, Portugal, and the UN Secretary General, were consisted as:

1. A safe atmosphere with no violence or other forms of intimidation would be a prerequisite for the implementation of an open and fair People's Consultation/ Ballot in East Timor. The responsibility to ensure such environment, and to maintain the overall law and order, were at the top of the Indonesia's security priorities. Neutral stance of TNI and the police were very important in this case.

2. KPS (the Commission for Peace and Stability), established in Dili on the 21st of April 1999, should be immediately in function. KPS worked together with the UN to regulate the mass conducts before and after the consultation, which should be well observed by all parties, to ensure the arm truce, also to take necessary measures to reach the arm truce settlements;

3. Before the registration started, the Secretary General would determine, based on an objective evaluation, that there was provided adequate security situation for the process of an open and peaceful People's Consultation/ Ballot;

4. Only the police, who would be responsible for the maintenance of law and order, and the Secretary General, after receiving the adequate mandate, would assign a certain number of civilian police officials to do the work, who, during the People's Consultation/ Ballot, would provide the supervision over the guarding of Ballot Cards to the Polling Places;

· It is the fact that there were 2 (two) questions in the Ballot forms of the People's Consultation/ Ballot, which were asked to the people of East Timor, they were:

1. Do you accept the special autonomy for East Timor within the United Country of the Republic of Indonesia?

2. Do you refuse the special autonomy for East Timor, which result with the separation of East Timor from Indonesia?

· It is the fact that the people of East Timor who had the rights to give their votes were those who were 17 (seventeen) years old or older, they were:

a. Those who were born in East Timor

b. Those who were not born in East Timor, but at least one of the parents were born in East Timor.

c. The person whose husband or wife were in the two categories mentioned above

· It is the fact that the stages of the process of the People's Consultation/ Ballot were regulated as follows:

Operational Plan/ Performance 10th of May - 15th of June

Public Information Program/

Voters' Education 10th of May - 5th of August

Preparation of Registration 13th of June - 17th of July

The announcement of the List

of Voters, and the submission of

Objections and Complaints 18th of July - 23rd of July

Political Campaign 20th of July - 5th of August

Quiet Period 6th - 7th of August

The election 30th of August

The announcement of the Result of

the People's Consultation/ Ballot

· It is the fact that in the process of the People's Consultation/ Ballot, Indonesia and Portugal had the rights to send their representatives to observe stages of the People's Consultation, in, as well as outside East Timor;

· It is the fact that the International Observers would observe the process of the People's Consultation/ Ballot, based on the regulations, established by UN, in relation to their presence;

· It is the fact that the Indonesian Authority would ensure the provision of the safe atmosphere for the process of an open and fair People's Consultation/ Ballot, and be responsible of the security of the process, and the safety of the UN personnel;

· It is the fact that a number of UN officials would be assigned to ensure the security and safety of the UN personnel and properties. A number of the International civilian police would be present in East Timor to provide assistance for the Indonesian police during the stages of activities of the People's Consultation/ Ballot, and to supervise the guarding of Ballot Cards and Boxes to and from the Polling Places;

· It is the fact that TNI Commander's instruction to respond to the Tri-partite Agreement of the 5th of May 1999, the Indonesian Government, in this case was the RI police, was authorized the responsibility over the control and the law enforcement during the People's Consultation/ Ballot;

· It is the fact that based on the Tri-partite Agreement, TNI were not allowed to make any activity, then TNI would withdraw some of the troops from East Timor, send them back into their posts, TNI had to stand by at their own Military installations, were not allowed to go out of the barracks, and were not allowed to carry their weapons;

· It is the fact that after the announcement of the grant of the 2 (two) Options by the RI President, B.J. Habibie, there were pressures, intimidations and abuses on the Pro-Integration people;

· It is the fact that on the 5th and 6th of April 1999, there were attacks of the Pro-Integration Group against the Pro-Independence Group sheltering at the Liquisa Church. The attacks caused 20 people died, and many others injured;

- It is the fact that the attacks of the Pro-Integration Group against the Pro-Independence Group sheltering in Liquisa Church, were related to the clashes between the Pro-Integration and the Pro-Independence Group on the 3rd and 4th of April 1999, during which, the Pro-Independence group burnt down the houses of the Pro-Integration people;
- It is the fact that, though there were TNI troops and the Stayling police standing by near the Liquisa church compound, but when the attacks came, they did nothing;
- That it is the fact that on the 5th of April 1999, morning, members of KORAMIL and Militia gathered round in front of KODIM Liquisa in the center of town area, then on the 6th of April 1999, in the early morning, Militia besieged the church;
- That it is the fact that on the 6th of April 1999, at around 10 in the morning, came Eurico Guterres to the Parish House to mediate a dialog with the pastors of the Parish, in the effort to urge the masses crowding the compound to disperse and leave for home, but they failed to reach settlements;
- It is the fact that on the 6th of April 1999, around 13.00 of the afternoon, the shootings started around Liquisa Church, then people in the Parish compound went into the pastor's house, and people outside the pastor's house were repeatedly slashed with sharp weapons by the militia;
- It is true that the witness, Pastor Rafael Dos Santos saw and heard the ongoing shootings for about an hour at Liquisa Church compound, committed by KODIM and the police, there were 2 (two) victims died after getting shot at, one of them was the Head of Liquisa Animal Husbandry, and the one who shot him was a member of KORAMIL of Maubara;
- It is the fact that Witness Pastor Rafael Dos Santos saw with his own eyes the attacks that happened at around 13.00 of the afternoon, in the Parish House compound, committed by BESI MERAH PUTIH (Red and White Iron) Militia, KODIM of Liquisa, and the police;
- It is the fact that the witness, Pastor Rafael Dos Santos had lived for over 10 years in Liquisa, that he could distinct police officers from the soldiers, those the witness recognized were a soldier from KODIM, Chief Sergeant Dos Santos, and the Second Sergeant (Police) Florindo;
- It is the fact that the witness, Pastor Rafael Dos Santos, saw with his own eyes through the jalousie- lassed windows, that people outside the witness' house rushed to attack into the Parish House, the witness saw with his own eyes through the jalousie glass that the tear gas were shot into the house, then the witness breathed painfully, then the witness ran out of the house;
- It is the fact that before the witness was out, when he reached the door, a militia man tried to shoot him, but his gun did not explode, because it did not explode, the militia man grabbed a machete and initiated to attack the witness with the weapon, but the witness was rescued by an officer from KODIM;
- It is the fact that the witness clearly saw Tome Diego, a member of KODIM of Liquisa who was an East Timor native, made the attacks, and beside Tome Diego, other soldiers who joined in the attacks were Jacob and Ishak Dos Santos, the witness' own nephew;
- It is the fact that when the witness, Pastor Rafael Dos Santos went back to the Parish House, the witness saw the Parish House was already in ruins, blood marks were everywhere inside the house, on the floor, across the corridors, and also in the bathroom;
- It is the fact that the Liquisa regent, Leonito Martins, through the windows of the KODIM

office, saw the clashes at Liquisa Church, in front of the house of Pastor Rafael Dos Santos, and after the incident, the witness saw the dead victims, whose bodies were full of severe cuts, on the cheeks, on the noses, the witness saw one by one, the dead victims were carried into car;

- It is the fact that Jacinto, a prominent figure from CNRT, who was the most wanted man by the Pro-Integration group and the police, hid in the residence of Pastor Rafael Dos Santos;
- It is the fact that the distance between KODIM Headquarters and the residence of Pastor Rafael Dos Santos was between 50 and 60 meters, so the witness could clearly see the house of Pastor Rafael Dos Santos;
- It is the fact that before the clashes at Ave Maria Church erupted, MUSPIDA of Liquisa organized a meeting at MAKODIM, which was attended by East Timor WADANREM (Deputy DANREM), Col. TNI Mujiono;
- It is the fact that the refugees sheltering in Liquisa Church compound and the house of Pastor Rafael Dos Santos, reached between 2,000 and 3,000 people;
- It is the fact that overseeing the crowding masses inside and outside the Liquisa Church compound, Witness Adios Salova as the KAPOLRES of Liquisa could expect the possibilities of clashes, so he requested back-up from KODIM;
- It is the fact that on the 17th of April 1999, a big rally was held at the front yard of the governor's office, attended by over 6,000 people, with participants coming from regencies throughout East Timor, the government officials who attended the rally were the East Timor Governor and other East Timor authority officials;
- It is the fact that the Inspector of the rally was PPI Commander Joao Tavares, who also made the opening speech, in which he called on people to win the integration process and still be a part of the united country of the Republic of Indonesia;
- It is the fact that besides the PPI Commander, Joao Tavares, Eurico Guterres also made the speech in front of the attending masses reaching thousands in number;
- It is the fact that after the big rally in front of the governor's office, in the parade of motor vehicles of the Pro-Integration masses, during which, they passed in front of the residence of Manuel Carascalao, clashes erupted between the Pro-Integration group and those sheltering at the residence of Manuel Carascalao, which led to the attacks of the Pro-Integration group against the Pro-Independence group, causing 17 people died and many others wounded. One of the twelve (sic!) dead victims was Manelito Carascalao, who was the son of Manuel Carascalao;
- It is the fact that participants of the big rally on the 17th of April 1999, carried guns, homemade firearms, and sharp weapons in the attacks at the residence of Manuel Carascalao;
- It is the fact that on April 1999, escalation of violence had increased throughout East Timor, and this became the concern of the RI government and East Timor's prominent figures, also became the serious interest of the UN;
- It is the fact that on the 21st of April 1999, there was a meeting between the two conflicting parties at the residence of Bishop Belo, attended by the representatives of the conflicting parties and government officials, including: CNRT and FALINTIL, which were represented by Xanana Gusmao and Leandro Issac, the provincial government, which were

represented by Abilio Ososrio Soares as the governor, and Armino Soares Mariano as the chief of the Provincial Legislative Council of East Timor, while TNI and POLRI were represented by Col. Infantry Tono Suratman (DANREM), and Police Col. Timbul Silaen, with observers General TNI. Wiranto (MENHANKAM/PANGAB), Bishop Belo, Bishop Basilio Dasimento, and the governor Abilio Soares;

· It is the fact that resulting from that meeting, an agreement on peace was signed by the two conflicting parties, and the enactment of the settlements included the 'sweeping' operations against weapons to promote the disarmament of the two conflicting parties;

· It is the fact that KPS (Commission for Peace and Stability) was established in Dili on the 21st of April 1999;

· It is the fact that up to the 17th and 18th of June 1999, the organization of KPS was unstable, because Xanan Gusmao of the Pro-Independence party never attended;

· It is the fact that due to the increasing escalation of violence in East Timor, the East Timor Governor, Abilio Ososrio Soares requested all regents to activate and intensified the organization of PAM SWAKARSA, he also required all members of PAM SWAKARSA to be given money compensation to support their welfare affordable to the respective regency governments;

· It is the fact that the reorganized members of the people's groups were aimed at improving the security of their respective areas, but after the situations had heated up later, the members of the Pro-Independence in PAM SWAKARSA, left the organization because PAM SWAKARSA made greater efforts for the ideology of the Pro-Integration;

· It is the fact that PAM SWAKARSA, after all, was a constituent of the government which fought for the Pro-Integration, in line with the government's policy;

· It is the fact that KAMRA was under the responsibility of the police, WANRA was under the responsibility of KODIM, and PAM SWAKARSA was under the responsibility of the government, all were prepared to provide security in their own areas;

· It is the fact that the Pro-Integration troops were later known as PAM SWAKARSA consisted of, among others, AITARAK, BMP, and BRIT;

· It is the fact that on the 5th of September 1999, at 19.30 WITA (Central Indonesia Time), KODAL (Command Control) was transferred from POLRI to TNI. The transfer of KODAL was made due to the chaotic situations everywhere, especially in Dili town, the concentration center of refugee masses, the situation developed into destructive manner, and the governance was already ineffective;

· It is the fact that the transfer of KODAL was made because the situation was already very chaotic, options were given for the people of East Timor who wanted to take refuge and leave East Timor;

· It is the fact that TNI had duty and responsibility as follows:

- 1) To secure all personnel of UNAMET reaching about 2000 who stayed in East Timor;
- 2) To take immediate actions to prevent clashes on a larger scale;
- 3) To secure hundreds of vital objects/ installations throughout East Timor;

· It is the fact that on the 30th of August 1999, the people of East Timor held the People's Consultation/ Ballot, which result was announced by UNAMET on the 4th of September 1999 with the composition of achievement as follows;

- The votes refused the Autonomy Option, which meant a separation from RI territory, reached 78,5% (334,580);
 - The votes for the Special Autonomy Option reached 21% (94,338);
 - The invalid votes reached 1,6% (7,985);
- It is the fact that on the 4th of September 1999, RI President, B.J. Habibie, officially announced that RI Government could accept the result of the People's Consultation/ Ballot which was announced by UNAMET (UN);
 - It is the fact about the execution of the People's Consultation/ Ballot, started from the registration, election, piling up of Ballot boxes, up to the Vote Counting were organized by UNAMET, while KPS only observed whether or not there were Human Rights violations;
 - It is the fact that right after the result of the People's Consultation/ Ballot was announced, thousands of the Pro-Integration people seek refuge, many cried in despair, while after the announcement of the People's Consultation/ Ballot, violence quickly spread out throughout East Timor, resulting in the total destructions of residential houses, office buildings, and shop lootings which tremendously terrorized people;
 - It is the fact that a day after the announcement of the People's Consultation/ Ballot on the 5th of September 1999, clashes erupted, then TNI Commander, his staff, and several other related officials, were directly escorted to East Timor to mediate the meeting between the prominent figures of the Pro-Integration and the Pro-Independence, urging them to accept the result of the People's Consultation/ Ballot which was announced the day before, and socialized it to all the supporters of the two parties to make them thoroughly understand that the result of the People's Consultation/ Ballot was the choice of the people of East Timor, for the better future of East Timor;
 - It is the fact that on the 6th of September 1999, some attacks committed by the Pro-Integration masses were made against the Pro-Integration group sheltering in a church compound in Suai, causing 27 people died, with 17 of them were males, and 10 others were females including a child;
 - It is the fact that the Pro-Independence sheltering at Suai Church reached thousands of people, who were after the attacks of the Pro-Integration group, relocated to the office compounds of the regent, KODIM, and POLRES, and some other safer places;
 - It is the fact that on the 6th of September 1999, the Pro-Integration group made the attacks against the residence of Bishop Belo, where the Pro-Independence group took refuge and were sheltered. The attacks happened because Bishop Belo was considered not neutral, and was a Pro-Independence. The attacks of the Pro-Integration caused a child died, and the back side of Bishop Belo house burnt down;
 - It is the fact that overseeing the worsening and threatening situation, with the growing number of falling victims, with strong criticism kept coming from the International Community and the UN, then President B.J. Habibie applied the Military Emergency status started on the 7th of September 1999, to provide the powerful law enforcement authority to control the situation, and to handle possible clashes in larger scale, then Maj. Gen. Kiki Syahnakri was appointed as the Commander of the Military Emergency Authority to handle the situation;
 - It is the fact that the change from KODAL to the Military Emergency status, then the handling of conflicts in East Timor were taken over by the Military Emergency Authority. With the Military Emergency status, all the military instruments could be in function, based on the law and regulation. Another consideration for the implementation of the Military Emergency was that the situation was already chaotic, and that the local government was no

longer in function;

· It is the fact that UNAMET committed various frauds, such as: in the recruitment of its local staff, the appointment of witnesses for the election purposes in the TPS (Polling Places), also in the Vote Counting sessions with only witnesses from the Pro-Independence, while those from the Pro-Integration were rejected or were never involved during the election of the People's Consultation/ Ballot, as well as, during the Vote Counting, besides that, during the Campaign, UNAMET supported the Second Option;

· It is the fact that there were two conflicting parties in East Timor, they were:

· The Pro-Integration Group:

- FPDK (Forum for the Unity of Democracy and Justice)
- BRTT (East Timor People Guards)
- MAHIDI (Dead of Alive for Indonesia), in Ainaro
- LAKSAUR MERAH PUTIH in Suai
- BMP (Red and White Iron) in Liquisa
- SAKUNAR in Ambeno
- AHI in Ailiu
- AITARAK in Dili
- JATI MERAH PUTIH in Los Palos
- DARA INTEGRASI in Ermera
- DADARUS MERAH PUTIH in Bobonaro
- OAN KLIBUR BA DAMAI
- LIQUISA BESI MERAH PUTIH (Red and White Iron of Liquisa)
- SAKA ERMERA DARAH MERAH PUTIH
- GUNTUR KAILAH in Ermera
- HAHALINTAR (sic) JUNIOR in Ablai Bobonaro
- TIM PANCASILA in Atsabe Ermera
- MAHADOMI in Manatuto
- ABLAI in Same
- NAGA MERAH (Red Dragon) in Ermera

· And the Pro-Independence Group:

CNRT consisted of CLANDESTIN, VITUN, FORSAREPTIL, FALINTIL, and FRETILIN;

· It is the fact that the attacks of the Pro-Integration Group on the Pro-Independence, victimized mostly civilian women and children;

· It is the fact that the UN had approved the entry of INTERFET troops into East Timor;

· It is the fact that the attacks on Ave Maria Church caused 3 (three) pastors died, they were Pastor FRANSISCO, Pastor HILARIO, and Pastor DEWANTO;

· It is the fact that besides the Ave Maria Church compound, other refugee centers included SMP II Public School, SD Mata Air School and Public Works Office Building;

· It is the fact that the weapons in the possession of KODIM Liquisa were more or less than 72 of SS-1 and SS-2 guns, and 10 pistols, while the firearms in the possession of KODIM Dili, among others, were SP-1, SP-2, M-16 and FN-46 pistols;

· It is the fact that for East Timor region, TRIBUANA VIII Task Force was assigned to assist DANREM 164 Wira Dharma, to monitor the situation in East Timor, to promote conducive situation in the enactment of the peace reconciliation between the Pro-Independence and the Pro-Integration during the People's Consultation/ Ballot;

· It is the fact that TRIBUANA VIII Task Force, in its operations, was responsible to the Commander of KOREM 164 Wira Dharma;

· It is the fact that in the incident in Liquisa on the 6th of April 1999, the Commander of TRIBUANA VIII Task Force, Lieut. Col. TNI Yayat Sudradjat, was present at the crime scene;

· It is the fact that East Timor Governor Abilio Osario Soares instructed all regents to reactivate PAM SWAKARSA to secure their respective areas;

· It is the fact that during the attacks of the Pro-Integration against refugees from the Pro-Independence Group sheltering at the residence of Manuel Carascalao, on the 17th of April 1999, DANREM Wira Dharma at the time, was Col. TNI Tono Suratman;

· It is the fact that when Col. TNI Noer Muis was posted as DANREM 164 Wira Dharma, there were several worth noting attacks of the Pro-Integration Group against the Pro-Independence Group, such as:

1. The Attacks of the Pro-Integration Group against refugees from the Pro-Independence Group at Diocese Dili on the 5th of September 1999, at the time, the DANDIM was Lieut. Col. TNI Sujarwo, the KAPOLRES was Police Lieut. Col. Hulman Gultom, and the regent was Dominggos Soares;

2. The attacks of the Pro-Integration Group against refugees of the Pro-Independence in the residence of Bishop Belo in Dili on the 6th of September 1999, around 10.30 in the morning;

3. The attacks of the Pro-Integration Group against refugees from the Pro-Independence Group at Ave Maria Church, Suai on the 6th of September 1999, causing 27 people died, at the time, the DANDIM was Lieut. Col. TNI Lilik Koeshadiyanto;

· It is the fact that the masses taking refuge at Ave Maria Church of Suai were around 5,000 people, while those outside the church compound were around 5,000 people, and the refugees sheltering at Ave Maria Church were already there before the People's Consultation/ Ballot was held;

· It is the fact that the incident at Ave Maria Church, Suai, was reported by the acting DANDIM officer, Lieut. Col. Lilik Koeshadiyanto, to DANREM 164 Wira Dharma Noer Muis, and DANREM had reported the incident to the Defendant, Maj. Gen. TNI Adam R. Damiri, then the Defendant had instructed to make prevention of spreading clashes into other regencies;

· It is the fact that the a de Charge witness, Police BRIPKA MAKARAW, the INTEL PAM officer of East Timor POLDA heard screams and cries coming from the house of Bishop BELLO, cries for help coming from mothers, children, and even men, who were civilians;

· It is the fact that KODIM of Dili received assistance of BKO troop from KOSTRAD with the strength consisted of 683 personnel;

· It is the fact that DANREM 164 Wira Dharma at the time, whether he was Col. TNI Tono Suratman, or Col. TNI Noer Muis, according to the hierarchy of the Command Line, were responsible to the Defendant, Maj. Gen. TNI Adam R. Damiri, as PANGDAM IX UDAYANA;

· That in the TATOLI IV Operations, the KAPOLRES was the WADAN (Deputy Commander) of the Sub-sector, while the Commander of the Sub-sector was DANDIM of

Dili;

- It is the fact that in East Timor, there were several Task Forces in BKO Operations assigned under DANREM 164 Wira Dharma, such as: Health Task Force, Territorial Task Force, and TRIBUANA Task Force, they were responsible to DANREM, through DANDIM;
- It is the fact that WANRA was under TNI supervision in line with the Law No. 20 of the year 1982, each of them received a monthly salary of Rp. 150,000,- and 18 kg of rice. They were assigned at KODIM, after receiving limited trainings on salutation, escorting, and security measures, and they were responsible to the respective DANDIM or DANRAMIL in accordance with their assignment areas;
- It is the fact that DANREM Col. TNI Tono Suratman received report from DANDIM of Dili, on the incident on the 17th of April 1999, after the big rally of the Pro-Integration in front of the East Timor Governor's office, after the rally ended, the Pro-Integration people organized a parade around town, and when they passed by the house of Manuel Carascalao, they clashed with the refugees sheltering at the house of Manuel Carascalao;
- It is the fact that DANREM 164 Wira Dharma Col. TNI Tono Suratman, on the occurring clashes at the houses of Pastor Rafael Dos Santos and Manuel Carascalao, directly reported to the Defendant as PANGDAM IX UDAYANA, and the Defendant gave instructions as efforts to assist the police;
- It is the fact that Joao Tavares was the Commander of PPI, and the Deputy Commander of PPI was Eurico Guterres;
- It is the fact that the victim-witness, Manuel Carascalao had come to the house of DANREM 164 Wira Dharma Col. TNI Tono Suratman to ask for help and protection against the attacks at his house, but DANREM refused, then the victim-witness requested weapons to defend himself, this request was also rejected, and the meeting at DANREM house was witnessed by Basilio Araujo;
- It is the fact that DANREM 164 Wira Dharma Col. TNI Noer Muis, after receiving report from DANDIM of Suai, had further reported the incident at Ave Maria Church, Suai, on the 6th of September 1999 to the Defendant, Maj. Gen. TNI Adam R. Damiri as PANGDAM IX UDAYANA, with confirmed victims reached 27 people;
- It is the fact that Witness Col. TNI Noer Muis, The DANREM 164 Wira Dharma, had received STR No. 543.3.8.1999, which consist of instructions to stand by the troop under the witness' control;
- It is the fact that the witness, Col. TNI Noer Muis gave orders to his subordinates through the radio, or STR (Radio-Telegraphed Letters) on the 6th of September 1999, and the witness' orders had been executed by his subordinate officers, because the witness saw and knew that;
- It is the fact that with the transfer of KODAL, there were additional troop consisted of 1 (one) SSK (approximately 100 personnel) transported with a Hercules plane, and other additional troops came one after the other, consisted of 2 (two) squads of troop on the Brigade level;
- It is the fact that the Commander of Operations at the time was the Defendant himself as PANGDAM IX UDAYANA;
- It is the fact that the number of refugees, at the time, was around 300,000, they left for

NTT, Kupang, Bali, Flores, and even for Jakarta;

- It is the fact that the East Timor natives, POLRI as well as TNI, could join the People's Consultation/ Ballot, as in line with the result of the Tri-partite Agreement signed in New York, the East Timor natives who were 17 years old or older could join the People's Consultation;
- It is the fact that the soldiers under the control of DANREM 164 Wira Dharma, Col. TNI Tono Suratman, at the KOREM, were 2 (two) Organic Battalions with between 7,000 or 7500 personnel, while the Territorial Battalion consisted of 4,500 personnel;
- It is the fact that the cause of the attacks at the house of Bishop Belo, according to the report of DANDIM of Dilli, was because right from the beginning, Bishop Belo never stood neutral, Bishop Belo as a religious shepherd took the side of the Pro-Independence, yet often filed complaints about the Pro-Integration, after the announcement of the People's Consultation/ Ballot, the Pro-Integration group were in search for Bishop Belo, and after the incident at the house of Bishop Belo, they found Ballot Boxes;
- It is the fact that after the clashes at the house of Bishop Belo, there were died and wounded victims of abuse;
- It is the fact that the Tri-partite Agreement on the 5th of May 1999, settled on the security responsibility to be in the hands of POLRI, and the People's Consultation/ Ballot to be organized by UNAMET without taking sides and in democratic manners;
- It is the fact that based on the prior agreement between the two parties, the Pro-Integration and the Pro-Independence groups, there were settlements on disarmament, but those who handed in their weapons and put them in storage were only the Pro-Integration, while the Pro-Independence refused to pile up their weapons;
- It is the fact that WANRA were armed, but after completing their post guard, their weapons were handed over to KODIM;
- It is the fact that the burning of properties had spread out through East Timor, starting from the down town area to the alleys of residential areas, in several areas houses and motor vehicles were burnt down, the burning of properties happened in the last day of the campaign period on the 27th of August 1999, and after the announcement of the People's Consultation/ Ballot, the Pro-Independence group took parts in the burning down of vital installations, while the INTERFET troops made no actions against them;
- It is the fact that on the 7th of September 1999, there was an exodus of people, leaving for NTT, and in the 3rd (third) week, on the 21st of September 1999, East Timor was completely handed over to the UN;
- It is the fact that on the 17th of April 1999, Witness Manuel Viegas Carascalao listened to a radio program in the witness' car, on Eurico Guterres, in a speech in front of the big rally, said: "Kill people who refuse Integration. Kill them all, including the Carascalao family!" The witness recognized the voice as the voice of Eurico Guterres, because the witness often heard Eurico Guterres talking;
- It is the fact that after being sheltered at POLDA in 3 or 4 days, the witness went home and saw all were destroyed, his valuables were all robbed, the witness also saw blood marks on the walls, outside, in the front yard, and there were bullet holes on the walls;
- It is the fact that the attacks at the witness' house, caused over 17 victims died, and the witness' son Manelito Carascalao was one of them, with many severe wounds on his corpse,

his neck was almost completely slashed in two, his body had bullet holes, there were marks of sharp weapon slashes on the forehead, and cuts on his face;

- It is the fact that the ABRI Commander, at that time was Gen. TNI Wiranto, always received reports from the Defendant, Maj. Gen. TNI Adam R. Damiri, as the PANGDAM IX UDAYANA, on the situations in East Timor;

- It is the fact that Gen. TNI Wiranto had seen the Special Report No. R.184/Lap.Sus/IV/1999, but did not recall whether or not he had read it;

- It is the fact that the ABRI Commander, Gen. TNI Wiranto, received various types of reports, such as: Intelligence Reports, Logistics Reports, Operations Reports, Special Reports, Daily Reports, Weekly Reports, and all of them directly filed into the Staff System at MABES TNI Headquarters;

- It is the fact that as the follow up of the Special Report No. R.184/Lap.Sus/IV/1999, the ABRI Commander, Gen TNI Wiranto, immediately sent a team of investigation led by the Inspector General of MABES TNI, MARSUYA TNI-AU (Air Force Lieutenant General) TamtamaAdi, to thoroughly investigate the incidents at the church and the Parish House in Liquisa, and the ABRI Commander emphasized that the Defendant/ PANGDAM IX UDAYANA, Maj. Gen. TNI Adam R. Damiri, and the East Timor KAPOLDA, Police Col. Timbul Silaen, to thoroughly investigate the background that led to the incidents and find the perpetrators;

- It is the fact that for problems regarding the supervision, trainings, equipments and finance of the forces, the ABRI Commander was assisted by the Army Chief of Staff, the Air Force Chief of Staff, and the Navy Chief of Staff, while the forces' operations were carried out by the Commanders of KODAM and the Commanders in Chief;

- It is the fact that the KODAM Commander, besides carrying out the operational tasks, was also delegated the authority, through the Army Chief of Staff, to carry out the supervisory tasks, so the KODAM Commander had the duty on the supervision of the army squads in his area or in his strategic compartments;

- It is the fact that the ABRI Commander, Gen. TNI Wiranto requested reports from the Defendant, Maj. Gen. TNI Adam R. Damiri, as the Commander of KODAM IX/ UDAYANA, among others, on Logistics, Intelligence, Operations, Daily Activities, and so on, the reports of which, were filed by the deputies or staff officials on behalf of the PANGDAM;

- It is the fact that the Defendant, Maj. Gen. Adam R. Damiri / PANGDAM IX UDAYANA, reported the activities from April through September 1999 to the ABRI Commander, the Defendant reported to the ABRI Commander the Liquisa incidents on the 3rd, 4th, and 5th of April 1999, and the incident on the 17th of April 1999, at the house of Manuel Carascalao, after that, the Defendant's reports were discussed in the meetings of officers in MABES level, in which according to the ABRI Commander, they dealt with sensitive issues, MABES TNI then sent a team of investigation to PANGDAM/ the Defendant and the East Timor KAPOLDA, then the ABRI Commander reported the matter to the RI President, B.J. Habibie;

- It is the fact that in his reports to the ABRI Commander, the Defendant/ PANGDAM IX UDAYANA did not mention the involvement of ABRI, it was only concluded that the security authority were present in the scene, and there were allegations that the security officers were involved in the shooting contacts;

- It is the fact that when the incidents occurred in April 1999, in Liquisa and at the house of

Manuel Carascalao, the control of the security authority was in the hands of PANGKOOPS NUSRA, who was the Defendant, Maj. Gen TNI Adam R. Damiri;

- It is the fact that the Defendant, Maj. Gen. TNI Adam R. Damiri reported to the ABRI Commander on the incident at Diocese Dili on the 5th of September 1999, and the ABRI Commander had made a recheck through phone calls to the Defendant as PANGDAM IX UDAYANA, as well as to the KAPOLDA;
- It is the fact that the incident at Ave Maria Church, Suai, on the 6th of August 1999, was also reported to the ABRI Commander, and during the incident at Diocese Dili on the 5th of September 1999, the security control was in the hands of PANGKOOPS NUSRA, who was PANGDAM IX UDAYANA Maj. Gen. TNI Adam R. Damiri / the Defendant;
- It is the fact that on the 4th and 5th of September 1999, the ABRI Commander, Gen. TNI Wiranto came to Dili, and at Komoro Airport in Dili conducted a briefing;
- It is the fact that there were additional troops sent to East Timor, assigned from areas throughout Indonesia, and those assigned in East Timor included 6 (six) Battalions, consisted of around 6,000 personnel, and up to the People's Consultation/ Ballot, there were assigned 7 (seven) Battalions;
- It is the fact that the East Timor native soldiers were recruited in 1978 and assigned in Battalions 744 and 745, and 90% of the members of KODIM of Dili were East Timor natives;
- It is the fact that the ABRI Commander had instructed TNI and POLRI to stand neutral, take no sides whatsoever, and take firm actions in line with the law, against whoever violated the law, regardless whichever sides they came from, the Pro-Integration or the Pro-Independence;
- It is the fact that the consideration of the ABRI Commander in the appointment and assignment of the Commander of the Military Emergency Authority, Maj. Gen. TNI Kiki Syahnakri, was because he was a top-ranked officer who could update the development of operations in East Timor, a professional officer who had the ability to control the situations in emergency;
- It is the fact that there was a transfer of the Control of Command (KODAL) in the East Timor area, because at the time, according to MABES TNI/ the Ministry of Defense and Security, KODAL Command was no longer effective in the hands of POLRI, and the ways of handling the commands and control from POLRI could no longer bring the East Timor region into the safe, secured and controlled conditions, so that the incidents in the 4 (four) regencies would not spread out to the other nine regencies;
- It is the fact that the ABRI Commander, Gen. TNI Wiranto, during the time of the transfer of KODAL from the police to the Defendant, Maj. Gen. TNI Adam R. Damiri, instructed officials to immediately overcome the riots, to prevent them from spreading out to other areas, to take stern actions against the provokers who were involved in the provocation against the masses, and to punish the perpetrators from whichever parties they came from, and whenever necessary, to shoot them on sight;
- It is the fact that the takeover of the control of command was a power to coordinate various activities in a certain area, carried out by various institutions;
- It is the fact that the frauds committed by UNAMET, were reported according to the regulated stages from the bottom up to the decision makers on the national level, the reports were received in writing, as well as in verbal procedure, they were even discussed in the

international level;

- It is the fact that the Minister of Foreign Affairs and the RI President had interfered to get clarification on the frauds committed by UNAMET and its elements, and as the response, the UN sent 3 (three) rapporteurs to reexamine the facts of the reports and then made a comprehensive report on it;

- It is the fact that the UN knew of the frauds, but the frauds were not dominant nor significant to disqualify the winner, and the vote counting was done openly and publicly, so that the delay of the announcement was no longer necessary;

- It is the fact that the First Lieut. Sugito had taken his men to the TKP (crime scene) at Ave Maria Church, Suai, the witness saw corpses were scattered around the place, then the witness and 4 (four) other people carried the 27 corpses by wrapping them in canvas and loaded them onto a Panther van;

- It is the fact that the corpses at Ave Maria Church, Suai, mostly had slashes of sharp weapons, and among the corpses were those of Pastor Hilario, Pastor Fransisco, and Pastor Dewanto, the three pastors had wounds from sharp weapons including the severe cuts on the hands, stomachs and necks;

- It is the fact that the 27 corpses were buried in piles in 3 (three) burial holes, in Alas village in the Indonesia-East Timor border, the village was chosen because if they made the burials within the East Timor area, they were afraid that during the funeral, they had to confront attacks by unidentified assailants;

- It is the fact that on the 15th of April 1999, MARSDYA TNI Tamtama Adi, the Inspector General TNI, had made the investigation and clarification on the alleged involvement of TNI in the incidents in Liquisa;

- It is the fact that the method of the investigation used by the 4 (four) member team, were by making observation notes, and went to the TKP to make verbal interviews without official records;

- It is the fact that MARSDYA TNI Tamtama Adi and his team did not interview Pastor Rafael Dos Santos, but the team of investigation interviewed John Rea, who, according to the information, tried to mediate a peace settlement, but failed to do so;

- It is the fact that the report of the team of investigation was considered as the Special Attention Report and was not yet completed, and it was considered as report with 'very special' characteristics, and the document was sent without seals, and it was sent directly to MABES TNI Headquarters;

- It is the fact that the Military Emergency Command was established on the 7th of September 1999, then Maj. Gen. Kiki Syahnakri was appointed and assigned as the Commander of the Military Emergency Authority for East Timor region;

- It is the fact that the basic principles of the establishment of the Military Emergency was the Presidential Decree that was issued on the 6th of September 1999, based on the Law No. 23 of the year 1959, in which in East Timor at the time, the local government was no longer in function, the eruption of mass riots, and the situations that threatened the sovereignty of the country led to the establishment of the Military Emergency;

- It is the fact that the Commander of the Military Emergency Authority, Maj. Gen. TNI Kiki Syahnakri had duty to stop the violence, to create conducive conditions to continue the process of the People's Consultation/ Ballot, also to propose to the ABRI Commander, the

advancement of the liquidation of KOREM 164 Wira Dharma, as KOREM 164 Wira Dharma had 2 (two) Battalions of East Timor native soldiers consisted of quite large force, for they wanted to fight against the arrival of the multinational troops, so the liquidation was advanced to avoid conflicts at the time of the arrival of the multinational troops in Dili;

- It is the fact that the troops arrived in Dili on the 20th of September 1999, led by General Peter Kosgrove, the troops were there to assist TNI;
- It is the fact that the Commander of the Military Emergency Authority, Maj. Gen. TNI Kiki Syahnakri, had made sky observations over the towns, and it was seen that the badly burnt towns included Dili, Manatuto, and parts of Maliana and Suai;
- It is the fact that when Maj. Gen. TNI Kiki Syahnakri was appointed as the Commander of the Military Emergency Authority, Dili town was still under the control of the Pro-Integration, while FALINTIL had controlled Dare, the uphill area of Dili town;
- That based on the PRO-JUSTISIA Letter No. T.T. 3002/SK.II/XI/1999, on the excavation of the unidentified mass burials, issued by the Department of Forensic, the Faculty of Medicine, University of Indonesia, there were facts as follows:

1. That based on the request of visum (autopsy) reports from the Public Prosecutor Office of East Nusa Tenggara in the Letter No. R. 417/Q.3/D.P.1/II/1999, dated the 22nd of November 1999, the team of Forensic Doctors from the Department of Forensic, the Faculty of Medicine, University of Indonesia/ RSUPN Dr. CIPTO MANGUNKUSUMO Hospital, Jakarta, consisted of Dr. SAMPURNO, SH. Spf., Dr. HERKUTANTO, SH. Spf., and Dr. AGUS WIJAYANTO, on the 25th of November 1999, had excavated corpses from the unidentified mass burials allegedly victims of Human Rights violations, in the South Alas village, Kobalima district, Belu Regency, NTT, and had examined 3 corpses on the site, while the examination of the other 23 corpses were carried out on the 26th of November 1999, at RSU Atambua Hospital;

2. There were 3 (three) mass burials:

- 2.1. One burial was around 2 times 3 square meters, contained 12 corpses
- 2.2. One burial was around 2 times 3 square meters, contained 3 corpses
- 2.3. One burial was around 2,5 times 2,5 square meters, contained 11 corpses

3. That based on the Visum et Repertum (autopsy report) No. 001/TT.3002/SK.II/XI/1999, the conclusion of the forensic examination, was that the corpse was identified as that of Romo (Father) Tarcisius Dewanto, on the corpse they found fractures at the third and fifth bones at the back of the neck caused by a high-speed gunshot, a fracture on the first rib at the left side, which matched the hole in the clothing, also caused by a gunshot, beside that, they found fractures on the ribs caused by blows of blunt objects;

4. That based on the Visum et Repertum No. 002/TT.3002/SK.II/XI/ 1999, the conclusion of the forensic examination was that the corpse was identified as that of Romo Hilario Madeira, on the corpse they found a fracture on the left upper arm, which matched the characteristics of those caused by high-speed gunshots. Besides that, they found fractures on the left shoulder bone, on the right ribs up to the seventh rib on the back side, and on the first left rib on the front side, also caused by a high-speed gunshot, the shot-wound ditches, based on the location, had caused fatal damages to the organs inside the left chest cavity, which were the lung and the large artery.

The cause of the fatality was the gunshot on the left chest, led to the damage of the internal organs, including the lung and the large artery, that caused the bleeding;

5. That based on the Visum et Repertum No. 003/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination, the corpse was identified as that of Romo Fransisco Soares, on the corpse they found a fracture on the third bone on the neck, with the straight line fracture due to cut of a sharp weapon, the entire cut on the neck bone led to the entire cut of the spinal cord that caused the fatal damage to the brain. Besides that, they also found fractures on the left ribs at the back, caused by the blow of a blunt object, which also caused severe damage to the lung tissue in the chest.

The cause of the fatality was the strike of a sharp weapon in the neck area, which led to the complete cut of the spinal cord that caused a fatal damage to the brain;

6. That based on the Visum et Repertum No. 004/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination, was that the corpse was that of an adult male, over 30 years old, on the corpse they found a fracture on the sixth right rib, which matched the tear on the jacket, caused by a strike of sharp object. Based on the location, the strike penetrated through the chest, damaging the lung tissue and caused the severe bleeding on the right side of the chest cavity, and it was fatal;

The cause of the fatality was the strike of a sharp object on the right side of the chest area, that went through the chest and caused the bleeding.

7. That based on the Visum et Repertum No.005/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was identified as that of an adult female, between 35 and 44 years old, on the corpse they found a fracture on the sixth rib on the right side which matched the tear on the jacket, caused by the strike of a sharp object. Based on its location, the strike went through the chest and caused severe damage to the lung tissue and the bleeding on the right side of the chest cavity, besides that, they found a wound on the right thigh, caused by a strike of a sharp object.

The cause of the fatality was the strike on the right side of the chest that penetrated into the chest, which led the bleeding.

8. That based on the Visum et Repertum No. 006/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a male, around 20 years old or younger, the corpse was already decomposed. The cause of the fatality could not be confirmed.

9. That based on the Visum et Repertum No. 007/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a female, around 20 years old or younger, the tissue was already decomposed. The cause of the fatality could not be confirmed, but the strike by a sharp object on the right side of the back could be considered as the cause.

10. That based on the Visum et Repertum No. 008/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a female, around 25 years old, on the corpse they found a tear in the neck area, and the complete cut of the sixth bone of the neck, caused by the strike of a sharp object, the complete cut of the neck bone led to the complete cut of the spinal cord, and the fatal damage to the brain;

The cause of the fatality was the strike of a sharp object onto the neck area that caused severe damage to the spinal cord and the brain;

11. That based on the Visum et Repertum No. 009/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a 5-year-old child, on the corpse they found slits on the front and the back sides of the clothing and T-shirt, caused by strikes of sharp objects.

The cause of the fatality could not be confirmed, but the strikes of sharp objects on the chest and stomach areas could be considered as the cause of the fatality of the child;

12. That based on the Visum et Repertum No. 010/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a young woman, around 21 years old, on the corpse they found that parts of the vertebrae on the chest area, which were the eighth, ninth, and tenth bones, were crushed in pieces, caused by a high-speed gunshot, the damage of the vertebrae caused damage to the spinal cord and the internal organs, including the aorta, which was fatal.

The cause of the fatality was a high-speed gunshot that crushed the spinal cord and caused severe damage to the aorta that led to the bleeding;

13. That based on the Visum et Repertum No. 011/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult male, age 30 years old or older, they found that the third, fourth, fifth bones of the vertebrae were crushed into pieces, caused by a high-speed gunshot.

The cause of the fatality was a high-speed gunshot on the neck that crushed the spinal cord and the brain.

14. That based on the Visum et Repertum No. 012/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult, less than 22 years old, on the corpse they found a bone fracture on the right side, an injury caused by a high-speed gunshot.

The cause of the fatality was a high-powered gunshot on the upper side of the right leg, causing the severe damage to the right leg that led to the bleeding.

15. That based on the Visum et Repertum No. 013/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a young adult male, on the corpse they found a bone fracture on the upper side of the left arm, and based on the characteristics, it was caused by a high-powered gunshot, and the fracture on the left rib, based on the seriousness of the condition, it was also caused by a gunshot.

The cause of the fatality was a high-speed gunshot that hit the left side of the chest and caused damage to the organs inside the left chest cavity, which were the lung and heart.

16. That based on the Visum et Repertum No. 014/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult female, on the corpse they found fractures on the right shoulder bone, the right collarbone, and the first through the fifth right ribs, which collectively could be concluded as the injuries caused by a high-speed gunshot. The damage on the bones led to the damage of the internal organs in the right side of the chest, including the lung that led to the bleeding.

The cause of the fatality was a high-speed gunshot on the left chest damaging the internal organs, including the lung.

17. That based on the Visum et Repertum No. 015/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination, was that the corpse was that of an adult male, on the corpse they found severe fractures on the skull, on top of the skull, as well as on the upper jaw area. The damage were caused by a high-speed gunshot, besides that, they found a tear on the right of the backside of the clothing and T-shirts, caused by a strike of a sharp object.

The cause of the fatality was a high-speed gunshot that crushed the top of the skull.

18. That based on the Visum et Repertum No. 016/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination, was that the corpse was that of a young female, less than 25 years old, on the corpse they found a smooth slash on the left side of the chest, caused by a strike of a sharp object, and a round tear on the armpit area, caused by a gunshot or a blow of a blunt object.

The cause of the fatality could not be confirmed, but the strike of a sharp object and, or the gunshot as mentioned before, could be considered as the cause of her death.

19. That based on the Visum et Repertum No. 017/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a young adult male, less than 25 years old, on the corpse they found a smooth slash on the left arm and waist areas of the clothing, caused by a strike of a sharp object.

The cause of the fatality could not be confirmed, but the strike of sharp objects could be considered as the cause of the fatality.

20. That based on the Visum et Repertum No. 018/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a male, age between 30 and 40 years old, on the corpse they found severe fractures of the bones of the face, including on the cheeks, and the upper and lower jaws, that based on the complexity of the condition, matched those caused by a high-speed gunshot. On the corpse, they also found that the sixth bone of the vertebrae was entirely cut due to the strike of a sharp object, which led to the completely cut of the spinal cord.

The cause of the fatality was a high-speed gunshot into the head that crushed the bones in the head, while the strike in the neck entirely cut the vertebrae on the neck area.

21. That based on the Visum et Repertum No. 019/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was and adult male, age over 25 years old, the cause of fatality could not be confirmed, but the strike of sharp objects could be considered as the cause of his death.

22. That based on the Visum et Repertum No. 020/TT.3002/SK II/ XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult male, on the corpse they found severe injuries in the soft tissues, as well as bone fractures, the cause of fatality could not be confirmed.

23. That based on the Visum et Repertum No. 021/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult male, on the corpse they found a hole on the back of the skull, caused by a gunshot, and a fracture on the left rib caused by a strike of a sharp object. The gunshot in the head had crushed the brain, while the wound on the left side of the chest caused by a strike of a sharp object that had torn the left lung that led to the bleeding. The cause of fatality to this man was a gunshot that hit the head.

24. That based on the Visum et Repertum No. 022/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a young adult male, on the corpse they found fractures on the upper and lower jaws that based on the complexity of the condition, was caused by the severe strike of a blunt object, or a high-speed gunshot, while the burn injuries seemed to happen after his death.

The cause of the fatality was the severe strike of a blunt object or a high-speed gunshot.

25. That based on the Visum et Repertum No. 023/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult male, between 35 and

40 years old, on the corpse they found marks of fractures on the skull, as they found a piece of the bone from the left temple which did not match the Sutura. The injury of the skull could be caused by the strike of a blunt object or a gunshot, while the burn injury seemed to happen after his death.

The cause of the fatality was the severe strike of a blunt object, or a gunshot on the head.

26. That based on the Visum et Repertum No. 024/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of an adult male, not more than 25 years old, on the corpse they found bone fractures on the head, including the nose up to the upper jaw, also the cheek bones, caused by a high-speed gunshot. The severe damage on the bones of the head had caused the severe bleeding that led to breathing trouble, which was fatal. The cause of fatality was a gunshot in the head.

27. That based on the Visum et Repertum No. 025/TT.3002/SK II/XI/ 1999, the conclusion of the forensic examination was that the corpse was that of a female, on the corpse they found fractures on the right ribs, which matched the tear on the clothing, caused by a gunshot. The cause of the fatality was a gunshot.

28. That based on the Visum et Repertum No. 026/TT.3002/SK II/XI/ 1999, was that the corpse was that of an adolescent male, the cause of fatality was not confirmed.

29. The condition of the corpses were already decomposed, it was concluded that the victims died around 2 up to 3 months before the examinations, the cause of the fatality of the victims were varied, from gunshots, to the strikes by sharp or blunt objects, the degrees of certainty of the causes of fatality were also varied, some of them could not be confirmed the causes of their deaths. How the victims died were determined by the causes of fatality, the treatment on the corpses, and how they were buried. Mostly the fatality causes of the victims were violence, they did not have proper post-mortality treatments, and they were buried in mass burials. Those points indicated that the corpses were victims of mass murders.

Considering that before the Panel of Judges further consider and discuss the case of Grave Human Rights violations, it is necessary to point out some principles of the International Law and the Humanitarian Law; besides that, as this case concerns the grave Human Rights violations, it is necessary to point out some general principles in the International Law concerning the crimes against humanity that have universal characteristics, which are as follows:

- That no one should be above the Law, that our responsibility would be ensuring its law enforcement and no one can escape the law for crimes he committed in the past or in the future.

- Crimes against humanity, war crimes, and genocide are *Hostis Humanis Generis* (Enemies of Mankind), which are international crimes that should not escape prosecution and punishment.

- Crimes against humanity have become parts of the general law principles that have been acknowledged by most community of nations, those who have committed crimes (commission) or omission could be retroactively prosecuted.

Considering that in the explanation of the Law No. 26 of the year 2000, on the Human Rights Court, it is declared that grave Human Rights violations are "Extra Ordinary Crimes", while the explanation of Article 7 of the Law says that genocide crimes and crimes

against humanity in this regulation are in line with the "Rome Statute of the International Criminal Court" (Article 6 and Article 7), the law makers and the Government have adopted the rules of the International Law into the National Law, therefore the exercise of the principles, customs, and court practices of the International Law on the actors of the Grave Human Rights violations, could be applied into the grave Human Rights violation courts in our country, such as this case, and they would be justified as long as they are related to the case of Grave Human Rights violations in East Timor.

Considering besides applying the principles as mentioned above, the panel consider it necessary to point out and discuss several issues concerning the validation of the Criminal Code, which consisted of the validation system in evaluating each of the evidence, which would be the basic guidance in hearing the case, as in the Article 10 of the Law No. 26 of the year 2000 on the Human Rights Court, among others, it is regulated that, if not regulated otherwise in this law, the criminal code procedure on the cases of Grave Human Rights violations, would be based on KUHAP (the Criminal Code Procedure), therefore the Law No. 8 of the year 1981 (KUHAP/ the Criminal Code Procedure), would be used as the basic code procedure of the grave Human Rights violations, including its validation system.

Besides that, Article 183 of the KUHAP Criminal Code Procedures regulates that to determine whether or not a defendant is guilty, and to be able to sentence the person, therefore:

- The fault should be proven with, at least, two valid evidence, and
- With the verification of, at least, two valid evidence, the judge would have no doubt that the crime had been committed and that the Defendant should be responsible for that.

Considering that Article 184, Paragraph (1) of KUHAP Criminal Code Procedure declares limited valid evidence according to the Law, which are:

- a. Witness' Testimony
- b. Expert's Testimony
- c. Letters
- d. Indications/ Clues
- e. The Defendant's Testimony

Considering Article 183 in relation to Article 184 Paragraph (1) of KUHAP Criminal Code Procedure, therefore a Defendant could be punished with criminal penalty, if his fault had been proven with at least, two out of five valid evidence as mentioned above. Therefore, the minimum validation which would be considered adequate to prove the crime committed by a Defendant, would be at least, two valid evidence;

Considering therefore the Panel of Judges should first explain each of the valid evidence, and how the judges' stance over the evidence, which would be the guidelines in ruling the case;

1. Witness' Testimony

That the witness' testimony would be considered as a valid evidence when the testimony of the witness was presented in court, over a crime he heard, he saw with his own eyes, and he experienced himself, by mentioning the reason of the knowledge, and the testimony was given under oath based on respected religion of each witness as regulated in Article 185, Paragraph (1) jo Article 1 point 27 jo Article 160, Paragraph (3) of KUHAP Criminal Code Procedure.

While the testimony of the witness which was not given under oath, though in accordance with the testimony of others, could not be considered as the valid evidence, but if the testimony is in accordance with the testimony of the witness who has given the testimony under oath, it could be used as the additional evidence for other valid evidence;

That the Law also regulates, when the witness, after giving the testimony in the investigation process, passed away, or for valid interference could not be present in court, or could not be summoned because his address or residence has been too far-away, or for other reasons which concern the national interests, therefore the given testimony would be read in court, and if the testimony had been given under oath, therefore the testimony would have the same value as the witness' testimony presented in court {Article 162, Paragraph (1) and (2) of KUHAP}.

That on how the judges would justify the facts of the witness' testimony, the Criminal Code Procedure regulates guidelines as follows:

- a. The concurrence of the testimony of one witness with that of the others;
- b. The concurrence of the witness' testimony with other evidence;
- c. The feasible reason used by the witness to explain about a certain issue;
- d. The lifestyle and morality of the witness, also all things that could generally influence whether or not the witness' testimony is trustworthy;

That the testimony of several witnesses, each of which stands for itself, over an incident or condition, could be used as evidence, if they are related to each other in one way or the other, therefore could confirm an incident or a certain condition (Article 185, Paragraph 4).

While the opinion or presumption obtained from merely reasoning was not the witness' testimony in Article 185 Paragraph (5) KUHAP, as well as the testimony obtained from other persons or testimonium de auditu was not included as the witness' testimony (Explanation of Article 185, Paragraph (1)).

The Law does not explicitly mention the valuation of the witness' testimony, read in court, which has not been given under oath;

From the starting point of the regulation Article 161, Paragraph (2), in relation with the Article 185, Paragraph (7),

Considering that based on the above explanation, therefore the Judge could, for certain reasons, accept or reject the testimony of a witness, though it should be acknowledged that the Judge could not simply arbitrarily accept or reject the testimony of the witness, on the other hand, the Judge should really thoroughly consider the testimony of the witnesses based on reasons in accordance with the law;

2. Experts' Testimony

That the testimony of an expert is a testimony given by a person who has particular knowledge on a certain issue that is essential in clarifying a criminal case, for the interest of the investigation stated in court (Article 1 point 28 jo Article 186 of KUHAP).

That the testimony of the expert is equal to the testimony of a witness mentioned before, that is it has no value of fixed and definite validation, therefore the testimony of an expert has a free value of validation or *vrij bewijkracht*;

3. Letters of Evidence

That according to Article 187 of KUHAP, a letter could be valued as a valid evidence according to the Law, when

- The Letter has been stated under oath of office
- The letter has been confirmed with a statement under oath

Then Article 187 of KUHAP has comprehensively specified the forms of letters which are valued as the evidence, they are:

a. The Official Record and other letters in the official format made by the authorized Public Official or made in his presence, with required contents as follows:

Contains the explanation of an incident or condition which was heard, seen or experienced by the respected official, with the clear and firm reasons over his explanation;

b. The letter was made in the regulated format, or the letter was made by the authorized official over the issue which management he is responsible for, and would be used for the confirmation/ validation of a certain issue or condition;

c. The testimony of an expert which contains the argument based on his expertise over a certain issue or condition which has been officially requested from him;

d. Other letters could be in effect if they are related to the content of other evidence.

That the letters as mentioned in the pointers a, b, c, are the official letters made by the authorized officials, or as regulated, or the letters of an expert with the particular knowledge on a certain issue or condition, made with the statement under oath, or confirmed with the statement under oath, while the letters in the format as regulated in the pointer d, are the letters with regular format;

That the value of the validation/verification of the letters of evidence is equal to that of the witness' testimony, or that of the expert's testimony, they all have free value of validation, the Judge is free to value the validation of evidence, as the principle of the process of the criminal case investigation is to seek the Real Truth (*Kebenaran Sejati/ Materiel Waarheid*) and not the Formal Truth (*Formeel Waarheid*)

4. Clue/ Indication Evidence

That a Clue/ Indication is the act, incident or condition, which because of its concurrence

with one another, or with the criminal act itself, indicating the occurrence of a crime, and the actor/s of the crime, and the clue could be obtained from:

- a. Witness' testimony
- b. Letters
- c. Defendant's testimony

(Article 188, Paragraph 1 and 2 of KUHAP Criminal Code Procedure)

That if the Judge wants to use the clue evidence as the basic valuation in verifying the Defendant's fault, the Law really demands the consciousness and responsibility of the concerned Judge.

Article 188, Paragraph (3) declares the valuation on the verification of a clue in every single condition, should be wisely considered by the Judge, after he had comprehensively carried out the investigation with thorough accuracy and care, based on his conscience.

Considering that the rule could be comprehended that as much as he is capable of, the Judge would not use the Clue Evidence in the proving the Defendant's fault, except in the very significant and pressing situation, whereas the Judge had already thoroughly examined and made the best use of other valid evidence, but as they were not adequate enough, the Judge could turn to the Clue Evidence. The value of the verification of the Clue evidence is equal to that of the witness' testimony, the expert's testimony, the letters of evidence, which all have the free valuation of verification, therefore the Judge would be free to value and use it as the evidence, and the Clue evidence could not stand on itself in proving the fault of the Defendant.

5. Defendant's Testimony

That the Defendant's Testimony is the statements of the Defendant presented in court on the actions he did or he knew or he experienced, and the Defendant's testimony could be used only for himself.

(Article 189 Paragraph (1) and Paragraph (3))

That the Defendant's testimony that were given outside the court could be used to assist in finding the evidence in court, as long as the testimony is supported by valid evidence on the charges on the Defendant, and the Defendant's testimony alone would not be enough to prove the Defendant is guilty of committing the crime as indicted on him, it has to be supported by other valid evidence.

(Article 189 Paragraph (2) and Paragraph (4) of KUHAP)

Considering that the value of the verification of the Defendant's testimony is equal to that of the other evidence as mentioned above, that it has the free value, because the Judges would not have to value of the validation on the evidence of the Defendant's testimony. The Judge could accept or reject it to be used as evidence for certain reasons. Besides that, the Defendant's testimony alone would not be enough to prove the Defendant guilty of committing the crime as charged to him, it has to be supported by other evidence.

Considering that based on the whole explanation above, after the Panel of Judges heard the

testimony of the witnesses presented in court, the testimony of those read in court, as well as the testimony of the Defendant presented in court, also by thoroughly observing the evidence presented in court, the Panel of Judges find it necessary to first value the testimony of the witnesses;

Considering the valid evidence in the form of letters, one of the letters that needs to be reconsidered by the Panel of Judges, is the Special Report Letter No. R-184/LAKSUS/IV/1999, signed by the Brig. Gen. TNI Mahidin Simbolon, the Panel considered this 1 (one) letter is related to the other valid evidence;

Considering the evidence in the form of Clues/Indications, the Panel of Judges would use the Clues/Indications from the courts of other cases of Grave Human Rights violations in East Timor which have been ruled at the same time with that of the Defendant, because the Panel of Judges regard the cases of Grave Human Rights violations in East Timor should be considered as one case, but as there are as many as 18 Defendants, therefore the case is divided into separated cases (splittings);

Considering the Defendant has been examined in court and has given his testimony;

Considering before the Panel consider the evidence proposed by the Ad Hoc Public Prosecutor, the Panel of Judges would first consider the charges of the Ad Hoc Public Prosecutor and the Plea Notes of the Team of Attorneys of the Defendant;

Considering the charges of the Ad Hoc Public Prosecutor, the Panel of Judges disagrees with the Ad Hoc Public Prosecutor, because the Prosecutors are not accurate, inconsistent and do not follow the rules of indictments, which are:

- The Ad Hoc Public Prosecutor do not consider the testimony of the expert witness, AKBP Drs. Gatot Subiyaktoro;
- The Ad Hoc Public Prosecutor indicted the Defendant free of charges, but still included the matters that implicate and commutate the Defendant, that is unusual in the free-of-charge indictment;
- In the last part of the indictment, the Ad Hoc Public Prosecutor declares that the indictment would not influence the TNI Community, especially the Defendant, Maj. Gen Adam R. Damiri: "The court was not a form of revenge and was not carried out for the benefit of, or under the pressures of certain parties," That is a very unusual statement to be declared in a free-of-charge indictment;
- The difference in opinion would be reconsidered by the Panel of Judges in the considerations related to the matter;

Considering the Plea Notes of the Attorneys of the Defendant, the Panel of Judges disagreed, though the Panel understands that what stated in the Plea Notes were the facts that only commutate the Defendant;

Considering that the difference of opinion would not be discussed one at a time in this section but all of them would be presented in the consideration related to the matter;

Considering the whole explanation above, after the Panel of Judges heard the testimony of the witnesses, those presented in court, as well as those read in court, also the testimony of the Defendant presented in court, and thoroughly observed the evidence presented in court, the Indictment Letters, as well as the Plea Notes, the Panel of Judges consider it necessary to first value the testimony of the witnesses:

a. Witness' Testimony

a. 1. On the Quality of the Witnesses

Considering that out of the 30 witnesses presented in court, the 12 of them, they are LILIK KOESHADIANTO, Brig. Gen. NOER MUIS, Brig. Gen. TNI TONO SURATMAN, ASEP KUSWANI, LEONITO MARTINS, SUJARWO, Drs. HERMAN SEDYONO, Maj. Infantry SUGITO, AKBP Drs. ADIOS SALOVA, YAYAT SUDRAJAT, AKBP Drs. HULMAN GULTOM, AKBP Drs. GATOT SUBIYAKTORO, and the witnesses whose testimony were read in court, they are Drs. G.M. TIMBUL SILAEN, ABILIO JOSE OSARIO SOARES, have been all the Defendants in the courts of Grave Human Rights violation cases too;

Considering that the 12 other witnesses, they are Lieut. Gen TNI (Ret) KIKI SYAHNAKRI, Maj. Gen. TNI ZAKI ANWAR MAKARIM, Gen. TNI (Ret) WIRANTO, BRIPKA Police MAKARAU, Maj. Infantry SALMON MALAVE, Capt. Police JOHN REA, Capt. Infantry JOKO WALUYO, First Lieut. CARLOS AMARAL, Sgt. Maj. RAIMUNDO DOS SANTOS, Maj. Infantry HARTONO, Brig. Gen TNI WIDYA BAGYA, and MARSDA (Ret) TAMTAMA ADI, are the witnesses from the military community from the Army TNI as well as the Air Force TNI;

Considering that the quality of the witnesses are the former supervisors of the Defendant, the colleagues of the Defendant, or the subordinate officers of the Defendant, therefore the Panel of Judges consider the testimony of the witnesses cover up the fault of the Defendant, or at least, they have given testimony that commutate each other.

Considering that only the 3 victim witnesses, who could only gave the authentic testimony, they are the witnesses, MARIO VIEGAS CARASCALAO and Pastor RAFAEL DOS SANTOS who were examined through teleconferences, and the witness, Bishop BELO, whose testimony was read in this court;

a.2. On the Testimony of the Witness, Bishop BELO

Considering the Attorneys of the Defendant that argued the testimony of Bishop BELO as testimonium de auditu (The Plea Notes, page 444), the Panel of Judges disagreed to that because in page 490, the testimony of Bishop BELO was acknowledged, though it was stated as the testimony of his own (unus testis nullus testis).

Considering that the Attorneys of the Defendant are inconsistent with their arguments, therefore the Panel of Judges considered the testimony of Bishop BELO should be used;

Considering that Bishop BELO experienced, or in the sense of requesting himself the protection to avoid the attacks of Militia, and he heard himself the words: "Attack now! Attack now!" shouted by an officer in military garb who had rather light skin color like a

Manado native;

Considering that Bishop BELO experienced himself, as he asked General WIRANTO. First, that in the ABRI Community, they should have a sophisticated intelligence network to be able to find who did the shootings during the evenings that worsened the situation. "I ask who did the shootings in Dili town that made people could not sleep. Second, I ask the ABRI Commander to clean up the routes from Batu Gede and Dili to Lautem, from Militia groups and their checking posts they established along the road." But the two questions were not answered by WIRANTO, he said only the "wet words" or the term for being cynical.

Considering that Bishop BELO saw with his own eyes, from the helicopter that brought him from Baucau, that his home was on fire;

a.3. On the Testimony of the Witness, Pastor RAFAEL DOS SANTOS

Considering that Pastor RAFAEL DOS SANTOS is the victim witness who experienced himself when he was threatened to be killed, and experienced himself, when his residence was under attacks by the Militia, joined with the Police and TNI, though it was first denied by the Attorneys of the Defendant, but they admitted that members of KODIM, RAYMUNDO, ISAC DOS SANTOS and TOME DIEGO, were among those who attacked the residence of Pastor RAFAEL (see page 420 of the Plea Notes);

Considering that the assailants were likely to be the members of KODIM, whom he knew very well, as they were all the local natives, even one of them or ISAC DOS SANTOS, was his own nephew, so the testimony of the witness is trustworthy;

Considering that Pastor RAFAEL DOS SANTOS experienced himself being in the middle of the tear gas smoke that was directly shot into the jalousie glassed window, and he experienced himself the glass of the jalousie windows of his house were shattered caused by the shots directly aimed at his house;

Considering that Pastor RAFAEL DOS SANTOS sincerely admitted that he was rescued by an officer of KODIM from the threats to be killed by a member of the Militia;

Considering the fact that his testimony, though presented through a teleconference, was given without pressures or directions, as it was witnessed by the representative of the Supreme Court, as well as the representative of the Attorneys of the Defendant, in Timor Loro Sae, therefore the Panel of Judges accept the truth of his testimony;

Considering the testimony of the witness, Pastor RAFAEL DOS SANTOS, though according to the Ad Hoc Public Prosecutor in the indictment, it was stated as the testimony of his own (page 101 of the Indictment Letter), it was agreed by the Attorneys of the Defendant according to the Plea Notes (page 422), but the Panel of Judges disagreed, and their consideration would be presented later.

a.4. On the Testimony of the Witness, MANUEL VIEGAS CARASCALAO

Considering that the testimony of the witness, MANUEL VIEGAS CARASCALAO, was accepted by the Panel of Judges as the valid testimony as the witness was a victim witness who experienced himself his house being destroyed, he saw with his own eyes and heard that his house was under attacks, and that his son named MANELITO was killed very

tragically, with his corpse full of severe wounds caused by slashes of sharp weapons, which almost completely separated the head from the body, and also wounds from gunshots;

Considering the witness saw with his own eyes, that blood marks were everywhere, in the front yard as well as inside the house, including in the dining room, in the study room, even in the bed rooms, also marks of gunshots on the walls, the household properties were totally destroyed, the glass windows and doors were shattered, also the condition of the entire house was in a real mess, the Panel of Judges disagreed with the Attorneys of the Defendant who said that the testimony of the witness was only a misinformation (see the Plea Notes page 227);

Considering that the testimony of the Witness was his own experience, therefore the Panel of Judges declared the testimony as the valid evidence;

b. On the Testimony of the Expert

Considering that the testimony of expert witnesses, in the opinion of the Panel of Judges have been quite objective, though the Judges were not required to use them, the Panel would consider only the important parts, but if they are not replied in this section, it is not necessarily meant that the Judges had accepted or rejected it, but they could be replied later in other sections related to the matter;

b.1. On the Testimony of Prof. Dr. MULADI, SH., on the Systematic Element:

Considering that in accordance with the testimony of an expert that the systematic element should be proven by the existence of the government policy on an 'ethnic cleansing', according to the Panel of Judges, could never be proven, as there were no governments would officially rule or apply policies such as that;

Considering that in the International Ad Hoc Crime Tribunal for Rwanda (ICTR) in the case of JEAN PAUL AKAYESU, the systematic element was described as the systematic and patterned actions based on the policies involving public, as well as private resources. The systematic element should not be formally formulated as the government policy, but should only be referred to the existence of a planning;

Considering that in the TIHOMIR BLASKIC case in the International Ad Hoc Crime Tribunal for the former Yugoslavia (ICTY), the systematic elements referred to four elements, they are:

- Political intentions or ideology in the plan to destroy, abuse or weaken a group of people or community;
- The spreading crimes or instructions of repeated and sustained inhuman actions that were related one another against civilians;
- The planning on the use of public, as well as private resources, such as the military or other resources;
- The involvement of the top-level officials, in political, as well as private authorities in the setting up of the plan;

Considering that in Indonesia, it could never be proven that there would never be a

government policy to make attacks, commit murders or violence against the residents of the former East Timor Province, even though there were lives, properties and dignity that should be sacrificed by the civilians in East Timor, due to the repeated, massive, same patterned crimes, those could not be blamed only on the Pro-Integration Group, in this case, the Militia in the PPI organization, also those could not be described as the scheme of PPI group, but they could be explained as the scheme of the system, as described by an expert, Dr. DANIEL SPARINGGA, which could be proven only by the existence of victims of the clashes happened repeatedly and in the same pattern, such as regulated in the customs of the International Law;

Considering that ABRI, especially the Army TNI policy in East Timor is the prime element in the system, in the operational control, the supervisory, as well as the security systems, those which could be described in history, as well as those in reality, it should be undeniable that ABRI, especially the Army TNI, was part of the system, so it could not be said that they should not be responsible;

b.2. Reply on the Testimony of the Expert, Dr. DODI HARYADI

Considering the testimony of the expert witness that said the cultural background of the ethnic communities in East Timor, had been socialized as having conflicts among sub-ethnics or non-homogeneous groups of people, were considered as the pre-conditions for the mass-behavior categorized as threatening behaviors;

Considering that the Panel have the opinion that the threatening pre-conditions should not remain persistent for a long time, therefore the East Timor authority should have made immediate and adequate preventions to end the threatening situation or sustainable conflicts.

c. On Letters

Considering that the valid evidence in the form of the Letters of evidence proposed by the Ad Hoc Public Prosecutor, one of which, was the evidence of the Special Report Letter Number: R-184/LAPSUS/IV/1999, dated on the 7th of April 1999, signed by the Brig. Gen. MAHIDIN SIMBOLON;

Considering the testimony of the witness, General WIRANTO, who said that the witness could only count on the official reports, such as the Letter Number: R-184/LAPSUS/ IV/ 1999, which is an official letter, with the official letterhead and seal of PANGDAM UDAYANA;

Considering that as the evidence, the report is valid, the report letter had been replied by the TNI Commander, and as the follow up, MABES TNI sent a team of investigation to Liquisa, led by Inspector General of MABES TNI, MARSDA (the Air Force Lieutenant General) TAMTAMA ADI. The fact shows that the letter is valid, though the Attorneys of the Defendant and the Defendant objected to the use of the letter as evidence;

Considering the report of the team of investigation presented in court, also the testimony of the witness MARSDA TAMTAMA ADI before the court, who only interviewed 4 (four) persons, the Regent of Liquisa, Sister FLORA, DANDIM of Liquisa, and KAPOLRES of Liquisa, the Panel considered that the Special Attention Report did not meet the requirements of an investigation as the only 4 (four) respondents would not meet the requirements of an investigation of such incidents that covered a vast area and caused so many victims, moreover, the interviews were not documented into official records, therefore

the Panel regarded the investigation not valid, and would not take it into consideration;

Considering that the Panel disagreed with the Attorneys of the Defendant who said that the letter should not be used as a valid evidence as there was no original letter, but based on the testimony of the witnesses, Brig. Gen. WIDYA BAGYA and I KETUT MURTIKA, or the witnesses who handed over and received the document as it should be, also after reading the official record of the handing over of the document declaring the letter was in accordance with the rule concerning original dossier, therefore the objection of the Attorneys of the Defendant could be put-aside;

Considering that the problem of the letters of evidence concerns the particular evidence of the Special Report No. R-184/LAPSUS/IV/1999, dated the 7th of April 1999, signed by Brig. Gen TNI MAHIDIN SIMBOLON, the KASDAM (Chief of Staff) of KODAM IX/UDAYANA, which include words: "The members of POLRES and BRIMOB squads, also the members of TRIBUANA Task Force, immediately back up the Pro-Integration Group ...," which in the opinion of the Panel, as it is already publicly acknowledged that 'to back up' means 'to assist' or at least, described the one-sidedness of the officers to the Pro-Integration Group;

Considering that based on the above explanation, the Panel of Judges considered the Letter could be used as the valid evidence;

d. On the Clues/Indications

Considering the Clues as evidence, are the valid evidence as regulated in Article 184, Paragraph (1), the Panel would carefully take them into consideration;

Considering that it was an undoubted fact (*feiten notoir, prima facie*), that the presence of TNI, especially the Army TNI, since 1975, had influenced the decision over the policy of Integration of East Timor to Indonesia, as the 27th Province;

Considering it was an undoubted fact that ABRI, especially the Army TNI, at the time, played important roles in mentally and physically developed East Timor, including the establishment of the native East Timor to become loyal, dedicated, and quite skillful soldiers, among others, in establishing and training WANRA, which in 1999, WANRA members joined in the PPI organization;

Considering it would be understandable that the sacrifices of ABRI, especially the Army TNI in the 23 years time, had become meaningless when RI Government announced the grant of Independence Option for the people of East Timor, furthermore, they had to accept the reality that the 27th Province had to be separated from the 'mother country' Indonesia, so it was understandable if the disappointment was directed to the Pro-Independence Group, who would easily control and use what they had built;

Considering that at the beginning of the assignment of Maj. Gen TNI KIKI SYAHNAKRI as the Commander of the Military Emergency Authority, as declared in his testimony before the court, he said that the first priority in his work program would be liquidating the Battalions 744 and 745 whose members were the local natives, because of the concern of their possible attacks at the UN peace-keeping troops to arrive in Timor Loro Sae;

Considering overseeing the matters, there were clear indications why those who became the Defendants of the Grave Human Rights violation cases were mostly from the Army TNI;

Considering therefore the Panel of Judges would use the clues/ indications taken from the

courts of other cases of Grave Human Rights violations in East Timor, which had been presided and ruled over simultaneously with that of the Defendant, as the Panel considered the cases of Grave Human Rights violations in East Timor should be in fact, tried as one case, but as there were as many as 18 Defendants, therefore the case was separated into several cases (splittings);

Considering that the separation was also acknowledged by the Attorneys of the Defendant, it was proven by the proposals of free-from-all-charge judgments for DANDIM of Liquisa, Lieut. Col. ASEP KUSWANI, and DANREM 164/ Wira Dharma, Brig. Gen. TONO SURATMAN (see page 487 of the Plea Notes), also for DANDIM of Dili, Lieut. Col. Infantry ENDAR PRIYATNO, and the criminal procedures against Lieut. Col. SOEDJARWO, the DANDIM of Dili, and against Brig. Gen. NOER MUIS, the DANREM 164/WD, in the pages 487, 489, 491, of the Plea Notes;

Considering that particularly in the case of DANDIM of Dili, Lieut. Col. Infantry ENDAR PRIYATNO, the Panel of judges presided and ruled over the case, have proven that the members of KORAMIL of Maubara attacked the residence of MANUEL VIEGAS CARASCALAO only because the members of KORAMIL of Liquisa were not under the direct command of DANDIM of Dili, therefore DANDIM of Dili was indicted free from all charges;

Considering also in the case of Lieut. Col. Infantry SOEDJARWO, it was proven that the security protection that should be provided at the residence of Bishop BELO had been withdrawn, so the attacks could be easily enforced;

Considering the failure to act from Brig. Gen NOER MUIS as the DANREM 164/WD, in the prevention and anticipation of the occurrence of riots/ clashes;

Considering the case of EURICO GUTERRES who testified in court such as testified by the Defendant, that he clearly confirmed the closeness of PPI with the military, which made stronger indications of the involvement of the military, especially the Army TNI, in every mass riot/ clash, and the occurrence of the omission (pembiaran) crimes as in fact, the riots/ clashes had been acknowledged by the military or the Army TNI;

Considering every clash and riot was performed in repeated, similar pattern or ways, also the attacks always aimed at refugee centers for the Pro-Independence people, which had no security or the security had been withdrawn;

Considering there were always similar signs before the occurrence of a riot/ clashes, there would be a huge number of crowding masses, mostly carried homemade firearms, wood sticks, and other weaponry, such as happened at MAKODIM of Liquisa, before the riot/ clashes at the residence of Pastor RAFAEL DOS SANTOS, such pattern occurred in the Big Rally, before the attacks on the house of MANUEL VIEGAS CARASCALAO, the incident just erupted without preventive measures from the police officials, as well as from TNI, though many of the TNI, POLRI, and the intelligence officers attended the big rally, this was supported by the testimony of a witness, the INTELPA officer from the East Timor POLDA;

Considering the contents of the speeches delivered by EURICO GUTERRES and JOAO TAVARES in front of thousands of the masses of the Pro-Integration Group, which provoked the 'wipe out' of CARASCALAO family, the attending authority officials should have known and predicted the coming situation, at least they knew that at the residence of MANUEL CARASCALAO there were refugees of the Pro-Independence Group;

Considering that the Panel of Judges take into consideration the existence of the refugees, it would be unreasonable for the Pro-Independence refugees to shelter in the listed centers at

MAKODIM, MAPOLDA, or the residences/ offices of KORAMIL, the governor, while DANDIM, KAPOLDA, the regent, DANRAMIL, and all their subordinate officers were clearly took the side of the Pro-Integration Group;

Considering that overseeing the above indications, it could be concluded that there were proofs of the involvement of the members of TNI and POLRI in the occurrence of riots/ clashes as charged by the Ad Hoc Public Prosecutor;

Considering that based on the valid evidence, the Panel of Judges disagreed with the Public Prosecutor, who declared there had been only one evidence (*unus testis, nullus testis*), as besides the testimony of the witnesses and the letters, there had been strong indications of the involvement of ABRI, especially the Army TNI members, therefore the argumentation of the Public Prosecutors should be put aside;

Considering that the argumentation *unus testis nullus testis* could be put aside in the cases on Grave Human Rights violations, such as practiced in the International Ad Hoc Crime Tribunal for the former Yugoslavia (ICTY) in the case of DUSCO TADIC.

Considering the setting aside of the above argument is possible when the court had to face difficulties in presenting witnesses, whose testimony had to be supported by other clues/ indications;

Considering that the Public Prosecutor has indicted the Defendant of the crime posed by the Law No. 26 of the year 2000, as follows:

FIRST: Article 42 Paragraph (1) a and b jis Article 7 b, Article 9 a,

Article 37 Law No. 26 of the year 2000, on Human Rights Court;

SECOND: Article 42 Paragraph (1) a and b jis Article 7 b, Article 9 h,

Article 40 Law No. 26 of the year 2000, on Human Rights Court;

Considering the starting point of the Panel of Judges is the Indictment Letter of the Ad Hoc Public Prosecutor, Case Registration No. 09/HAM/TIM-TIM/07/2002, on behalf of the Defendant, ADAM R. DAMIRI, dated on the 1st of July 2002.

Considering the Ad Hoc Public Prosecutor had indicted the Defendant of committing crimes against humanity during times and places as follows:

1. Liquisa Regency, on the 6th of April 1999;
2. Dili Regency, and Dili administrative town, on the 17th of April 1999, and 5th and 6th of September 1999;
3. Covalima Regency, on the 5th and 6th of September 1999;

Considering as the Indictment on the Defendant was listed in cumulative method, the Panel would consider the two indictments;

Considering the Panel should first consider the first indictment, with considerations as follows:

Considering that Article 42 of the Law No. 26 of the year 2000 Paragraph (1) a and b reads as follows:

- 1) A Military Commander or a person who could effectively act as a Military Commander

could be held responsible of a crime in the jurisdiction of the Human Rights Court, committed by troops under his effective control of commands, or under his effective power and control, and the crime has been the result of the lack of adequate control over the troops, he should be

- a. A Military Commander or a person who knows or base on the condition at the time, should have known, that the troops are committing or just committed Grave Human Rights violation and
- b. A Military Commander or a person who did not take necessary measures in his power to prevent or stop the crime or to hand over the perpetrators for further investigation and prosecution.

Considering that according to the Panel, the elements of the First Indictment should be as follows:

1. A military Commander or a person who could effectively act as a Military Commander;
2. The Effective Control;
3. Are committing or just committed Grave Human Rights violation in the form of murder;
4. No adequate control over the troops;
5. Knows or based on the condition of that time, should have known;

Considering that the elements would be explained one by one by the Panel as follows:

Ad. 1. On "a Military Commander or a person who could effectively act as a Military Commander"

Considering that a Military Commander is a member of the Armed Force who has duty and authority to give instructions to one or more of the Armed force units, or has the power to give direct orders to his subordinate officers or to the commanders of the subordinate units.

Considering that a Commander, according to the Command Doctrine is the power based on the Law, to give instructions or to direct the squads and soldiers under the command.

Considering that a Command Unit should be applied through the Chain of Command which is the Hierarchy of the Command Line, from the top ranked commander down to the lowest one, and the instruction starts from the top Commander and it is interpreted by the down-line force in stages down to the level of executors;

Considering that though the execution should be carried out in the regulated stages according to the ranking order of the squad, but the responsibility over the execution of the task should be in the hands of one person, who is the holder of the top command, except when there is a divergence committed by those in the lowest level of command.

Considering that the command structure consists of the supervisory command and the operational command, each of which, has its own command structure;

Considering that based on the Article 37 Paragraph (1) and Paragraph (3) of the Law No. 20 of the year 1982, on the Defense and Security of the Nation, the highest ranked of Commanders, who should be responsible on the defense management would be the President, assisted by the TNI Commander, while the usage command or the operational command would be in the hands of the TNI Commander;

Considering the Commander is the Military Commander who could effectively control the operations and troops, and the operations carried out by the Military District Command (KODAM), as the Operation Command (KOOPS) started from the instruction of the (TNI) Commander so that PANGKOOPS should directly report to the Commander;

Considering, that the power of the Commander should cover:

- The execution of commands and controls on KOOPS, including on the squads which should be established besides KOOPS;
- The officer who has the control and supervision over the execution of the task of KOOPS, and other squads involved;
- The Highest Ranked Officer who hands over the Case;
- The Highest Ranked Supervisor who has the authority to give Penalty;

Considering that PANGKOOPS is a Military Commander who could effectively hold the control of operations over the troops, it means that PANGKOOPS receives instructions from the Commander and controls the entire TNI squads under KOOPS.

Considering the power of PANGKOOPS would cover:

- The Executor of Commands and the Control of Operations over squads under the Command of KOOPS
- The control executor and the supervision on the execution of the task operation over the squads and soldiers under his command;
- The Highest Ranked Officer who hands over the Case in the operation area;
- The Highest Ranked Officer who has the authority to give Penalty, in the operation area;

Considering that the Panel of Judges agreed with the Ad Hoc Public Prosecutor who declared that based on the result of the court examination, it has been proven that (pages 166-167):

- The Defendant was the Commander of the Military District Command (PANGDAM) IX/ UDAYANA, who was assigned since 15th of June 1998 until 27th of November 1999;
- As the PANGDAM IX/ UDAYANA, the Defendant had duty and authority as the Chief of the Supervisory Command, as well as the Chief of the Operational Command;
- KODAM IX/ UDAYANA supervised several Military Sub-district Command (KOREM) including KOREM 164 Wira Dharma of East Timor, which supervised 13 KODIM, including:
 - KODIM 1638/ Liquisa;
 - KODIM 1627/ Dili;
 - KODIM Suai (Covalima)
- The Defendant had the authority to give instructions or make directives to the TNI squads in the jurisdiction of KODAM IX/ UDAYANA, including those in KOREM jurisdiction, such as KOREM 164 Wira Dharma, East Timor, and he had the right to get reports;

Considering the Panel of Judges also had the same opinion with the Attorneys of the Defendant, who declared an active Military Commander should be the one who has been

appointed as a military officer, holds a rank, receives salary from the state, and should be appointed as the leader in the military community, who has the authority based on the Law, to lead, move, control, and supervise the squads consisted of personnel and materials of the military squad (page 402 of the Plea Notes).

Considering that based on the above considerations, the Panel of Judges reject the argument of the Team of Attorneys of the Defendant who declared that the Defendant had no authority of the effective control of command on members of KOREM 164 Wira Dharma and members of KODIM squad, as well as KORAMIL in the jurisdiction of KOREM 164 Wira Dharma, therefore the Defendant was not an effective Military Commander (page 403 of the Plea Notes).

Considering that based on the above consideration, therefore the Panel of Judges consider the Defendant as PANGDAM IX UDAYANA was an effective Commander who had to be responsible over the crime under the jurisdiction of the Human Rights Court, committed by the troops under his effective command and control, or in his effective power and control as the result of the lack of adequate control over the troops;

Ad. 2. The Effective Control

Considering that the troops under his effective command and control were the troops down-line the Commander, de jure as well as de facto, they were in the down-line chain of command whereas the Commander could give instructions, while the word "effective" was meant to cover the required de jure and de facto;

Considering that the Team of Attorneys in the Plea Notes refers to the Additional Protocol I of the Geneva Convention, 1949 (Protocol Additional to the Geneva Convention of the 12th of August 1949, and relating to the Protection of Victim of International Armed Conflict/ Protocol I) as the doctrine and standard of the responsibility of a command (Articles 86 and 87), in which the Team of Attorneys uses the term "direct subordinates" and uses the term "... under the direct command and control" in the translation of the term "... under their command and other persons under their control ..." (pages 397-398), the Panel of Judges consider the translation not accurate, because in the original text, the two Articles have not contained the word "direct", and the addition of the word "direct" would mislead the meaning of the Article;

Considering that based on the consideration that what is meant by the troops under his effective command and control would not be the troops which were his direct subordinates;

Considering that the control is the action after the issuance of an instruction or the execution of an instruction from the up-line command, in which the control is the facility of KODAL in the military circle, the effective control could be proven by observing whether or not the command ranks received the required reports. In other words, the control could be observed in the operation instructions, as there had been the KODAL, and as long as they received the required reports, then that should be the practice of an effective control. Example: DANRAMIL reported to DANDIM, DANDIM reported to DANREM, DANREM to PANGDAM, and PANGDAM to the TNI Commander;

Considering that DANREM 164 Wira Dharma, Col. TNI TONO SURATMAN, in the incident at the residence of MANUEL VIEGAS CARASCALAO, he directly reported to the Defendant as PANGDAM IX UDAYANA, after that the Defendant gave the instructions which were to assist the Police;

Considering that based on the testimony of DANREM 164 Wira Dharma, Col. TNI NOER MUIS, after receiving reports from DANDIM of Suai over the attacks at Ave Maria

Church, Suai on the 6th of September 1999, he reported to the Defendant, the PANGDAM IX UDAYANA. It was also reported that the number of dead victims reached 27. The TNI Commander requested reports from the Defendant on the incidents in East Timor. Then the Defendant reported the incidents in April and September 1999, to the TNI Commander, which were followed up by the departure of the special Team of Investigation to Liquisa. Then the Defendant also reported to TNI Commander the incidents of the 5th September at Diocese Dili, and that on the 6th of September at Ave Maria Church, Suai;

Considering that during the incidents, the security control were in the hands of PANGKOOOPS NUSRA, therefore the Defendant was the effective Commander for receiving reports from his subordinates, and reporting up to his supervisor;

Ad. 3. Are committing or just committed Grave Human Rights violations in the form of murders.

Considering what was meant by Grave Human Rights violation as indicted by the Ad Hoc Public Prosecutor was the crime against humanity in the form of spreading or systematic attacks, which he knew, were aimed at the civilians, and in the form of murders.

Considering the elements of crime against humanity would be the existence of "attacks", and "spreading" or "systematic."

Considering what is meant by "attacks" should not be necessarily military attacks, which means that the attacks should not be necessarily use the military force, or the use of the military guns, but they could be a mobilization of non-military force, or operations that have been carried out on civilians that led to murders.

Considering what is meant by "spreading" refers to the massive actions, repeatedly performed, in a large scale which covers the area, as well as that which covers the number of victims, and they were performed collectively (AKAYESU case)

Considering that in East Timor, there had been crimes against humanity in the form of murders and meet the spreading element as covered in the court that:

- On the 5th and 6th of April 1999, there were attacks of the Pro-Integration Group against civilians of the Pro-Independence sheltering in Liquisa Church and in the residence of Pastor RAFAEL DOS SANTOS which was about 50 meter away from KODIM Headquarters, that caused 20 victims of the Pro-Independence died, while TNI and POLRI who were present at the scene were standing by but made no preventive measures.

- On the 17th of April 1999, there were attacks of the Pro-Integration group against civilian refugees from the Pro-Independence Group sheltering at the residence of MANUEL VIEGAS CARASCALAO, caused 17 people died, including the son of MANUEL VIEGAS CARASCALAO. The attacks were made after the Big Rally of the Pro-Integration Group in front of the East Timor Governor's office, acknowledged by TNI and POLRI officials. Even DANREM received reports directly from the victim witness on the attacks.

- On the 6th of September 1999, there were:

· Attacks of the Pro-Integration Group against the Pro-Independence refugees sheltering at Ave Maria Church Suai, causing as many as 27 victims died, as reported in the result of the excavation of the mass burials and the visum et repertum (autopsy) reports, issued by the Forensic Department of the Faculty of Medicine of the University of Indonesia (UI);

· Attacks of the Pro-Integration Group against refugees of the Pro-Independence sheltering at the residence of Bishop BELO, causing a young child died.

Considering that the systematic element in the crime against humanity would be the orderly, patterned actions, based on the policy involving public, as well as private resources, and it should not necessarily be formally formulated, but it could refer to the existence of a plan (AKAYESU case). Besides that, it should contain three other elements, they are: the political purpose contained in the plan to destroy or weaken a group of people or community; the crime should be in a large scale and they were performed repeatedly, and involved the authority (BLASKIC case);

Considering that in the crime against humanity in East Timor, such as those in the three different places above, have similar characteristics, though they were not formally formulated, they are:

- Always preceded by the crowding mass consisted of organizations of the Pro-Integration Group which have clear organizational structures, and acknowledged by the government officials, TNI and POLRI;

- The existence of the political purpose which was winning the Pro-Integration Group by weakening the Pro-Independence Group;

- The victims of the attacks were always civilian residents of the Pro-Independence sheltering at the centers out of the refugee centers authorized by the government;

- The locus of the incidents were in a large scale, and they were done repeatedly in Dili, Liquisa and Suai;

- It is very clear that The Army TNI was discriminative, or at least, clearly took the stance on the side of the Pro-Integration Group;

Considering that based on the above facts, the Panel of Judges consider the elements of the crime against humanity have been fulfilled;

Considering that the actors of the crimes against humanity were the troops that should be under his effective command and control, therefore the Panel of Judges would consider the element: "Troops under his effective command and control" as follows:

Considering that it has been proven that the actors of the crime against humanity in the incidents were the Pro-Integration, it has been also proven that there had been involvements of TNI members:

- In the incident of the attacks at Liquisa Church on the 5th and 6th of April 1999, that caused 20 people died and many others injured, it has been proven that:

· There were members of TNI who were standing by with members of POLRI at the crime scene, but just did nothing;

· That the witness RAFAEL DOS SANTOS saw and recognized the members of TNI who joined in the attacks, they were a member of KODIM of Liquisa, Chief Sergeant TNI RAYMUNDO DOS SANTOS, and a member of KORAMIL of Maubara and other TNI members, including TOME DIEGO, JACUB, and the Second Sergeant of POLRI, FLORINDO, according to RAFAEL DOS SANTOS, they made the attacks with BESI MERAH PUTIH (Red and White Iron) Militia;

· That the assailants departed from the front yard of KODIM Liquisa;

- The tear gas were shot straight into the house where the refugees sheltered;
- In the incident of the attacks at the house of MANUEL VIEGAS CARASCALAO on the 17th of April 1999, DANREM 164 Wira Dharma, Col. TONO SURATMAN, knew of the attacks as he was directly reported by the witness, but he just did nothing;
- In the incident of the attacks on Diocese Dili on the 5th of September 1999, it has been proven that the security authority, especially TNI, failed to make the preventive actions and corrective measures, such as happened in the incident of the attacks on Ave Maria Church, Suai, as well as in the attacks at the residence of Bishop BELO on the 6th of September 1999.

Considering that according to the Panel of Judges, the Defendant, as the PANGDAM IX UDAYANA, should be the person who made firm actions against the perpetrators of the attacks at Liquisa Church, the residence of MANUEL CARASCALAO, the Church of Suai, and Diocese Dili, and the incident at the house of Bishop BELO, with the pattern of repeated, systematic attacks;

Considering that overseeing the above facts, it has been proven that there were involvements (actively, as well as passively) of the members of TNI under his effective command and control, therefore the Panel of Judges consider the Defendant should be responsible for the crime against humanity as indicted in this case;

Ad. 4. The lack of Adequate Control over the Troops

Considering that referring to the essence of the Article 87 of the Additional Protocol I, that a Commander should have the responsibility of making the practical measures which should be preventive, as well as corrective, to make sure the troops under his control, would abide by the norms of Law, whereas a commander should ensure:

- That the members of his troops should have the adequate training in the field of Humanitarian Law, in which the norms should be reflected in every decision in the Military Operations;
- The achievement of effective reporting system, so that the Commander would immediately identify the possible violations of Humanitarian and Human Rights Law;
- The establishment of the observation system that his instructions have been effectively carried out by the subordinates, including in the arrangement of the Humanitarian and Human Rights Law;
- The execution of corrective measures in the case of violations that would possibly happen, or that just happened, or that had happened.

Considering the revealed facts in court showed that the Defendant as PANGDAM IX UDAYANA, in his capacity as the executor of the control and supervision in the execution of operational tasks of the troops, made no effective supervision over above the incidents, proven by the testimony of the witnesses, that he never came to the crime scenes.

Considering the facts revealed before the court, it has not been proven that the Defendant had carried out one role in his power as PANGKOOPS, which was the officer who should hand over the case in his operation area, and as the Top Official Supervisor who had the Right to Give Penalty in his operation area, as none of his subordinates who should have been responsible for the incidents as indicted in this case were examined, investigated, or prosecuted in court. Therefore the Defendant failed to do the corrective measures over the

violations committed by, or involving the troops under his effective command and control.

Ad. 5. Knew or based on the Condition at the Time, should have Known;

Considering that before the Panel consider whether or not the element of the responsibility of a commander exists in the Defendant's self, the Panel would quote several arguments which have become the opinio communis doctorum, in practice in some international cases;

Considering in the case of TIHOMIR BLASKIC (ICTY), as explained before, the Ad Hoc Public Prosecutor as well as the Panel of Judges in the case, argued that the element could be proven by the fact that the Commander had the factual knowledge through the direct or situational evidence;

Considering that in the case, the element of knowledge, could be proven by the relevant factors such as the number of victims, forms and the coverage of the actions that violated the Law, and whenever possible, the geographical locations of the actions that violated the Law;

Considering that in the case, there should be statements of the element of "should have known." The Panel of Judges have concluded that in the post World War II, there had been standards of responsibility of a Commander over the crimes committed by his subordinates, in case he fails to learn the coming violations at the time, and fails to predict the result, could be considered as an omission, as the commander has duty to make whatever reasonable and applicable measures to prevent violations. The failure to do that would become his responsibility;

Considering that in the practice of the international court, the Defendant's knowledge over the crimes committed by his subordinates without the commander's adequate actions, could be used to determine the means rea, or the responsibility of the Commander;

Considering that in this court, the Ad Hoc Public Prosecutor have presented some of the evidence in the form of official record, on the conditions, incidents, as well as the geographical locations of the incidents that resulted in many victims, that had been known by the supervisor of the Defendant, which was General WIRANTO, even in his testimony, he always said that he always received official report from his subordinate, which was the Defendant, so that General WIRANTO, as the ABRI Commander, could always be well informed and kept up with the last situation in East Timor, enough to prove that the Defendant knew or had known what happened;

Considering that overseeing the above description, the Panel of Judges consider this element has been proven;

Considering that based on the above considerations, viewed from the concurrence and relations of each other, and related to the developing actual theory, principle and norms (treaty and customary international norms), and the practice in the International Courts of the case over the crimes against humanity, the Panel concluded that the indicted crime (actus reus) in the first indictment has been legitimately and convincingly proven, and therefore the Defendant should be responsible in command over the incidents in East Timor, as indicted by the Ad Hoc Public Prosecutor;

Considering that the Defendant has been indicted in the second indictment as regulated in: Article 42 Paragraph (1) a and b jis, Article 7 b, Article 9 h, Article 40 of the Law No. 26 of the year 2000, of the Human Rights Court; on Crimes against Humanity in the forms of

spreading and systematic attacks which he knew, were aimed at civilians in the form of abuse;

Considering that according to the Panel, the elements of the second Indictment should be as follows:

1. A Military Commander or a person who could effectively act as a Military Commander;
2. The Effective Control;
3. Are Committing or just Committed Grave Human Rights Violations in the form of Abuse;
4. The Lack of Adequate Control over the troops;
5. Knew or based on the Condition at the Time, Should Have Known;

Considering that over the Ad. 1 up to the Ad 5, have been considered by the Panel in the considerations of the elements of the first indictment, then the Panel take over the legal consideration in the legal considerations of the first indictment, as the legal consideration in the second indictment;

Considering the Panel particularly consider the consideration in Ad. 3., as the actions that had injured victims due to abuses, as the facts revealed in court, whereas a number of people injured and properties destroyed, resulting from the attacks at Liquisa Church and at the residence of Pastor RAFAEL DOS SANTOS at the 6th of April 1999, at the house of MANUEL CARASCALAO on the 17th of April 1999, at Diocese Dili and the house of Bishop BELO on the 5th and 6th of September 1999, also at the Ave Maria Church, Suai on the 6th of September 1999;

Considering that based on the testimony of the witnesses presented in court, also the facts revealed in court, those who fell victims were civilians from the Pro-Independence Group;

Considering that the meaning of abuse in the Law No. 26 of the year 2000, is the translation of the word persecution according to Statuta Rome, which means all forms of the revocation of the fundamental rights which violate the International Law, in various forms, from tortures and ruthless and inhuman punishments and treatments, humiliation of a person's dignity, cruel arrests, slavery, to other acts of inhuman revocation of rights, done to a certain group of people or community;

Considering that finally the Panel disagreed to the prosecution/ requisition of the Ad Hoc Public Prosecutor in the free-of-all-charge indictment on the Defendant Maj. Gen TNI ADAM R. DAMIRI, as the free-of-all-charge indictment is not in accordance with the subjects that have been considered by the Panel of Judges earlier, and the indictment is discriminative and has brought no justice to the other defendants in the separated (splitting) cases, besides that, the Panel had no ties with the Ad Hoc Public Prosecutor who had made the free-of-all-charge indictment on the Defendant, but the Panel only tied (binding) to the facts revealed in court;

Considering that according to the Panel, the Defendant as PANGDAM IX UDAYANA, should be responsible for the spreading violence in East Timor, before the People's Consultation/ Ballot, as well as after the People's Consultation/ Ballot;

Considering that the Defendant has been proven of committing the crimes as regulated in the first indictment, in which he has violated the Article 42 Paragraph (1) a and b jis, Article 9 a, Article 37 of the Law No 26 of the year 2000, on the Human Rights Court, and the second indictment in which he has violated Article 42 Paragraph (1) a and b jis, Article 7 b,

Article 9 h, Article 40 of the Law No. 26 of the year 2000, on the Human Rights Court, with the minimum sentence of 10 years;

Considering the evidence including the letters, such as the visum et repertum reports No. 001/TT.3002/SK.II/XI/1999, up to No. 026/TT.3002/SK.II/XI/1999, and the other letters, firearms, ammunition, and the video-cassette-recording, the Panel has instructed to attach them on the dossiers of this case;

Considering that before the Panel comes to the Order (Amar) of Indictment in this case, the Panel would first consider the issues that implicate and commutate the Defendant:

The issues that implicate:

1. The incidents indicted by the Ad Hoc Public Prosecutor have been proven to victimize many lives and properties, which happened during his position as PANGDAM IX UDAYANA who supervised East Timor region;
2. The violence which occurred in East Timor during which the Defendant held the position of PANGDAM IX UDAYANA, have dishonored the name of Indonesia in the International circle and International Community, especially in regard of upholding Human Rights;

The issues that commutate:

1. The Defendant has made efforts to mediate peace between the conflicting parties during the time before the People's Consultation/ Ballot, and after the People's Consultation/ Ballot;
2. The Defendant as a Professional Officer who has reached the rank of the Major General TNI, has long dedicated himself to the nation and the country;
3. In the Defendant's long career as a Professional Officer of TNI, he has received 7 (seven) awards from the government, including the SATYA SEROJA Award;

Considering as the Defendant has been found guilty, therefore he should pay the financial charge of the court of Rp. 5,000,- (five thousands rupiahs);

Observing the result of the discussion of the Panel of Judges on Thursday of the 31st of July 2003;

Observing the Law Number 8 of the year 1981, the Law Number 39 of the year 1999, the Law Number 26 of the year 2000, and the Universal Declaration of Human Rights, and the other Law and Regulations related to this case:

P R E S I D I N G

- Declare the Defendant: MAJ. GEN. TNI ADAM R. DAMIRI has been legitimately and convincingly proven guilty of committing the crimes as indicted in the first and second indictments;

"GRAVE HUMAN RIGHTS VIOLATIONS IN THE FORM OF CRIMES AGAINST HUMANITY"

- Sentence the Defendant therefore, with 3 (three) years imprisonment;

- Declare the evidence as mentioned in the list of evidence, and the video as well as letters of evidence presented in court, have been handed over to the Ad Hoc Public Prosecutor to be used as evidence in this case;

- Sentence the Defendant of paying the financial charge of the court of Rp. 5,000,- (Five Thousands Rupiahs);

Therefore it has been decided on Thursday, the 31st of July 2003: in the Discussion Meeting of the Panel of Judges of the Central Jakarta Human Rights Ad Hoc Court, which consisted of: Mrs. Hj. MARNI EMMY, SH., MH., as the Head of the Panel of Judges, ROKI PANJAITAN, SH., Dr. KOMARIAH EMONG SAPARDJAJA, SH., RUDI M. RIZKI, SH., LL. M., SULAIMAN HAMID, SH., each of them respectively acted as a member of the Panel, whose decision has been declared on Tuesday, the 5th of August 2003 in the court declared open to public by the Head of the Panel of Judges, accompanied by the members of the Panel, and has been assisted by SRI SUNARYATI, SH., and SITI AGUSTIATI DJAMILAH, SH., as the Acting Clerks of the Human Rights Ad Hoc Court, attended by HOZIE, SH., the Ad Hoc Public Prosecutor at the RI Attorney General Office, the Defendant, and the Team of Attorneys of the Defendant.

Members of the Panel Head of the Judges

ROKI PANJAITAN, SH. Mrs. Hj. MARNI EMMY, SH., M Hum.

Dr. KOMARIAH EMONG S., SH.

RUDI M. RIZKI, SH., LL.M.

SULAIMAN HAMID, SH.

The Acting Clerks of the Court

SRI SUNARYATI, SH.

SITI AGUSTIATI DJAMILAH, SH.