

Judgment

Defendant Asep Kuswani

**Indonesian Ad Hoc Tribunal
Judgment of Asep Kuswani**

V E R D I C T

No.: 06 / PID. B. / HAM. AD HOC / 2002 / PN.JKT.PST.

"FOR THE SAKE OF JUSTICE IN THE NAME OF GOD ALMIGHTY"

The ad hoc human right court in the State Court of Central Jakarta which investigate and try first degree cases with the regular system, has given verdict as follows, on the cases of each defendant:

I. Letkol. Inf. Asep Kuswani, place of birth Garut, age 44 years old / date of birth 7 February 1958, sex male, nationality Indonesia, residence Mabes TNI Cilangkap East Jakarta, religion Islam, occupation member of military (former DANDIM 1638 / Liquisa East Timor), education AKABRI.

II. Ajun High Commissioner Police Drs. Adios Salova, place of birth Bogor, age 44 years old / date of birth 9 November 1958, sex male, nationality Indonesia, residence Asrama Pecinan-Komplek POLRI Jl. Siliwangi no. 83 Kuningan-West Java. Religion Islam, occupation member of POLRI (former Kapolres Liquisa East Timor), education SESPI POLRI 1998.

III. Leoneto Martins, place of birth Liquisa East Timor, age 52 years old / date of birth 15 March 1952, sex male, nationality Indonesia, residence Jl. Desa Ngelbaki, Kecamatan Kupang Tengah, Kabupaten Kupan, Prop. Nusa Tenggara Timur; religion Catholic, occupation civil servant; (former Bupati of Liquisa East Timor), education SLTA (secondary school).

The defendants were not detained;

The defendants were accompanied by a Team of Lawyers consisting of 3 groups which are the TNI Officers' Team of Human Rights Lawyers according to the letter of power dated 17 June 2002; Drs. Adios Salova Team of Lawyers according to the letter of power dated June 17 June 2002 and East Timor Defenders' Team of Lawyers according to the letter of power dated 31 May 2002 where all are registered in the Administration of Ad Hoc Human Rights Court of Central Jakarta.

The Ad Hoc Human Rights Trial;

Have read the case files;

Have read the Decision of the Chairperson of the Human Rights Court Central Jakarta No. 06/Pid.Ham/Ad Hoc/2002/PN.JKT.PST dated 03 June 2002, about the Appointing of the Panel of Judges to investigate and try this case;

Have read the Decision of the Chairperson of the Human Rights Court Central Jakarta No.06/Pid.Ham./Ad Hoc/2002/PN.Jkt.Pst dated 12 June 2002 about the date of trials;

Have listened and taken into account the letter of indictment No. Case Register :

04/HAM/TIM-TIM/05/2002 dated 31 May 2002 read by the General Attorney at court;

Have listened and taken into account the exception of the Defendants given and read by each

Team of Lawyers at court;

Have listened and taken into account the responses and opinions of the General Prosecutor read in court;

Have listened and taken into account the Temporary Ruling of the Ad Hoc Human Rights Court No. 06/Pid.B/HAM Ad Hoc/2002/PN.JKT.PST. dated 10 July 2002;-

Have listened and taken into account the legal charges of the General Prosecutor read in court dated 14 November 2002 that basically charges for the Panel of Judges for Ad Hoc Human Rights Violation Cases who investigate and try this cases decide to:

1. State that the Defendants are not proven to be legally and convincingly guilty in perpetrating gross Violation of Human Rights by Assisting/Suggesting crime against Humanity, violating Article 42 jis article 7 letter b, Act article 9, letter a article 37 Act No 26 Year 2000, jo article 55 verse (1) 2nd Criminal Code.
2. Release the Defendants from that Primary indictment.
3. State that the Defendants have been proven to be legally and convincingly guilty in perpetrating a criminal act of Gross Violation of Human Rights as regulated in Article 41 jis Article 7 letter b, Article 9 sub a, Article 37 Act No. 26 Year 2000 about Human Rights Court.
4. Give a punishment of 10 (ten) years to each Defendant.
5. Resolve that Defendant 1 until Defendant 3 take the burden of paying the case fee of Rp 5.000,- (five thousand rupiah) each.

Have listened and taken into account the legal defense of each Defendant, delivered individually and by their Team of Lawyers, which was read in trial consecutively, basically asking the Panel of Ad Hoc Human Rights Judges to release the Defendants from all indictments (vrijspraak) or at least release them from all legal charges (ontslag van rechtvervolgings), and rehabilitate their names, and if the Panel of Ad Hoc Judges do not agree with the elaboration of proof in that defense, then ask for the fairest verdict.

Considering, that the Defendants were taken to trial by the General Prosecutor based on the following indictments:

FIRST

PRIMARY

That the First Defendant ASEP KUSWANI, as Commander of Military District 1638 / Liquisa, Second Defendant Drs. ADIOS SALOVA, as the Head of Resort Police Liquisa, Third Defendant LEONETO MARTINS, as Bupati of Liquisa Region and Lt. Col. Inf. Yayat Sudrajat as Commander of Intelligent Task Unit Tribuana VIII who is a Defendant in another case file tried separately together or individually on 6 April 1999, in the office of Military District Command 1638/Liquisa East Timor or in other places where the Ad Hoc Human Rights Court of Central Jakarta has authority to investigate and decide upon the case according to the provisions in Article 2 President Decree No. 96 Year 2001 dated 1 August 2001, the Defendants as effective Military Commander / supervisor did not control his troops/subordinates which are under his Command and effective control, or under his authority and effective control, i.e. Defendants 1, 2 and 3 knew or based on the situation at that time should have known or had consciously neglected information that clearly showed that his troops/subordinates were perpetrating, or had just perpetrated gross violations of Human Rights by killing as an action committed as part of a wide or systematic attack aimed directly to civilians and Defendants 1, 2, and 3 did not do or take any appropriate and necessary action under his authority to prevent or stop his troops/subordinates' actions or surrender the perpetrators to the authorities to carry out investigation, investigation, and give charges. The First Defendant as the person in charge of security and safety of the people in the region of Kabupaten Liquisa, Defendant 2 as the person in charge of security and order in the region of Kabupaten Liquisa, Defendant 3 as the person in charge of governance and development did not perform their authority according to the law, thus the attack towards

civilians taking shelter in Pastor Rafael Dos Santos' residence in Church of Liquisa area happened, causing 22 (twenty two) victims dead, actions carried out by the Defendants as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, amounting to +/- 2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA +/- 300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligence Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) who was lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) who are:

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

And committed murder by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, causing victims of 22 (twenty two) civilians dead, i.e.:

1. JACINTO DA COSTA PEREIRA; 2. AGUSTINHO; 3. JOANICO; 4. ABRAO DOS SANTOS; 5. AGUSTO MAUZINHO; 6. AMEKO DOS SANTOS; 7. NARSIZIO; 8. HERMINO DOS SANTOS; 9. FERNANDO DOS SANTOS; 10. LAURINDO PEREIRA; 11. MARIKI DOS SANTOS; 12. MANUEL LISBOA; 13. VITOR DA COSTA; 14. ALBERTO OLIVERIA; 15. AMANDIO CESAR DOS SANTOS; 16. CESAR DOS SANTOS; 17. AGUSTINHO DOS SANTOS; 18. LAURINDA DOS SANTOS; 19. SANTIAGO; 20. JOHNNY / MAU SOKO; 21. Cemetery of victims without names in Liquisa case in Maubara Cemetery; 22. Cemetery of victims without names in Liquisa case in Maubara Cemetery.

Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendants knew about the attack on civilian refugees inside the Church of Liquisa area, the

Defendants did not take any appropriate action to prevent or stop that attack or to surrender the perpetrators to the authority to carry out investigation, investigation and give charges. That the behavior of the Defendants as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 jis article 7 letter b, article 9 letter a, article 37 Act No. 26 year 2000 about Human Rights Court jo article 55 verse (1) 2nd Criminal Code.

SUBSIDIARY:

SPECIFICALLY ON THE DEFENDANT ASEP KUSWANI

That the Defendant ASEP KUSWANI, Lt.Col. Inf. NRP. 29468 as Commander of Military District 1638 / Liquisa, East Timor, on Tuesday 6 April 1999, or at other times around that in April year 1999, in the office of Military District Command 1638/Liquisa East Timor, or at least in another place in Liquisa Region, East Timor, or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, the Defendant as an effective Military Commander or as a person who is effectively acting as Military Commander is held responsible upon a crime under the jurisdiction of Human Rights Court, where the crime was perpetrated by the soldiers under his Command and effective control, or under his authority and effective control and that crime is a result of absence of effective control upon soldiers, i.e. the Defendant as the person in charge of security and safety of the people in the region of Kabupaten Liquisa knew or based on the situation at that time should have known that the soldiers under his authority and effective control perpetrated, or had just perpetrated gross violations of Human Rights by killing as an action committed as part of a wide or systematic attack but the Defendant did not take any appropriate action under his authority to prevent or stop those attacks or surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges, actions which were carried out as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

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Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he

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

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Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendant Asep Kuswani knew or given the situation at that time should have known that soldiers of Tentara Nasional Indonesia (TNI) under his command and effective control were perpetrating or had just murdered the refugees taking shelter in Pastor Rafael Dos Santos' residence in Church of Liquisa area, where that action is considered as gross violation of Human Rights, but the Defendant Asep Kuswani did not take any appropriate and necessary action under his power and authority to prevent or stop those attacks, or after those attacks the Defendant Asep Kuswani did not surrender the perpetrators to officials authorized to carry out investigation, investigation dan give charges.

The behavior of the Defendant Asep Kuswani as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (1) jis article 7 letter b, article 9 letter a, article 37 Act No. 26 year 2000 about Human Rights Court.

SPECIFICALLY ON THE DEFENDANT DRS. ADIOS SALOVA

That the Defendant Drs. ADIOS SALOVA as Head of Resort Police Liquisa East Timor, on Tuesday 6 April 1999, or at other times in the month of April year 1999, in the office of Military District Command 1638/Liquisa East Timor, or at least in another place in Liquisa Region, East Timor, or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, as a superintendent who is legally responsible for the gross violations of Human Rights committed by his subordinates under his authority and effective control where the Defendant as the person in charge of security and order in the region of Kabupaten Liquisa knew or neglected information that clearly showed that his subordinates were perpetrating or had just perpetrated gross violation of Human Right by killing as an action committed as part of a wide or systematic attack aimed directly at civilians but the Defendant did not do or take any appropriate and necessary action under his authority to prevent or stop his subordinates' actions or surrender the perpetrators to the officials authorized to carry out investigation,

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At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) who was lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) who are:

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

And committed murder by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, causing victims of 22 (twenty two) civilians dead, i.e.:

1. JACINTO DA COSTA PEREIRA; 2. AGUSTINHO; 3. JOANICO; 4. ABRAO DOS SANTOS; 5. AGUSTO MAUZINHO; 6. AMEKO DOS SANTOS; 7. NARSIZIO; 8. HERMINO DOS SANTOS; 9. FERNANDO DOS SANTOS; 10. LAURINDO PEREIRA; 11. MARIKI DOS SANTOS; 12. MANUEL LISBOA; 13. VITOR DA COSTA; 14. ALBERTO OLIVERIA; 15. AMANDIO CESAR DOS SANTOS; 16. CESAR DOS SANTOS; 17. AGUSTINHO DOS SANTOS; 18. LAURINDA DOS SANTOS; 19. SANTIAGO; 20. JOHNNY / MAU SOKO; 21. Cemetery of victims without names in Liquisa case in Maubara Cemetery; 22. Cemetery of victims without names in Liquisa case in Maubara Cemetery.

Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendant Drs. Adios Salova knew or given the situation at that time should have known that member of POLRI under his command and effective control were perpetrating or had just murdered the refugees taking shelter in Pastor Rafael Dos Santos' residence in Church of

Liquisa area, where that action is considered as gross violation of Human Rights, but the Defendant Drs. Adios Salova did not take any appropriate and necessary action under his power and authority to prevent or stop those attacks, or after those attacks the Defendant Drs. Adios Salova did not surrender the perpetrators to officials authorized to carry out investigation, investigation dan give charges.

The behavior of the Defendant Drs. Adios Salova as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (2) jis article 7 letter b, article 9 letter a, article 37 Act No. 26 year 2000 about Human Rights Court.

SPECIFICALLY ON THE DEFENDANT LEONETO MARTINS

That the Defendant Leoneto Martins as Bupati of Liquisa Region, East Timor, on Tuesday 6 April 1999, or at other times in the month of April 1999, in the office of Military District Command 1638/Liquisa East Timor or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, as a superintendent the Defendant Leoneto Martins is legally responsible for the gross violations of Human Rights committed by his subordinates under his authority and effective control where the Defendant Leoneto Martins knew or consciously neglected information that clearly showed that his subordinates were perpetrating or had just perpetrated gross violation of Human Right by killing as an action committed as part of a wide or systematic attack aimed directly at civilians but the Defendant Leoneto Martins did not do or take any appropriate and necessary action under his authority to prevent or stop his subordinates' actions or surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges, actions which were carried out as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of

Liquisa area, amounting to +/- 2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA +/- 300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa

area by the group of Pro Integration followers of Besi Merah Putih (BMP) who was lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) who are:

1. JOSE MATHEUS.; 2. TOME DIOGO.; 3. ABILIO ALVES.; 4. CARLOS (Danramil Maubara).; 5. ANTONIO GOMES. ; 6. ISAK DOS SANTOS.; 7. GEORGE VIEGAS.; 8. MAURISIO.; 9. JEFERINO.; 10. ZACARIAS.; 11. MANUEL MARTINS, and 12. JACOB. And committed murder by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, causing victims of 22 (twenty two) civilians dead, i.e.:

1. JACINTO DA COSTA PEREIRA; 2. AGUSTINHO; 3. JOANICO; 4. ABRAO DOS SANTOS; 5. AGUSTO MAUZINHO; 6. AMEKO DOS SANTOS; 7. NARSIZIO; 8. HERMINO DOS SANTOS; 9. FERNANDO DOS SANTOS; 10. LAURINDO PEREIRA; 11. MARIKI DOS SANTOS; 12. MANUEL LISBOA; 13. VITOR DA COSTA; 14. ALBERTO OLIVERIA; 15. AMANDIO CESAR DOS SANTOS; 16. CESAR DOS SANTOS; 17. AGUSTINHO DOS SANTOS; 18. LAURINDA DOS SANTOS; 19. SANTIAGO; 20. JOHNNY / MAU SOKO; 21. Cemetery of victims without names in Liquisa case in Maubara Cemetery; 22. Cemetery of victims without names in Liquisa case in Maubara Cemetery.

Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendant Leoneto Martins knew or given the situation at that time should have known that his subordinates who were under his effective control were perpetrating or had just murdered the refugees taking shelter in Pastor Rafael Dos Santos' residence in Church of Liquisa area, where that action is considered as gross violation of Human Rights, but the Defendant Leoneto Martins did not take any appropriate and necessary action under his power and authority to prevent or stop those attacks, or after those attacks the Defendant Leoneto Martins did not surrender the perpetrators to officials authorized to carry out investigation, investigation dan give charges.

The behavior of the Defendant Leoneto Martins as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (2) jis article 7 letter b, article 9 letter a, article 37 Act No. 26 year 2000 about Human Rights Court.

SECOND PRIMARY

That the First Defendant ASEP KUSWANI, as Commander of Military District 1638 / Liquisa, Second Defendant Drs. ADIOS SALOVA, as the Head of Resort Police Liquisa, Third Defendant LEONITO MARTINS, as Bupati of Liquisa Region and Lt. Col. Inf. Yayat Sudrajat as Commander of Intelligent Task Unit Tribuana VIII who is a Defendant in another case file tried separately together or individually on 6 April 1999, in the office of Military District Command 1638/Liquisa East Timor or in other places where the Ad Hoc Human Rights Court of Central Jakarta has authority to investigate and decide upon the case according to the provisions in Article 2 President Decree No. 96 Year 2001 dated 1 August 2001, the Defendants as effective Military Commander / supervisor did not control his troops/subordinates which are under his Command and effective control, or under his authority and effective control, i.e. Defendants 1, 2 and 3 knew or based on the situation at that time should have known or had consciously neglected information that clearly showed that his troops/subordinates were perpetrating, or had just perpetrated gross violations of Human Rights in the form of torture perpetrated as an action committed as part of a wide or systematic attack aimed directly to civilians and Defendants 1, 2, and 3 did not do or take any appropriate and necessary action under his authority to prevent or stop his

troops/subordinates' actions or surrender the perpetrators to officials authorized to carry out investigation, investigation, and give charges. The First Defendant as the person in charge of security and safety of the people in the region of Kabupaten Liquisa, Defendant 2 as the person in charge of security and order in the region of Kabupaten Liquisa, Defendant 3 as the person in charge of governance and development did not perform their authority according to the law, thus the attack towards civilians taking shelter in Pastor Rafael Dos Santos residence in Church of Liquisa area happened, causing 21 (twenty one) victims injured, actions carried out by the Defendants as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, amounting to +2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become very frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA +300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) of + 300 people, among them are:

1. CRISPIN DA COSTA PEREIRA; 2. ALFONSO; 3. MIGUANA; 4. VIKTOR; 5. FRANSISCO; 6. JOAO LOU MESA; 7. MOUREGO; 8. FERNANDO; 9. AKUBOU; 10. TEDI; 11. ROMALDO; 12. MASERNA; lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI), who are:

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

And some members of Resort Police Liquisa, among them are:

1. ALFONSO; 2. CHICO.

Thus, Lettu Pol. Jhon Rea recalled his intention of meeting Pastor Rafael Dos Santos to deliver the message of the Defendants.

That as government officials, Let.Kol. Inf. ASEP KUSWANI, as Commander of Military District 1638/Liquisa, Drs. ADIOS SALOVA, as Head of Resort Police Liquisa, LEONITO MARTINS. As Bupati of Liquisa Region had the authority to prevent those attacks, but did

not have the initiative to prevent mass concentration and did not attempt to disarm fire arms and other tools used by followers of Besi Merah Putih (BMP) and did not attempt to hinder / take away and evict mass from the Church of Liquisa area, besides the Defendant Let.Kol. Pol Drs. Adios Salova as Head Of Resort Police did not take any legal action towards people who owned unlicensed fire arms and weapons, when the Defendant Drs. Adios Salova had the authority to take legal actions according to the law, and the Defendant Leoneto Martins as Bupati of Region Liquisa did not prevent mass concentration of Besi Merah Putih whose members are mostly member of Pam Swakarsa under his training and control.

That the attack to the Church of Liquisa area committed by Besi Merah Putih (BMP) group together with TNI soldiers and police members had caused 21 (twenty-one) victims injured, i.e.:

1. JOSE RAMOS ; 2. FRANSISCO DOS SANTOS; 3. JOAO PEREIRA; 4. ABILIO DOS SANTOS ; 5. JOSE NUNES SERRAO ; 6. LUCAS SOARES 7. MATEUS PANLERO; 8. RICARDO RODRIGUES PEREIRA; 9. LAKUMAU; 10. JANUARI; 11. FELIS; 12. JOAO KUDA; 13. ARMANDO; 14. ANTONIO; 15. LUIS; 16. EMILIO; 17. LUCAS DOS SANTOS; 18. JOAO DOS SANTOS; 19. SEBASTIO; 20. RAMIRO; 21. MATIUS ALVES CORREIA;

from the mass who were taking refuge and shelter in the Church of Liquisa area at that time.

That the behavior of the Defendants as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 jis article 7 letter b, article 9 letter h, jis., article 40 Act No. 26 year 2000 jo article 55 verse (1) 2nd Criminal Code.

SUBSIDIARY:

SPECIFICALLY ON THE DEFENDANT ASEP KUSWANI

That the Defendant ASEP KUSWANI, Lt.Col. Inf. NRP. 29468 as Commander of Military District 1638 / Liquisa, East Timor, on Tuesday 6 April 1999, or at other times around that in April year 1999, in the office of Military District Command 1638/Liquisa East Timor, or at least in another place in Liquisa Region, East Timor, or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, the Defendant as an effective Military Commander or as a person who is effectively acting as Military Commander is held responsible upon a crime under the jurisdiction of Human Rights Court, where the crime was perpetrated by the soldiers under his Command and effective control, or under his authority and effective control and that crime is a result of absence of effective control upon soldiers, i.e. the Defendant Asep Kuswani as the person in charge of security and safety of the people in the region of Kabupaten Liquisa knew or based on the situation at that time should have known that the soldiers under his authority and effective control perpetrated, or had just perpetrated gross violations of Human Rights in the form of torture perpetrated as an action committed as part of a wide or systematic attack but the Defendant Asep Kuswani did not take any appropriate action under his authority to prevent or stop those attacks or surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges, actions which were carried out as follows: Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA

PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, amounting to +/- 2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA +/- 300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara

Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) who was lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) who are:

1. JOSE MATHEUS.; 2. TOME DIOGO.; 3. ABILIO ALVES.; 4. CARLOS (Danramil Maubara).; 5. ANTONIO GOMES. ; 6. ISAK DOS SANTOS.; 7. GEORGE VIEGAS.; 8. MAURISIO.; 9. JEFERINO.; 10. ZACARIAS.; 11. MANUEL MARTINS, and 12. JACOB. And committed murder by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, causing victims of 21 (twenty one) civilians injured, i.e.:

1. JOSE RAMOS ; 2. FRANSISCO DOS SANTOS; 3. JOAO PEREIRA; 4. ABILIO DOS SANTOS ; 5. JOSE NUNES SERRAO ; 6. LUCAS SOARES; 7. MATEUS PANLERO; 8. RICARDO RODRIGUES PEREIRA; 9. LAKUMAU; 10. JANUARI; 11. FELIS; 12. JOAO KUDA; 13. ARMANDO; 14. ANTONIO; 15. LUIS; 16. EMILIO; 17. LUCAS DOS SANTOS; 18. JOAO DOS SANTOS; 19. SEBASTIO; 20. RAMIRO; 21. MATIUS ALVES CORREIA;

Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendant Asep Kuswani knew or given the situation at that time should have known that soldiers of Tentara Nasional Indonesia (TNI) under his command and effective control were perpetrating or had just tortured the refugees taking shelter in Pastor Rafael Dos Santos' residence in Church of Liquisa area, where that action is considered as gross violation of Human Rights, but the Defendant Asep Kuswani did not take any appropriate and necessary action under his power and authority to prevent or stop those attacks, or after those attacks the Defendant Asep Kuswani did not surrender the perpetrators to officials authorized to carry out investigation, investigation dan give charges.

The behavior of the Defendant Asep Kuswani as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (1) jis article 7 letter b, article 9 letter h jis., article 40 Act No. 26 year 2000 about Human Rights Court.

SPECIFICALLY ON THE DEFENDANT DRS. ADIOS SALOVA

That the Defendant DRS. ADIOS SALOVA as Head of Resort Police Liquisa East Timor, on Tuesday 6 April 1999, or at other times in the month of April year 1999, in the office of Military District Command 1638/Liquisa East Timor, or at least in another place in Liquisa Region, East Timor, or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, as a superintendent who is legally responsible for the gross violations of Human Rights committed by his subordinates under his authority and effective control where the Defendant as the person in charge of security and order in the region of Kabupaten Liquisa knew or neglected information that clearly showed that his subordinates were perpetrating or had just perpetrated gross violation of Human Right in the form of torture perpetrated as an action committed as part of a wide or systematic attack aimed directly at civilians but the Defendant Leoneto Martins did not do or take any appropriate and necessary action under his authority to prevent or stop his subordinates' actions or surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges, actions which were carried out as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, amounting to +/- 2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released

shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA + 300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) who was lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (POLRI), among them are Alfonso and Chico from Resort Police Liquisa, and committed torture by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor RAFAEL DOS SANTOS' residence in the

Church of Liquisa area, causing victims of 21 (twenty one) civilians injured, i.e.:

1. JOSE RAMOS ; 2. FRANSISCO DOS SANTOS; 3. JOAO PEREIRA; 4. ABILIO DOS SANTOS ; 5. JOSE NUNES SERRAO ; 6. LUCAS SOARES 7. MATEUS PANLERO; 8. RICARDO RODRIGUES PEREIRA; 9. LAKUMAU; 10. JANUARI; 11. FELIS; 12. JOAO KUDA; 13. ARMANDO; 14. ANTONIO; 15. LUIS; 16. EMILIO; 17. LUCAS DOS SANTOS; 18. JOAO DOS SANTOS; 19. SEBASTIO; 20. RAMIRO; 21. MATIUS ALVES CORREIA;

Given the people who took refuge and sheltered in the Church of Liquisa area at that time, the Defendant Drs. Adios Salova knew or given the situation at that time should have known that member of POLRI under his command and effective control were perpetrating or had just tortured the refugees taking shelter in Pastor Rafael Dos Santos' residence in Church of Liquisa area, where that action is considered as gross violation of Human Rights, but the Defendant Drs. Adios Salova did not take any appropriate and necessary action under his power and authority to prevent or stop those attacks, or after those attacks the Defendant Drs. Adios Salova did not surrender the perpetrators to officials authorized to carry out investigation, investigation dan give charges.

The behavior of the Defendant Drs. Adios Salova as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (2) jis article 7 letter b, article 9 letter h, article 40 Act No. 26 year 2000 about Human Rights Court.

SPECIFICALLY ON THE DEFENDANT LEONETO MARTINS

That the Defendant LEONETO MARTINS as Bupati of Liquisa Region, East Timor, on Tuesday 6 April 1999, or at other times in the month of April 1999, in the office of Military District Command 1638/Liquisa East Timor or in other places where the Ad Hoc Human Rights Court of State Court Central Jakarta has the authority to investigate and decide upon the case according to provision of article 2 President Decree No. 96 Year 2001 dated 1 August year 2001, as a superintendent the Defendant is legally responsible for the gross violations of Human Rights committed by his subordinates under his authority and effective control where the Defendant Leoneto Martins as the person in charge of governance and development in the region of Kabupaten Liquisa knew or consciously neglected information that clearly showed that his subordinates were perpetrating or had just perpetrated gross violation of Human Right in the form of torture perpetrated as an action committed as part of a wide or systematic attack aimed directly at civilians but the Defendant Leoneto Martins did not do or take any appropriate and necessary action under his authority to prevent or stop his subordinates' actions or surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges, actions which were carried out as follows:

Approaching the referendum in East Timor Province specifically in Kabupaten Liquisa, security and order started to break up, resulting in feud, dispute and conflict between Pro Independence group and Pro Integration group followers of Besi Merah Putih (BMP) whose members then partially became members of Pam Swakarsa.

The conflict, dispute and feud continued to spread, i.e. on 3 April 1999 the Pro Independence group gave a threat of murder to the Pro Integration group followers of Besi Merah Putih (BMP) in Desa Dato Kecamatan Liquisa Kabupaten Liquisa.

On 4 April 1999 followers of Pro Independence who were lead by JACINTO DA COSTA PEREIRA burned the houses of Pro Integration group followers of Besi Merah Putih (BMP), because these followers of Besi Merah Putih (BMP) from Pukelara and Maubara burned the house of FELISBERTO DOS SANTOS and murdered his son named ELIDIO member of Pro Independence.

On 5 April 1999, for fear of being murdered by Pro Integration group, followers of Pro Independence started to take refuge in Pastor RAFAEL DOS SANTOS' residence in Church

of Liquisa area, because Pastor HENRY from Maubara had given information that Pro Integration group followers of Besi Merah Putih (BMP) will come and attack Liquisa area. That based on Pastor HENRY's information, Pro Independence group lead by JACINTO DA COSTA PEREIRA and some of its members went to the border of Maubara-Liquisa to anticipate the plan of attack of Pro Integration Group followers of Besi Merah Putih (BMP), but when they met in Batu Blete, Pro Integration group followers of Besi Merah Putih (BMP) assisted by Tentara Nasional Indonesia (TNI) soldiers and members of Police of Republic of Indonesia (Polri) had shot members of Pro Independence causing 2 (two) victims dead and 7 (seven) people injured, among them JOSE from Hatu Kesi and SIRILIO DOS SANTOS who was shot in his thigh.

Until 13.00 WITA followers of Pro Independence group from Maubara, Pukelara, Liquisa and surrounding areas took refuge in Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area, amounting to +/- 2000 people and soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (Polri) and Pro Integration Group followers of Besi Merah Putih (BMP) released shots to the air causing the refugees to panic and become frightened.

At noon around 13.00 WITA, the Church of Liquisa area had been surrounded by soldier of Tentara Nasional Indonesia (TNI) and member of Police of Republic of Indonesia (Polri) who were then followed by the arrival of followers of Besi Merah Putih (BMP) and they released shots to the air causing the followers of Pro Independence from Maubara, Pukelara, Liquisa and surrounding areas to become frightened and took refuge and sheltered in the Church of Liquisa area.

Then on Tuesday, 6 April 1999, around 07.00 WITA +/- 300 people of Pro Integration group followers of Besi Merah Putih (BMP) lead by MANUEL SOUSA started to gather and surround Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area, some brought fire arms, constructed fire arms, swords, samurai, knives, bats, stabbing tools, arrows, or other violent weapons, and they shouted to ask the refugees of Pro Independence to come out and leave the Church area.

Around 08.00 a.m. Pastor RAFAEL DOS SANTOS was met by 2 (two) members of Brimob named DAMIANUS DAPA and FRANSISKUS SALAMALI asking him to surrender JACINTO DA COSTA and GREGORIO DOS SANTOS to Pro Integration group followers of Besi Merah Putih (BMP), but the request was rejected by Pastor RAFAEL DOS SANTOS for fear of them being murdered.

Around 11.30 WITA, 5 (five) members of Police of Republic of Indonesia (Polri) lead by Lettu Pol. JHON REA came to Pastor RAFAEL DOS SANTOS' residence in Church of Liquisa area to ask JACINTO DA COSTA be surrendered, where Pastor RAFAEL DOS SANTOS was willing to surrender under the condition that JACINTO DA COSTA PEREIRA and his friends are taken to Polda East Timor in Dili and followers of Besi Merah Putih (BMP) are pulled out of Liquisa.

At that time Pro Integration group followers of Besi Merah Putih (BMP) threatened the refugees by yelling "leave this area, or a second group will come, even if you are inside the Church, we will attack the church later at 01.00 WITA", while throwing stones into Pastor RAFAEL DOS SANTOS' residence in the Church of Liquisa area which was surrounded by a gate wall, thus creating a fearful and frightening situation because soldiers of Tentara Nasional Indonesia (TNI) from Kodim 1638/Liquisa and members of Brimob/Polri from Polres Liquisa joined with Pro Integration group followers of Besi Merah Putih (BMP). Given the requirements proposed by Pastor RAFAEL DOS SANTOS, Lettu Pol. JHON EA went to Headquarters of Kodim 1638/Liquisa to report the requirements and to report that the group of Pro Integration followers of Besi Merah Putih (BMP) would launch an attack to Church of Liquisa area if until 12.00 WITA JACINTO DA COSTA PEREIRA was not

surrendered. The report of Lettu Pol. JHON REA was witnessed by the Defendants who were in the Headquarters of Kodim 1638/Liquisa at that time.

Responding to the report of Lettu Pol. JHON ERA, Deputy Commander of Korem 164/WD Kol. Inf. MUJIONO gathered in a meeting with ASEP KUSWANI as Commander of Military District/1638 Liquisa, Drs. ADIOS SALOVA as Head of Resort Police (Kapolres) Liquisa, LEONETO MARTINS as Bupati of Liquisa Region, and Let.Kol Inf. YAYAT SUDRAJAT as Commander of Intelligent Task Unit Tribuana VIII. The meeting appointed LEONETO MARTINS to deliver their approval of Pastor RAFAEL DOS SANTOS' requirements, however LEONETO MARTINS rejected it because he was afraid of being murdered if he should meet Pastor RAFAEL DOS SANTOS.

Around 12.15 WITA while Lettu Pol. JHON REA was on his way to Church of Liquisa area, gun shots were still heard from that location followed by an attack to the Church of Liquisa area by the group of Pro Integration followers of Besi Merah Putih (BMP) of + 300 people, among them are:

1. CRISPIN DA COSTA PEREIRA; 2. ALFONSO; 3. MIGUANA; 4. VIKTOR; 5. FRANSISCO; 6. JOAO LOU MESA; 7. MOUREGO; 8. FERNANDO; 9. AKUBOU; 10. TEDI; 11. ROMALDO; 12. MASERNA; lead by MANUEL SOUSA and JOSE AFAAT (Camat Maubara), soldiers of Tentara Nasional Indonesia (TNI) and members of Police of Republic of Indonesia (POLRI), among them are Alfonso and Chico from the Resort Police of Liquisa and committed torture by shooting with fire arms, constructed fire arms, stabbing with swords and samurai, releasing arrows, stabbing with knives and beating with other violent weapons the refugees followers of Pro Independence who were taking shelter in Pastor Rafael Dos Santos' residence in the Church of Liquisa area, thus, Lettu Pol. Jhon Rea recalled his intention of meeting Pastor Rafael Dos Santos to deliver the message of the Defendant Leoneto Martin, Asep Kuswani and Drs. Adios Salova, causing victims of 21 (twenty one) civilians injured, i.e.:

1. JOSE RAMOS ; 2. FRANSISCO DOS SANTOS; 3. JOAO PEREIRA; 4. ABILIO DOS SANTOS ; 5. JOSE NUNES SERRAO ; 6. LUCAS SOARES 7. MATEUS PANLERO; 8. RICARDO RODRIGUES PEREIRA; 9. LAKUMAU; 10. JANUARI; 11. FELIS; 12. JOAO KUDA; 13. ARMANDO; 14. ANTONIO; 15. LUIS; 16. EMILIO; 17. LUCAS DOS SANTOS; 18. JOAO DOS SANTOS; 19. SEBASTIO; 20. RAMIRO; 21. MATIUS ALVES CORREIA;

while the Defendant Leoneto Martins knew or consciously neglected information that clearly showed that his subordinate Jose Afaat (Camat Maubara) and the group of Pro Integration followers of Besi Merah Putih (BMP) a mass organisation under the training of the Local Government of Kabupaten Liquisa were perpetrating or had just perpetrated torture towards the refugees taking shelter in Pastor Rafael Dos Santos' residence in the Church of Liquisa area ,where this action is considered as gross violation of Human Rights, but the Defendant Leoneto Martins did not take or do any appropriate and necessary actions under his power and authority to prevent or stop those actions, or after those attacks the Defendant Leoneto Martins did not surrender the perpetrators to the officials authorized to carry out investigation, investigation, and give charges.

The behavior of the Defendant Leoneto Martins as described above is a gross violation of Human Rights as regulated and given punishment in the provisions of Article 42 verse (2) jis article 7 letter b, article 9 letter h, article 40 Act No. 26 year 2000 about Human Rights Court.

Considering, that evidence had been presented in the trial, which are:

1. Photo Copy of special report No. R / 184 / Lapsus / IV / 1999 / dated 7 April 1999;
2. Photo Copy of Crime Scene Statement 2 July 2000;
3. 6 (six) pictures of Liquisa Church area.

Considering, that witnesses had been presented in the trial to give their information under oath according to their religion, where the basic points are as follows:

1. Witness ANTONIO DA CONCEICAO SANTOS:

- That the witness knew the Defendant I, as Dandim, Defendant II as Kapolres and Defendant III as Bupati in Liquisa;
- That the witness knew Pastor Rafael and lived together with him in his residence in the Church of Liquisa areal;
- That on 4 April 1999 there were riot in Maubara Liquisa between mass of Pro independence and mass of Besi Merah Putih (BMP);
- That on 5 April 1999 the citizens came to Church of Liquisa area, residence of Pastor RAFAEL DOS SANTOS because they were frightened and wanted to take shelter following the threat from Besi Merah Putih because on 4 April 1999 BMP Militia from Pukelara had destroyed Felis Berto Dos Santos' house and burned the citizens' houses.
- That on 6 April 1999 since morning, citizens around Liquisa came to the Church of Liquisa area to find shelter in a safe place;
- That on 6 April 1999, Besi Merah Putih militia together with the police had surrounded the area outside the gate of Church of Liquisa.
- That Besi Merah Putih brought samurais, swords, and weapons an attacked inside the Church helped by people in strip clothes.
- That those who attacked inside the Church were Besi Merah Putih and members of Koramil Maubara, but the witness did not know their names;
- That the location of the Church area is near the Office of Kodim Liquisa.
- That when the Church was being surrounded, TNI and Police were seen to take guard, but the Police did not prevent the attacks on the Church.
- That as a result of that attack, the witness witnessed some people dead and many injured;
- That one of the people who attacked whom the witness knew was a TNI named Tome Diego from Kodim Liquisa and he brought fire arms;
- That the witness survived because he claimed that he wanted autonomy and then he was taken to Kodim, if he didn't say he wanted autonomy he would be killed;
- That the witness was then ordered to go to Bupati Leoneto Martins' residence and there he witnessed people dead and injured;
- That the attack on Church of Liquisa area started from noon until 17.00 WITA.

2. Witness JULIO DE SOUSA

- That on 7 April 1999, the witness had buried 5 (five) bodies brought by Witness JOSE AFAAT as Camat Maubara and Dan Ramil CARLOS and Manuel Sausa as Dan Yon Besi Merah Putih;
- That those bodies were brought using a vehicle (mikrolet) owned by Koramil and another vehicle (Kijang) owned by Camat JOSE AFAAT;
- That the witness know one of the people who died named LEONEL because he was still relatives with the witness;
- That those bodies were received when the witness was in the security post at night around 19.00 Wita, all bodies were covered with blood;
- That according to the news the witness heard, if a person did not join Besi Merah Putih then he/she would be killed;
- That the burial of the five bodies were attended by Muspida, Camat and Dan Ramil.

3. Witness JHON REA:

- That the witness is a member of POLRI and sits as Kapusdalops as Liquisa Polres;

- It is true that on 5 April 1999 houses of pro integration civilians were burnt down by mass lead by Head of Village Dato named Jacinta Da Costa Pereira;
- That people knew that Jacinto was taking shelter in Pastor Rafael Dos Santos' residence located inside the Church of Liquisa area;
- It is true that on 5 April 1999 many people came to the Church of Liquisa area because they were frightened of a clash among citizens;
- That under the order of Defendant II as Kapolres Liquisa, on 6 April 1999 the witness came to meet Pastor Rafael Dos Santos to negotiate for the surrender of Jasinto to Polres Liquisa so that he could be held accountable for his actions, but Pastor answered that he would surrender Jasinto under the condition that Muspida takes him away on their own and Jasinto would go through the process in Polda Dili and that the followers of Besi Merah Putih would be pulled out of the Church of Liquisa area.
- That the requirements that the Pastor requested were informed to Defendant II, Defendant I, Defendant III and Wadan rem in the office of Kodim Liquisa. And then Wadan Rem assigned Defendant III Leoneto Martins to meet Pastor, but Defendant III rejected for fear of being murdered;
- That over the rejection of Defendant III, the witness was assigned back to meet Pastor, but he didn't accomplish it as on his way to the Church area, gun shots fired by people clashing were heard coming from the direction of the Church;
- That after the clash stopped in the afternoon, the witness was ordered by Kapolres Adios Salova to bring 5 (five) bodies, who were victims of the assault in the Church Area, from Kodim to the hospital for examination;
- That the witness then found out that the victims' bodies were buried in Maubara by Camat Baubara named Jose Afat;

4. Witness LUCAS SOARES;

- That on 5 April 1999, the witness went to Church of Liquisa Area to Pastor Rafael Dos Santos' residence to look for protection because the situation was not safe anymore.
- That by the time the witness arrived at the Church area, he saw thousands of citizens Pro Independence taking refuge in the Church Area.
- That on 6 April 1999 on Tuesday around 13.00 Wita, an attack occurred on the Church of Liquisa area, where the witness witnessed the attack because he was taking shelter beside Pastor Rafael Dos Santos' room together with his father in law.
- (unclear) ... taking shelter consist of children, men, women and seniors who were all frightened because they felt that the house was not safe anymore.
- That on 6 April 1999 since noon, the Church area has been surrounded by followers of Besi Merah Putih who were bringing constructed weapons, spears and arrows.
- That on 6 April 1999 noon, Eurico Gutteres came to meet Pasto Rafael Dos Santos to talk about the repatriation of the refugees to their homes and then Eurico Gutteres went to meet Bupati Leoneto Martins;
- That around 13.00 Wita, gunshots were heard from outside the Church Area and the witness heard the refugees screaming and crying and the windows of Pastor Rafael Dos Santos' house were being shot.
- That when the shots were released the witness ran out to save himself and after he was aside he was hit by a sword and almost killed and he was beaten with a gun by a person wearing military uniform whom the witness knew as Dominggus from Maubara.
- That as a result of the assault by Besi Merah Putih, from outside the Church the witness heard that 5 (five) people were dead.
- That during the attack in the Church Area on 6 April 1999, the witness saw military and Police officers who were taking guard and just standing and did not attempt to separate the

people or prevent the attack in the Church.

- That the number of Police officers and Brimob and TNI who were taking guards were fewer compared to the people gathered in Pastor Rafael's residence or the followers of Besi Merah Putih;

- That as far as the witness's knowledge, after the event in the Church, there had been arrests and investigation on few people who were perpetrators of the riot, the cases of these people had been investigated and given a verdict.

5. Witness DAMIANUS DAPA:

- That the witness is a Police member of Polres Liquisa;

- That on 5 April 1999, riots happened and Jacinto Da Costa Pereira as head of Dato village lead people to burn down civilians' houses in Maubara;

- That after the burning down of civilians' houses on 5 April 1999, the Kapolres Adios Salova ordered the witness to have patrol and security at Pastor Rafael's residence.

- That the witness saw many people from Besi Merah Putih group gathering and shouting from outside the Church Area demanding that Jacinto Pereira be surrendered to authorities;

- That on 6 April 1999, Defendant II as Kapolres ordered the witness and Lt. Pol. Frans Salamali to check whether Jacinto is in the Church Area residence of Pastor Rafael, then the witness came to the Church Area to negotiate with Pastor Rafael, demanding that Jacinto be surrendered to Polres, but Pastor Rafael did not agree for fear of being murdered, although the witness guaranteed that Jacinto would not be killed but Pastor Rafael still did not allow Jacinto to be taken outside.

- That after the witness failed to bring Jacinto out of the Church Area residence of Pastor Rafael, the witness returned to Polres Liquisa headquarters and reported to Kapolres Adios Salova that Pastor Rafael did not allow him to take Jacinto out.

- That based on the witness' report, Kapolres Adios Salova assigned Lt. Pol. JOHN REA to negotiate with Pastor Rafael and then ordered the witness to stay in Polres Liquisa headquarters.

- It is true that on 6 April 1999 there were clashes between groups around Pastor Rafael's residence but the witness did not know what groups were clashing;

- That the number of people gathering and fighting are more than the number of Police and Brimob guarding;

- That after the clashes, the witness heard that there were 5 (five) people who died in the Church Area residence of Pastor Rafael.

- That the witness did not know any TNI member named Tome Diego, Iskak and Jacob.

- That the witness knew Alfonso as a dismissed police member.

- That the reason the witness withdraw part of his information in the dossier is because during that time the witness was in an unstable condition.

6. Witness EURICO GUTTERES:

- That the witness knew Pastor Rafael Dos Santos who lives in Church of Liquisa residence area;

- That on 6 April 1999, the witness came to Liquisa and met Pastor Rafael and talked for around 20 minutes in the yard of Pastor Rafael's residence in the Church area;

- That upon Archbishop Belo's request, the witness asked Pastor Rafael "What is happening", but Pastor answered "How come Leoneto Martins in Maubara is allowed while we're not", the witness did not understand what Pastor meant because he kept on talking in Maubara language which the witness did not understand and then the witness left that place;

- That when they met with Pastor Rafael to discuss that the people in the Church area could return to their homes but it was not allowed by Pastor so the witness returned back;

- That on 6 April 1999 the witness saw and helped carry 5 (five) victims who died in the Church Area to be taken to Kodim Liquisa, after there were clashes between people inside the Church Area and those outside it;
- That Manuel Saosa was the leader of Besi Merah Putih in Liquisa who was Pro Integration.

7. Witness Lt.Col. Inf. YAYAT SUDRAJAT:

- That the witness was Dan Satgas Tribuana VII assigned in Dili;
- It is true that on 6 April 1999, Dan Rem ordered the witness to escort Wadan Rem leaving from Dili to monitor the situation to Liquisa and meet with Dan-dim Kapolres and Bupati of Liquisa between 10.00 - 11.00 Wita.
- That a while after arriving at Kodim, Wadan Rem asked what happened and found out that there were a warming situation between the people who were Pro-Integration and those Anti-Integration around Pastor Rafael's residence.
- That in the meeting at Kodim office, the possibility of holding negotiations with Pastor Rafael was discussed; but at the time of the meeting, at 12.00 wita, gunshots were heard and then the meeting at Kodim was dismissed.
- That when the meeting at Kodim was dismissed, the witness did not know where Dan Dim Asep Kuswani, Kapolres Adios Salova and Leoneto Martins went.
- That when the witness went out of Kodim, the witness witnessed clashes in the street in front of Kodim between people who brought swords and he saw people being hit and many were wounded
- That during the clashes, the Police and Brimob assisted by TNI members tried to prevent those clashes;
- That the witness did not see and never heard news stating that members of POLRI, Brimob or TNI were involved in the clashes;
- That as a result of the clases, the witness saw a wounded child and then carried that child so that there was blood stains of the victim on his clothes;
- That after the clashes, the witness heard that there were 5 (five) victims who died in the Church Area residence of Pastor Rafael;
- That after the situation calmed down, the witness returned to Dili together with the Dan Ren's group.

8. Witness Frans Salamali:

- That the witness was Dan Tun Brimob that got B.K.O. at Liquisa Polres with his 29 members and Kapolres Adios Salova ordered them to guard Pastor Rafael's residence because there were conflicting groups.
- That the witness knew defendant I Asep Kuswani as Dan Dim Liquisa and Defendant II Adios Salova as Kapolres Liquisa, but did not know defendant Leoneto Martins.
- That on 6 April 1999 07.00 Wita, the witness and his troops arrived at Pastor Rafael's residence area, and then saw many people dressed differently gathering around Pastor Rafael's residence, all were male adults, some were dressed in stripes and some were dressed in black and blue, they were members of Besi Merah Putih led by Manuel Sousa;
- That the witness then talked to Manuel Sousa persuading him not to attack inside the Church area while stating that "those inside are our brother", but Manuel Sousa did not heed the witness and continued to shout with members of his group asking Jacinto Pereira be surrendered to the authorities;
- That Kapolres ordered the witness to coordinate with Lt. Pol. Damianus who was meeting Pastor and persuading the people inside the Pastor's residence area to be allowed home and the witness heard that Jacinto was inside the residence.
- That when the witness and Lt. Pol. Damianus talked to Pastor Rafael, the witness saw many

people inside Pastor's residence area, they were children, women and seniors.

- That the witness saw that the people inside the Church area were unarmed.
- That when the witness was on duty all day outside the Church area, he saw that the people outside held guard, if those inside did not come out they would come in and attack at 12.00 Wita.
- That at first the witness did not see any weapons in Besi Merah Putih group, but when gunshots were heard, then Besi Merah Putih group led by Manuel Sousa moved to attack into Pastor Rafael's residence using traditional weapons such as samurai, spears and wooden bats;
- That the witness tried to hold them, but those outside continued to enter because there were too many of them compared to the guards, and they attacked brutally and the witness saw them carrying weapons, swords, spears, etc.
- That the witness did not see any TNI member at that time.
- That during the incident, the witness did not see Kapolres or Dan Dim or Bupati there.

9. Witness JOSE AFAT

- That the witness was Camat Maubara since 1995 until 1999.
- That the witness knew about the establishment of Pam Swakarsa in Maubara to secure their own regions and it was under the Bupati's instruction.
- That the witness knew about the existence of Pro Independence group and Pro Integration group formed by the people themselves.
- That the witness knew about the existence of Pro Integration group named Besi Merah Putih with unclear number of members led by Manuel Sousa.
- That since 3 April 1999 until 6 April 1999, the witness was in Kafemenanu to visit his family.
- That the witness heard that Pro Independence group attacked Maubara and was revenged by Pro Integration and the people ran and took refuge in The Church Area, before 6 April 1999 knew about this based on his staff's reports;
- That the witness knew about the establishment of Pamswakarsa based on the Governor's written Instruction to the Bupati.
- That Pam Swakarsa is different from Besi Merah Putih;
- That on 6 April 1999 around 18.30 Wita, the witness received 5 (five) bodies to be buried at Maubara brought with a truck from Liquisa and they were victims of attacks in the Church Area residence of Pastor Rafael.

- That the burial of the 5 (five) bodies, victims of the attack on Father Rafael's residence, was under the instruction and agreement between Pupate and member of Muspida and attended by member of DPR Maubara citizen.

10. Witness Letkol Mujiono:

- That the witness knew Defendant I, II, III as Muspida in Liquisa;
- That the witness have met The defendants when the witness as Wadanrem Dili East Timor since June 1998 - May 1999;
- That the witness knew that the referendum will instigate two groups Pro Integration and Pro Independence;
- That when the witness was Wadanrem public order was maintained and security problem was taken care by law enforcement;
- That Pam Swakarsa was a group of East Timor people, but the witness did not know who fund Pam Swakarsa
- That the witness has heard WANRA from member of the society; the difference between

Pam Swakarsa and Wanra was Wanra trained by TNI.

- That KAMRA was trained by TNI, performed by POLRI.
- That in Pam Swakarsa, WANRA, and KAMRA there were no rank and chain of command;
- That the witness was ordered by Danrem to go to Liquisa to verify the report about increasing tension in Liquisa caused by mass refuge to Father Rafael's residence in church of Liquisa area. Meanwhile the witness accompanied by 2 (two) armed units of TNI soldier;
- That the witness arrived in Liquisa around 12.00 Wita and went to Makodim welcomed by The defendants and the witness received the report from Dandim about the attack.
- That the witness received a report that there were 5 (five) people dead in the attack, one of them are TNI soldier in Dili Serda Sofyan and the witness did not have a chance to see.
- That the witness heard a report there were action to guard the church area and successfully manage to prevent Pro Integration group draw near to Pro Independence group and it was conducive at the beginning but failed because of the gunshots.

11. Expert Witness Dr. A.S. Tambunan, SH.:

- That about responsibility of Commandant in TNI based on Military Doctrine where Commandant responsible for anything done or not being done by his unit of army. But this doctrine does not cover law responsibility.
- That law infringement happened is a personal responsibility of the perpetrator him/herself.
- That if the infringements happen in order to perform the military duty, resulted in obliteration of people's property, the loss of human life, and any other detriments, then it is a State responsibility;
- That military responsibility is not the same with judicial responsibility, whether civil or criminal;
- That in the military apply verbal or literal order that have equal power, if the order is simple not complicated and easy to understand, and if the order meant to fulfill military purpose then the responsibility of the action conduct is in the State.
- That the content of an order have to be complete and clear, thus if this was not fulfilled and something happened then person who give the order is responsible of the mistakes and otherwise if the order has already complete and clear, then the receiver mistaken the order therefore responsibility lies in the receiver's hand.
- That in the case happened in Liquisa East Timor, as long as there is Polri then Polri is the one who must come first in accordance with New York agreement signed by The Government of Republik Indonesia, although TNI was providing help but responsibility still lies in Polri.

12. Witness a de charge KAPTEN JOKO WALUYO:

- That the witness is a member of Military District Command and sits as Pasiter;
- That the witness saw the commotion happened in church of Liquisa area at noon on 6 April 1999;
- That based on order from The defendant I, the witness rescued Father Rafael who was still in seminary, helped by Catholic Youths (MUDIKA) through the back way to avoid the mass and brought to Makodim and Father Rafael was strictly protected by his member.
- That the witness previously saw there were about 500 mass gather around;
- That personnel who secure the location in seminary were Polri and Brimob added by member of Military District Command t;
- That during the flag ceremony Dandim ordered all members not to go anywhere and helped to maintain security and use PDH uniform.
- That the witness only heard that 5 (five) victims were dead and more than 20 (twenty) people were injured;

13. Witness a de charge CHARLOS AMAREL:

- That the witness knew Defendants I, II, III during his task in Liquisa year 1993 - September 1999. The witness was sits as Danramil Maubara since year 1996 until 1999;
- That when the riot happened in church of Liquisa area, the witness was in Salatiga, off-duty;
- That when the witness returned on 20 April 1999 the witness received a report from Suparno that there were riot happened in Liquisa, and Wadanramil had helped the burial of 5 (five) dead victims from the riot in Liquisa;
- That the witness knew member of Military District Command, Tomi Diego, that has passed away in 1996. Killed by member of CNRT, the witness knew Tomi Diego last sits as Kopral in Asumaro.
- That there were no reports mentions about member of Danramil takes part in that riot.
- That the witness do not recognize and do not know Yose Manthius, Abilio Martez, Chivas Do Santos.

14. Witness a de charge AGUSTINUS SANTOS ALFRED:

- That the witness as civil officer in Pemda Liquisa knew Defendants I, II, III;
- That the witness heard about the commotion in the seminary on 5 April 1999 when a lot of people gathered, and on 6 April 1999 there was a riot in Father Rafael residence located INSIDE the church of Liquisa area;
- That the witness ordered by Bupati to help the refugees who left Father Rafael's church.
- That during the dispute, the witness was in the church area and the witness saw police officers were guarding. After the dispute, there were gunshots and police officers tried to separate the mass including the witness himself.
- The witness heard that 5 people were dead, and 20 people were injured;
- That the witness never heard any member of TNI or Polri involved during the commotion in Father's residence;
- That when Father Rafael was in Military District Command, there was no attack from the mass.
- That the witness do not know Zakaria, etc and member of Military District Command and Polres.
- That the witness knew Carlos Amarel and did not see Carlos Amarel.

15. Witness a de charge ORLANO ALFONSO DOS SANTOS:

- That the witness knew the defendant III since year 1999, because the witness was finance staff in Pemda Liquisa.
- That the witness in April 1999 was in Liquisa and in the official residence of The defendant III;
- That the witness knew there was a commotion in the church of Liquisa area when the witness helps around 20 injured riots victim in Bupati's residence.
- That on 6 April 1999, as far as the witness knew, the defendants were in Military District Command Liquisa.
- The witness knew that around 1000 people took refuge in Bupati's residence.

16. Witness a de charge JACKY ANWAR MAKARIM:

- That the witness knew the defendants when sits as member of General Inspector ABRI Liquisa 17 April 1999.
- That the witness was several times coming to Liquisa before 17 April 1999 as a member of YSPH.
- That the witness went to Liquisa to clarify the incident in Liquisa ordered by Pangab.
- That the witness had verify the report from Catholic Church that the attack was done by

member of TNI to church bring about 25 victims, the fact based on the witness clarification with public in Liquisa, the attack was between Pro Integration group and Pro Independence group, also based on reports from another sources;

- That during his visit to Liquisa the witness received answers from this 3 points below:
 - Were there any TNI members involved?
 - Is that true that there were 5 people dead and 25 people injured?
 - Were there any gunshots from Father Rafael's residence?
- That the witness did field observation, interview when doing clarification in Liquisa.
- That the witness found some clues on a very keen peace effort from law enforcement and the security is considered sufficient from police officers by securing the crime scene from dispersion and the witness did not see directly, just found some evidence from the investigation.
- That the witness observed directly to Father Rafael's residence and found a projectile of standard military bullet from inside church to outside.
- That the team of General Inspector ABRI did a separate clarification on groups.
- That the clarification conclude:
 - There were no member of TNI involved in the commotion;
 - There were 5 (five) dead victims and 25 (twenty five) injured victims;
 - There were gunshots from Father's residence that trigger the riot;
- That victim from TNI is Sersan Sofyan from Kopasus who was shot in the chest;
- That the witness was informed there was a tough negotiation from officers, but during the process of negotiation there were gunshots from Father's residence that trigger the riot.

17. Witness a de charge CARLO BRIX TEWU:

- That the witness sits as Direktur Reserse of East Timor.
- That from investigation there were 3 suspects from people of Liquisa processed in Polda East Timor throughout the riot on 6 April 1999 in church of Liquisa area;
- That the suspects were not yet brought into court, just to the prosecutor.
- That process of making the suspect's dossier take quite a long time because there were other cases to handle.
- That there were around 20 people as witnesses and 3 people as suspects with 5 dead victims and around 20 injured victims.
- That the witness does not remember names of the suspect, while evidence found out was about 10 constructed weapons, and other weapon like knives and spears;

Witness a de charge ANAMIS LOPEZ:

- That the witness knew The defendants I, II, III but has no family relationship;
- That the witness on 5 April and 6 April 1999 was in Liquisa with his/her family;
- That the witness as part of Pro Integration group knew about the riot between Pro Integration group and Pro Independence of East Timor;
- That at that time the witness heard his/her family was kidnapped and forced to come into church of Liquisa by people from Pro Independence group.
- That when the witness was looking for his/her family on 17.00 WITA and not in the Koramil, the witness met a group of Pro Independence people then the witness was forced to follow them into the church/seminary of Liquisa.
- That the witness saw Yacinto and Father Rafael inside the church with around 20 people and hundreds of other were behind the church.
- That the witness saw Yacinto was holding constructed weapon while other Pro Independence group armed with sword, spear, and other weapons.
- That the witness heard gunshots around 12.00 WITA, people inside the church went panic

and running away.

- That the witness can made to run away and went to Bupati's residence and the witness saw a lot of people injured because of the dispute between those two groups.
- That the witness saw TNI helped injured refugees a lot.

Considering, that General Prosecutor has asked for permission in court to read some written statement from witnesses that has decently called for several times but did not come, they are: 1. Rafael Dos Santos; 2. Joao Pereira; 3. Jose Menezes Nunes Serpao; 4. Fransisco Da Silva; 5. Maria Fernanda Mendes; 6. Florinda Dos Santos; 7. Ricardo Rodrigues Pereira; 8. Emilio Barreto; 9. Dulcia Carvalho Dos Santos and 10. Jacinto Da Costa Freitas with the reason: because based on the letter from General Attourney of Timor Leste that can not ensure the attendance of those witnesses for security reason, and based on that request The Court ordered General prosecutor to read their written statement as has been mentioned in the dossier and considered as part of this decision and has been considered in this decision;

Considering, that based on written statement from the witnesses that was read before, The defendants I, II, and III declared they denied any information explain the defendants has committed crime, and declared they denied any information from the witnesses that consist lies and plead so those information will not become as evidence;

Considering, that The defendants, each of them, has given their own testimony in court as below:

I. The Defendant Letkol Infanteri Asep Kuswani:

- That the defendant rejects the accusation.
- That based on the report received by the defendant on 4 April 1999 there was a clash between Anti Integration group and Pro Integration group and attacking Pro Integration's residential area.
- That on 5 April 1999 Anti Integration group did obliteration, burning, and take hostage from Pro Integration's son/daughter whereas the incident reported to the police and handled by the police then the Anti Integration group run away and hide in Father Rafael's residence.
- That on 6 April 1999 the Pro Integration group was asking, through the police, Father Rafael to give the Anti Integration group who did burn and destroy civilian's house and take hostage to the police according to the law.
- That the police sent Lettu. Pol John Rea to negotiate with Father Rafael but failed because when Lettu John Rea wanted to report to The Head of Resort Police Liquisa Adios Salova in Makodim, suddenly a gunshot was heard from Father Rafael's residence to Pro Integration direction and then Pro Integration group sporadically was attacking Father Rafael's residential area.
- That because of the attack 5 people were dead and approximately 20 people were injured.
- That all the incidents since 4, 5, and 6 April 1999 was reported to Dan Rem as Direct Authority above the defendant;
- That based on report from the defendant to Dan Rem, the defendant was ordered as below:
 - Adjusting to PROTAP In dealing with the riot and prioritize Polri.
 - To coordinate with Polri in doing preventive action for the riot.
 - To prepare all member to give security aid in dealing with the riot persuasively
 - To prevent the riot from spreading.
 - To evacuate the victims.
- That the clash happened on 6 April 1999 in Father Rafael's residence was done by Pro Integration mass and Pro Independence mass;
- That the defendant does not know for sure the cause of that clashes because a mass concentration gathered inside and outside the Church area.
- That the clash in Father Rafael's residence started with a gunshot from the crime scene, and

the defendant hardly could decide from which group the gunshot came from, Pro Integration group or Pro Independence group, because when it happened both groups has varied.

- That on 6 April 1999 in the morning the defendant met The Head of Resort Police Liquisa Adios Salova in Military District Command to discuss coordination in preventing bigger riot.
- That before the riot happened there was a meeting in Makodim attended by the defendant as Dan Dim, Bupati Leoneto Martins, The Head of Resort Police Liquisa Adios Salova to attain a solution in order to prevent more riot and resulting in sending Lettu John Rea to negotiate with Father Rafael to give people involved in the riot given to the police but the negotiation failed.
- That before the attack happens Wadam Rem Kol. Mudjiono gave instruction in the meeting in Military District Command Liquisa in order to prevent bigger clash and riot must based on the existing fixed procedure (PROTAP), and trying to re-negotiate with Father Rafael Dos Santos, but the negotiation failed because of the gunshot.
- That after the attack to Father Rafael's residence in the Church's area Deputy Commander of Korem ordered to make an effort to stop the clash by approaching and investigates the crime scene, secure the refugees, give help, and evacuate the victims.
- That afterward the defendant ordered his member Lettu Joko to evacuate Father Rafael and brought him to Military District Command.
- That based on that order Lettu Joko can safe Father Rafael and hid him in Makodim Liquisa and after Father Rafael take a rest then he was shifted to the nunnery based on his own request.
- That after the riot the defendant examine Father's residence, he saw broken glasses and furniture in disarray.
- That since morning on 6 April 1999 the defendant ordered his entire member to gather and prepare in Military District Command.
- That the defendant has heard about mass organization named Besi Merah Putih (BMP) but does not know for sure who establish it, and according to information lead by Manuel Saosa.
- That in the incident on 6 April 1999 even though preventive action has been taken but due to the lack of law enforcement compared with Pro Integration mass or Anti Integration mass approximately 3000 people thus beyond the competency of the law enforcement.
- That in the clash between Pro Integration masses there were no member of Military District Command involved, but in helping to evacuate Father Rafael and help and evacuate the refugees;
- That the defendant has never infringe the law or doing crime and punished before this case.

II. The defendant AKBP Drs. Adios Salova:

- That on the afternoon 4 April 1999 the defendant received a report from the watchman that there is a clash of mass in Pukelara.
- That on 5 April 1999 there is demolition and burning of civilian residence done by mass with Jacinto Da Costa Pereira, chief of Dato Village pro independence, as their leader.
- That on 5 April 1999 the defendant sent police officers to investigate the crime scene.
- That based on information on 6 April 1999 chief of Dato Village, Jacinto, were in Father Rafael's residence, according to the phone call from the nunnery.
- That the defendant tried to find Jacinto to face legal process by sending Lettu Pol. John Rea to Father Rafael's residence for the investigation about demolition and burning of Pukelara civilian residence.
- That on 6 April 1999 mass concentration has happened outside the church area and demand for CNRT leader, Jacinto the chief of Dato Village, and other CNRT member bestowed.
- That Lettu Pol John Rea met Father Rafael to negotiate so Jacinto can handed over to the police, Father Rafael was ready to do that with several requirements member of CNRT and Jacinto taken to Polda Dili and mass of Besi Merah Putih that gather around the church area

were pulled back because there were too many refugees asking for protection inside the area.

- That based on the requirements asked by Father Rafael, Lettu John Rea failed to bring Jacinto and other member of CNRT.
- That on 6 April 1999 around 08.00 WITA the defendant received a phone call from Father Rafael telling that mass from Pro Integration group will get into Father Rafael's residence because Jacinto, the chief of Dato Village, and some members of Falantil's group were hiding in there.
- That based on report from Father Rafael mentioned above, the defendant ordered 1 (one) platoon of Brimob (mobile brigade) to protect Father Rafael's residence by guarding the priest's residence inside the church area from mass gathered outside the church area to prevent being attacked by Pro Integration group.
- That the Besi Merah Putih crowd from Pro Integration wanted Jacinto and his friends to be handed over because they have attacked the Pro Integration group in Pukelara and carried weapons when they entered the priest's house.
- That after the defendant assigned Brimob to guard the priest's residence, the defendant ordered Letda Pol. Damianus Dappa to negotiate with the priest to hand over the chief of Dato Village but he was rejected by the priest.
- That around 10.00 WITA on 6 April 1999 the defendant checked the scene and met Pro Integration group, Eurico Gutteres and Manuel Sausa, they demanded so the police can investigate the leader of Pro Independence, Jacinto and friends, taken from the priest's residence, and arrested, based on the request from the Pro Integration group, the defendant stated not to do any attack and to give some time for the police to negotiate with the priest.
- That around 10.30 WITA the defendant ordered Lettu Pol. John Rea to negotiate with the priest to hand over Jacinto to the police.
- That at the time the defendant was with Deputy Commander of Korem Mudjiono, Dan Dim Liquisa which is the defendant I. Liquisa's bupati Leoneto Martins which is the defendant 3 (three), and Letkol Yayat Sudrajat gathered in Makodim Liquisa, not long after that Lettu Pol. John Rea came with the result from negotiation with the priest that the priest wanted to hand over if Polri was the one who take them and processed in Polda Dili and Muspida would take part to secure and pulled Besi Merah Putih mass back from outside the church area.
- That before the clash happen, the defendant saw TNI member was in Military District Command prepared them selves. Meanwhile the defendant's member with Brimob guarded between the church area, in where Father Rafael's residence, and Besi Merah Putih group.
- That around 12.00 WITA the defendant II with the defendant I and the defendant III with Deputy Commander of Korem asked Bupati Leoneto Martins, the defendant III, to secure Jacinto but Leoneto Martins refused it because he was afraid to be killed, thus after the defendant ordered John Rea to negotiate to receive the priest suggestion, a few minute later there were gunshots followed by fire contact, the defendant I and other officer immediately left the meeting site of their own and the defendant did not know where they were about, because the situation were in chaos and the defendant ordered his subordinate to separate the mass;
- That based on crime scene investigation the gunshots came from the priest's residence to Pro Integration numbering around 2000 people;
- That the gunshots from inside the church area responded by gunshots from Besi Merah Putih mass from Pro Integration outside the church area, it resulted in clashes among mass.
- That force from Polri and Brimob with unlimited numbers could not block the clash because gunshots came from all over direction and they were in between the mass.
- That based on that incident the defendant ordered Kapuskodalops, John Rea and Brimob forces to immediately rescue the refugees from Pro Integration action and temporary brought them to The Head of Resort Police Liquisa's residence and later taken to Bupati's residence.

- That at the time the defendant saw Father Rafael and his assistant were already safe in Military District Command, but the defendant did not know who had rescued them.
- That the clash between Pro Integration mass and Pro Independent mass in the church area causing 5 victims dead and then buried in Maubara after coordinating with Bupati Leoneto Martins (the defendant III) and around 25 victims injured and taken to Puskesmas;
- That the defendant has never been punished and never involved in any crime cases before.

III. The defendant Leoneto Martins:

- That the defendant was sit as Bupati, Leader of Liquisa Region, since 1994-1999 and responsible directly to the Governor of East Timor in Dili;
 - That the defendant had direct subordinate, assistant, expert staff, and other administrative officer who were effectively controlled by the defendant;
 - That the existence of Pam Swakarsa within the region of Liquisa was known by the defendant as a result from the instruction from East Timor's Governor;
 - That on 4 and 5 April 1999, there was a fight in Pukelara village, Maubara municipality, in the form of obliteration and burning of civilian's residence from Pro Integration group. This was conducted by Pro Independence group, lead by Jacinto Da Costa Pereira, who was then hide in Father Rafael Dos Santos's residence;
 - That there had been no militia known in Liquisa but Besi Merah Putih, it was formed from the people's aspiration to defend Red and White flag in East-Timor, lead by Manuel Sausa;
 - That on 3 April 1999 there was an assassination threat from the community CNRT Dato Village to Pro Integration (unclear)
 - That on 4 April 1999 there was once again assassination threat from CNRT to Pro Integration group in Pukelara village that caused around 1000 people from Pro Integration must take refuge to Koramil office;
 - That on 5 April 1999, CNRT group from Dato Village attacked Pukelara Village and burn 10 houses and at the same time CNRT youth also attacked Maubara people and caused 2 people, Domingus and Fransisco, injured. Because of the attack, Maubara people run after the CNRT group to Liquisa and they went into hiding in the church and to Father Rafael Dos Santos's residence.
 - That the defendant reported the entire incident to the Governor by phone but there was no further contact, until on 6 April 1999 the defendant could gave written report through the Public Relation of the district government of Liquisa.
 - That the defendant heard that mass gathered around Father Rafael's residence ordered Jacinto to surrender himself and his weapon.
 - That when the clash happened in Father Rafael's residence, the defendant was in Makodim;
 - That police officer, John Rea, ordered by The Head of Resort Police Liquisa to go to Father Rafael's residence and negotiate about giving in Jacinto and his weapon but Father Rafael demanded to give Jacinto to police officer and guarantee on his safety and the security guard should pulled out BMP mass that gathered around the church area.
 - That when Muspida decided to fulfill Father Rafael's demand suddenly there were gunshots came from Father Rafael's residence, so the next step of negotiation failed to be done.
 - That on 6 April 1999 police officers took people from the Priest's residence and taken to the defendant's residence by police vehicles, because all refugees were rescuing themselves to the defendant's residence.
 - That as a consequence of that clash among citizen, the defendant found out that 5 people dead and around 20 people injured. Injured victims taken to the General Hospital of Dili;
 - That the defendant has never been punished and never involved in any crime cases before.
- Considering, that The Court has given attention to all things during the trial process, in summary of the decision The Court would indicate to the notions stated in the dossier,

including the first dossier that all has included and considered in this decision; -
Considering, that based on all testimony from witness testimony, expert testimony, the defendants testimony, and hard evidence along with all documents compiled, has given the irrefutable facts during the trial as below:

1. It is true that the defendant I Letkol Inf. Asep Kuswani was Commander of Military District Command 1638 / Liquisa since September 1997 until December 1999 in his daily task he was directly responsible to the leader of Danrem 164/Wira Dharma located in Dili; -
2. That is true the defendant I had subordinate Staff Leader and several Officers with 3 (three) Koramil in Liquisa, Bazar Tele, and Maubara;
3. That is true the defendant II AKBP Adios Salova was sit as the Head of Resort Police Liquisa, East Timor, since 1998 until 1999 and in his daily task directly responsible to the Head of State Police East Timor in Dili;
4. That is true the defendant II had subordinate Wakapolres (Deputy of the Head of Resort Police) and several Officers with the Head of Sector Police in Liquisa area;
5. That is true the defendant III Leoneto Martins was sit as Pupate Liquisa since 1994 until 1999 and directly responsible to the Governor of East Timor in Dili. Meanwhile in top-down hierarchy the defendant had subordinate assistant, expert staff and administrative officers supporting his task and fulfill the Government programs under effective control from the defendant;
6. It is true that the existence of Pam Swakarsa in Liquisa was known and approved by the defendant 3 Leoneto Martins as a realization of Instruction from Governor of East Timor;
7. It is true that on 4 and 5 April 1999 has happened a riot in Pukelara Village, Maubara Municipality, in the form of obliteration and burning of civilian's residence from Pro Integration group done by Pro Independence group, whose leader named Jacinto Da Costa Pereira, who was then discovered hide and sheltered in Father Rafael Dos Santos's residence;
8. That is true since morning on 6 April 1999, there were a lot of local civilian gathered in Father Rafael's residence to take refuge, they were people from Pro Independence group consist of seniors, men, women, and children. Meanwhile outside Father Rafael's residence there were mass gathered as well known as BMP or Besi Merah Putih lead by Manuel Sousa from Pro Integration group consist of men bring traditional weapons, spears, arrows, and other stabbing tools made from wood;
9. It is true that Besi Merah Putih consist of local people of Liquisa East Timor formed spontaneously on their own will in order to create a security group in their surrounding, and in their activities also support Pro Integration group;
10. It is true that Besi Merah Putih group since morning up until midday emotionally yelled to Father Rafael and to people inside his house to give in a person named Jacinto Da Costa Pereira to police officer as to responsible in his action on 4 and 5 April 1999;
11. It is true that Besi Merah Putih group threatened by yelling if Jacinto was not given out, they will attack later at 12.00 WITA;
12. It is true that around 12.00 WITA gunshots were heard from the crowd area and Besi Merah Putih group lead by Manuel Sousa with traditional weapons like spears, samurai, arrows, bats came into and attacked the church area where Father Rafael's residence was. Meanwhile officer from POLRI were unable to prevent the chaos; -
13. It is true that since morning the defendant AKBP. Adios Salova had ordered one unit from Brimob to guard between two groups of people, under Letda Pol Frans Salamali while the defendant I Asep Kuswani prepared his members in Makodim if suddenly needed.
14. It is true that on 6 April 1999 the defendants 1. Letkol Asep Kuswani, 2. AKBP. Adios Salova, 3. Leoneto Martins, were having a meeting in Makodim 1638 Liquisa discussed about the way out since there were mass concentration outside the church of Liquisa area and mass of refugees sheltered inside Father Rafael's residence within the church area, because of the

threat yelled by Pro Integration mass Besi Merah Putih to give out Pro Independence leader Jacinto Da Costa Pareira who was sheltered inside Father Rafael's residence, therefore could be responsible of his wrong doing to police officer; -

15. It is true that while the mass gathered around the church of Liquisa area were escalated the defendants had got suggestion from Deputy Commander of Korem 164/WD Letkol Mujiono, that in order to deal with riot that might be happened, to remain in Fixed Procedure (PROTAP) and prioritize Polri and coordinate in order to prevent and to deal with the riot from spreading and evacuate the victims.

16. It is true that after received suggestion from Deputy Commander of Korem Mujiono, the defendant I Asep Kuswani prepared all his members in Makodim if needed anytime.

17. It is true that the defendant II AKBP Drs. Adios Salova as state apparatus and law enforcement responsible to maintain and improve order together with other state defense apparatus also maintain peace and security in the community and to serve and protect the people of Liquisa.

18. It is true that around 10.00 WITA, the defendant II Adios Salova ordered his subordinate Lettu. Pol John Rea to negotiate with Father Rafael Dos Santos so then the Priest wanted to give in the Pro Independence group leader, Jacinto, who burn civilian's residence in Pukelara at 4, 5 April 1999, to the police so he can face legal process and to lessen anger from Pro Integration people who were gathered around the church area, as to avoid the clash among citizen, but the negotiation failed because Father Rafael did not allow CNRT member and Jacinto given to the police for fear of them being murdered.

19. It is true that the first negotiation between Father Rafael Dos Santos and Lettu Pol John Rea failed and reported to the defendant II Adios Salova, that Father Rafael was ready to give in Jacinto Da Costa with several requirements that the investigation will be done in Polda, and pulled back Besi Merah Putih mass that gathered around the church;

20. It is true that when the witness John Rea reported result from the first negotiation to the defendant II, in Makodim 1638 Liquisa, there were Deputy Commander of Korem Letkol Mujiono and Letkol Yayat Sudrajat, and it was agreed to fulfill Father Rafael's demand and ordered Lettu Pol John Rea return to Father Rafael, but before Lettu Pol John Rea went there suddenly gunshots were heard from Father Rafael's residence in the church of Liquisa area, so his leaving cancelled and the meeting between the defendants with Deputy Commander of Korem Letkol Mujiono and the witness Yayat Sudrajat was ended and each of them left Makodim Liquisa.

21. It is true that because the gunshots heard was more intense from all direction where people clashing mixed up in a big crowd followed by attack to the church of Liquisa area by Besi Merah Putih followers, lead by Manuel Sousa, use swords, spears, and arrows with other traditional weapons like bats;

22. It is true that around 12.00 WITA Besi Merah Putih group launched an attack to civilian hiding inside Father Rafael's residence consist of unarmed and defenseless women, seniors, men, and children;

23. It is true that Brimob army who guard the area failed to prevent the clash between two groups of mass, because Brimob only consist of 40 people and unable to block thousands of mass approximately 3000 people.

24. It is true that during the attack by Pro Integration group Besi Merah Putih, the refugees from the church of Liquisa area were panic and running out rescuing themselves, to Bupati's official residence, Resort Police office, and to Military District Command Command (Kodim) Liquisa, later all refugees were directed to the official residence of Pupate, the defendant III; -

25. It is true that the defendant I Asep Kuswani ordered his soldiers under TNI leader Joko Waluyo went to the church of Liquisa area to rescue Father Rafael Dos Santos and secure him in Makodim Liquisa, after Father Rafael Dos Santos was in Military District Command

Liquisa and take a rest, then he moved to nunnery of Liquisa; -

26. It is true that after more soldiers ordered by the defendant II as Commander of Military District came to help, the situation was getting better and the riot was decreased and controlled; -

27. It is true that because of the attack done by Besi Merah Putih followers to Father Rafael's residence, inside the church of Liquisa area, 5 (five) people dead and 20 (twenty) people injured.

28. It is true that all dead victims were buried in an appropriate service in Maubara area agreed by Muspida decision in Liquisa, it was lead by the defendant III Leoneto Martins and attended by some member of DPRD. Meanwhile injured victims taken to Public Health Center;

29. It is true that after the situation was under control then police line was made, and on the next day 7 April 1999 a team from Resort Police of Liquisa processed the Crime Scene, to do inquiry and investigation to the 3 (three) defendants in Liquisa case. Meanwhile the investigation process done by officers from Resort Police of Liquisa together with Dit Serse from State Police of East Timor.

30. It is true that based on the result from the Crime Scene there were some arrows, bats, and knives collected and secured by police officer in charge;

31. It is true that other facts will be conversed simultaneously in the examination and nequisitor from General Prosecutor.

Considering, that the next facts mentioned above will become an initial basic for examination in proving the charges from General Prosecutor to the defendants as follow:

First:

PRIMARY:

Article 42 jis. Article 7 letter b, Article 9 letter a, Article 37, Act No. 26 Year 2000 about Human Rights Court jo. Article 55 verse (1) the-2nd Criminal Code; -

SUBSIDIARY:

Specifically on the Defendant I Letkol Inf. Asep Kuswani:

Article 42 verse (1) jis. Article 7 letter b, Article 9 letter a, Article 37 Act No. 26 year 2000 about Human Rights Court;

Specifically on the Defendant II AKBP. Drs. Adios Saliva:

(unclear) Act No. 26 year 2000 about Human Rights Court;

Specifically on the Defendant III Leoneto Martins:

Article 42 verse (2) jis. Article 7 letter b, Article 9 letter a, Article 37 Act No. 26 year 2000 about Human Rights Court;

Second

PRIMARY:

Article 42 jis. Article 7 letter b, Article 9 letter h, Article 40 Act No. 26 year 2000 jo. Article 55 verse (1) the-2nd Criminal Code;

SUBSIDIARY:

Specifically on the Defendant I Letkol Inf. Asep Kuswani:

Article 42 verse (1) jis. Article 7 letter b, Article 9 letter h, Article 40 Act No. 26 year 2000 about Human Rights Court;

Specifically on the Defendant II AKBP. Drs. Adios Salova:

Article 42 verse (2) jis. Article 7 letter b, Article 9 letter h, Article 40 Act No. 26 year 2000 about Human Rights Court;

Specifically on the Defendant III Leoneto Martins:

Article 42 verse (2) jis. Article 7 letter b, Article 9 letter h, Article 40 Act No. 26 year 2000 about Human Rights Court;

Considering, that in proving the charges from General Prosecutor cumulatively compiled and

in various alternative level, the Court is facing its obligation to prove whether the first or the second charges, each with one option. If one of the charge has completed all of its element, therefore the indictment has legally and certainly proven, so then the other indictments will no longer needed to be proven; -

Considering, that the first-primary charge from the General Prosecutor related to Article 42 jis. Article 7 letter b, Article 9 letter a, Article 37, Act No. 26 year 2000 jo. Article 55 verse (1) the-2nd Criminal Code as follow:

Considering that the articles of charge on the first-primary from the General Prosecutor consist of articles that describe all elements as to formulate criminal action, and there are some subsidiary articles to describe about the qualification and the role of all defendants in the committed crime;

Considering, that if we examine the outline of articles on the first-primary charge above, we can see the motivation of the General Prosecutor to prove that the defendants is guilty in committed a gross violation of Human Rights in the form of "murder" based on Commander Responsibility and Effective Control or under the power of effective control toward the gross violation of Human Rights happened;

Considering, that in examining and investigating every elements in every first-primary article of charge mentioned above, these problem must be answered first:

a. Was the gross violation of Human Rights really happened?

b. Who did the gross violation of Human Rights?

c. Whether the defendants were responsible of that gross violation of Human Rights?

Considering, that in answering those question above has to be done consecutively, where the next question can be answered only if the previous question answered; -

Considering, that Article 42 Act No. 26 year 2000 is a customary bout commander responsibility which will be examine after proving articles about gross violation of Human Rights;

Considering, that article 7 letter b Act No. 26 year 2000 stated: "the Gross violation of human rights consist of:... b. crime against humanity".

That the article above is just explained about one kind of gross violation of human rights that is a crime against humanity and does not consist of any elements about criminal action that needs further explanation;

That to recognize the formulation and examination of elements in the article above, should be connected with other article of charges, so then this article can be proven if it is completed with elements from other articles; -

Considering, that Article 9 letter a Act No. 26 year 2000 stated: "Crime against humanity as has been mentioned in Article 7 letter b is an action committed as part of a wide or systematic attack and identified that the attack deliberately directed to civilian, in the form of: a. murder".

Considering, that the article above consist of elements as follow:

1. The element of "action committed was part of a wide or systematic attack"; -

2. The element of "identified that the attack deliberately directed to civilian"; -

3. The element of "action committed was in the form of murder as mentioned in Article 340 Criminal Code"; -

Considering, that the elements mentioned above will be examined one by one as follow:

Ad.1. Element of "Action committed was part of a wide or systematic attack":

Considering, that Act No: 26 year 2000 about Human Rights Court with the explanation does not give any limitation or a clear definition about a wide attack, therefore to give a limitation or comprehension upon that element the Court was considering several things as follow; -

That element wide means that an action will bring impact nationally and internationally, the action caused a severe damage, material and immaterial loss, horrible, it is a vicious action to

forced one political will, lead to insecurity feeling in individual or society, and involved many parties, and caused repercussion incidents; -

That in accordance to the facts in trial, number 7, 8, 10, 11, and 12, stated that the clash happened in front of Father Rafael's residence was a result of a disappointment from Besi Merah Putih group who demanded Father Rafael and people inside his residence to give in Jacinto Da Costa who was responsible into the obliteration and burning on 4 and 5 April 1999 in Pukelara Village Maubara Municipality. Meanwhile Father Rafael refused to give him in until the limit of time 12.00 WITA on 6 April 1999;

That the witness Antonio Da Conceicao Santos explained that he saw the Besi Merah Putih follower attacked people inside the Father Rafael's residence use samurai, spears, and constructed fire arms. Meanwhile the attackers beat the witness himself and he was afraid, but then the witness managed to escape from the residence and rescued by the police;

That the witness Frans Salamali who was assigned to guard outside the church area near Father Rafael's residence explained that around 12.00 WITA there were gunshots, and at the time Besi Merah Putih group lead by Manuel Sousa carried traditional weapons and knives attacked Father Rafael's residence that located inside the church of Liquisa area;

That because of the attack there was a riot happened. People lived around the area were frightened and asked for help, and it was finally discovered, after the incident, Father Rafael's residence was destroyed and caused a big loss, there were 20 (twenty) injured victims, and 5 (five) dead victims according to the facts revealed in court at Number 27; -

Considering, that based on the testimony from the witnesses and the defendants stated there was no attack towards Pro Independence people; instead it was a clash between Besi Merah Putih group against Pro Independence group inside Father Rafael's residence, the Court considered as follow:

That in one circumstances, where in one side there was a group of people consist of men, women, children, and seniors unarmed inside one residence in the church area to take refuge, and in other side there was a group of Besi Merah Putih who entered emotionally together with traditional weapons and knives, then the riot happened was not an equal and balance clash, but a condition where one side was passively sheltered and frightened, while in other side was doing an active intimidation in order to achieve their goal; -

Considering, that based on the explanation above, according to the Court the incident happened on 6 April 1999 in Father Rafael's residence inside the church of Liquisa area was an attack from one side by Besi Merah Putih followers towards other side, the refugees from Pro Independence group who were frightened and in search of a safe shelter; -

Considering, that the attack destroyed Father Rafael's residence and caused a big loss, injured victims, and dead victims in the society, according to the Court can be described as a result from any horrible and vicious action; -

Considering, that based on the explanation above, the Court decide the sub element "a wide attack" has been fulfilled.

Considering, that the element Ad.1 is an alternative point of view, so if the element of "wide" has been fulfilled then the element of "systematic" need no further examination, however the Court decide that it is necessary to give its opinion about the "systematic" element as follow: That the element of "systematic" means something that has been planned, as a systematic or sustainable policy. This thing could happen directly or indirectly.

That directly, the planner or the actor will do everything they wanted and planned before, regardless the effect of the action.

That indirectly, can be an action to tolerate or approve or condone the incident from happen or facilitate the planner to do his plan. This thing can be done through cooperation or conspiracy from a policy that has been approved or let an incident happened, so the actor cans easily conducting his action. Or after the planner performed his action, there were no immediate

action taken to prevent it.

That based on the fact revealed in the Court Number 10, 11, and 12 showed that Besi Merah Putih group lead by Manuel Saosa since morning until around 12.00 WITA on 6 April 1999 had gathered and threat the people who take refuge in Father Rafael's residence; -

That based on the fact revealed in the Court Number 9 the followers of Besi Merah Putih consist of local people of East Timor that spontaneously came and joined in an organization to defend the security of their region. And this group was part of Pro Integration group, which an independent community's organization outside the Government hierarchy.

That as they gave a time limitation, from morning on 6 April 1999 until noon before 12.00 WITA, which is the time when the first gunshot was heard, it was enough time for Manuel Sousa and his group of army named Besi Merah Putih to do a consolidation and coordination in preparing the attack.

That based on the fact revealed in the Court, signaled with a gunshot on 6 April 1999 around 12.00 WITA, the followers of Besi Merah Putih lead by Manuel Sousa that was part of Pro Integration group move forward and attacked simultaneously from all direction using traditional weapons to Father Rafael's residence in the church of Liquisa area, wherein the people from Pro Independence group take refuge; -

That the attack done by Besi Merah Putih group was coordination and the execution of a policy made by that organization without any interference from external parties; -

Considering, that from the examination of element "part of a wide and systematic attack", according to the Court has answered the exception or objection from Team of Lawyer of the Defendants given in the beginning of the trial;

Considering that based on the examination above, element ad 1. "as part of a wide or systematic attack" has been fulfilled;

Element ad 2 "identified that the attack was deliberately directed to civilian".

Considering that the elements examined as below:

Considering that on the explanation Article 9 Act No. 26 year 2000 stated the definition of "attack deliberately directed to civilian" is an arrangement of action done to the civilian as a continuation from authoritative policy or any policy related to the organization; -

Considering that the definition was in accordance with the course of action in Article 7 verse (2) the Rome Statute, that define attack deliberately directed to the civilian is a multiply action towards civilian, in accordance with or as a continuation from a state or organization policy to do the attack.

That based on the fact revealed in the Court Number 8 showed before the attack happened in Father Rafael's residence inside the church of Liquisa area, since morning until around 12.00 WITA the followers from Besi Merah Putih group had gathered around outside the church fence; -

That based on the fact, it gave a clue that there was an appropriate time to formulate an organization policy or Besi Merah Putih group to conduct an attack to the Pro Independence refugees; -

That there was no other target inside Father Rafael's residence in the church area but frightened and unarmed refugees; -

That a group of people who take refuge and gathered in Father Rafael's residence was an unquestionably fact that it was a group of civilian who were targeted consist of priests, nuns, infants, children, men, and women; -

Considering that based on explanation above, it shows that Besi Merah Putih which was a part of Pro Integration group had committed an attack with single target and deliberately directed to civilian; -

Considering that based on the explanation above, the Court decide the element ad 2 "the attack was deliberately directed to civilian" has been fulfilled.

Ad. 3 the element of "action committed was in the form of murder as mentioned in Article 340 Criminal Code"

Considering the element above examined as follow:

Considering that based on Article 340 Criminal Code stated "anyone who deliberately or on purpose to take someone's life, will be punished because of an arranged murder, with death sentence or a life time sentence or a provisional sentence maximum twenty years".

That the article above consist of elements; a. anyone; b. on purpose; c. planned; d. take someone's life.

a. "anyone" explained as follow:

That the term "anyone" above meant to explain who ever the person or a person who committed an action described in the article;

That related to the first question in the examination, whether the gross violation of Human Rights really happened, therefore to identify the perpetrators, the examination need to be done together with the elements of action;

Element b "in purpose" explained as follow:

That the definition of in purpose was an action done by someone or anyone deliberately understands that the action will take someone's life;

That with the perpetrator was conscious with the effect of his/her doing, or with any possibility that someone might get killed, instead of cancelled it the perpetrator was continuing his plan;

That based on the fact revealed in the Court Number 12 stated that basically on 6 April 1999 around 12.00 WITA had happened a riot in Father Rafael's residence inside the church of Liquisa area, the followers of Besi Merah Putih armed was attacking Father Rafael's residence;

That the witness Antonio Da Conceicao Santos along with the witness Fransisco Salamali has given their testimony explained that Besi Merah Putih from Pro Integration group had entered the house and attacked the refugees from Pro Independence group inside Father Rafael's residence, the witness saw Manuel Saosa and his members carried traditional weapon, such as spears, samurai, and bats, the attack caused several people were injured and there were dead victims; -

That based on the witness Fransisco Salamali testimony who saw Manuel Saosa stands together with other Besi Merah Putih follower outside the church area, and the witness Frans Salamali asked him to disperse the crowd because people inside the church is our own brothers, but he was ignored by Manuel Sausa, even they kept shouting demanding Jacinto to give himself out from the priest's residence;

That the Human Rights Court Ad Hoc disagrees with team of lawyer from the defendants nor the General Prosecutor who acknowledge the incident happened in the area of Ave Maria church was a clash among citizen, refers to the result from examination of the evidence and the witness called in trial, the Court decide that the incident was not a clash, but an attack by Besi Merah Putih followers towards unarmed civilian in Father Rafael's residence; -

That in the normal condition, Besi Merah Putih from Pro Integration group lead by Manuel Sousa consciously aware that the use of knives and weapon like samurai, spears, and arrows to human body, could resulted in injured people and death;

That consciously and emotionally attacked, due to the hatred to Jacinto Da Costa Pereira, because he was hiding in the priest's residence, Besi Merah Putih group lead by Manuel Saosa, never stopped their plan to attack, and caused around 20 (twenty) people injured and 5 (five) people dead; -

That the differences in the system of examination on the criminal elements and the facts revealed in the Court, but the Court agrees with the examination from General Prosecutor about the element "on purpose" done by Besi Merah Putih has been fulfilled; -

Considering that based on the examination above, according to the Court element b. "on purpose" has been fulfilled.

Element c. "planned before" explained as follow:

That with planned before means that there had been enough time to think about how, when, or with what tools the plan would be done between the motivations to commit the action until the realization of the plan;

That the interval should be enough, meaning not too fast nor too long, the most important thing is whether in the length of time the suspect or the perpetrator could think clearly that the suspect actually has a chance to cancel his/her plan, but instead of doing it he keep continuing his plan;

That the action done as a crime was a murder;

That the witness Antonio Da Conceicao Santos and Lukas Soares together explained that the number of refugees inside the church area is bigger than Besi Merah Putih group outside the church area; -

That the fixed plan or formulating strategy for Besi Merah Putih group to attack inside Father Rafael's residence in the church area was in the duration of time since morning until at noon around 12.00 WITA when the gunshot was heard;

That the length of time was enough for Manuel Sousa and his group of army to prepare any tools, weapons, or to think about how and when the exact time, or actually it was still possible to cancel the plan, but in reality cancellation was not an option, and the followers still continuing the attack and the incident happened and caused injured and dead victims; -

That the group of mass inside the church area was powerless and it can be stopped after TNI's soldier ordered by the defendant I came to help Polri to stop the clash; -

Considering that based on the explanation above the Court decide that there was enough time extent between the motivation and the realization of plan to think clearly on how to do the attack, so it can be considered as planning, therefore the court agree the element c "planned before" has been fulfilled; -

Element d. "take someone's life" examined as follow:

That the terms "take someone's life" refers to any action in the incident resulted in the loss of someone's life but the suspect;

That based on the fact revealed in the Court Number 27, the attack done by Besi Merah Putih had caused victims in civilian consist of Pro Independence group inside Father Rafael's residence and inside the church of Liquisa area, 5 (five) people dead and 20 (twenty) people injured; -

Considering that based on the explanation above, the Court decides the element d. "take someone's life" has been fulfilled.

Considering that because all of the elements contained in Article 9 a has been fulfilled, therefore article of charges from General Prosecutor stated has been proven in the trial. And if it is connected with Article 7 letter b in the same charges mentioned above, then the conclusion is the indictment from General Prosecutor about there had happened gross violation of Human Rights in the form of "murder" has been fulfilled; -

Considering, based on the notions mentioned above, it answered question number 1 and number 2, which are:

1. It is true that gross violation of human rights in the form of murder happened;

2. That the violator of human rights was Besi Merah Putih, lead by Manuel Sousa; -

Considering that afterward the Court will examine about the question number 3: whether the defendant I, the defendant II, and the defendant III should be responsible on the gross violation of human rights?

Considering that to answer the question, the next article will be examined in the first-primary indictment is the Article 42 Act No. 26 year 2000 as follow:

Considering, that Article 42 verse (1) mentioned as follow:

"Military Commander or someone who is effectively acting as military commander is responsible to any crime in the jurisdiction of Human Rights Court, committed by any soldiers under his command and effective control or under his power or effective control and the crime action was a result from inappropriate control, which is:

- a. Military Commander or anyone who know or who supposed to know about the condition where his army committing or has just committing a gross violation of human rights, and
- b. Military Commander or anyone who did not do any appropriate action and needed in his power to prevent or to stop the action or to give the suspect to the officer in charge for investigation, inquiry, and charges".

Considering that the article above consist of elements as follow:

1. Military Commander or someone who is effectively acting as military commander,
2. Responsible to any crime committed in the jurisdiction of Human Rights Court, conducted by army under the command and effective control, or under the power and effective control,
3. The crime committed is a result from inappropriate control, which are:
 - a. Military Commander or anyone who know or who supposed to know about the condition where his army committing or has just committing a gross violation of human rights:
 - b. Did not do any appropriate action and needed in his power to prevent or to stop the action or to give the suspect to the officer in charge for investigation, inquiry, and charges".

Considering that because of the charges refer to 3 (three) defendants who has different task, so for the sake of clarity of the examination the elements above, it has to be done one by one, each and every defendant as follow:

I. The first-Primary indictment to the Defendant I Letkol Inf. Asep Kuswani;

Ad. 1 element "Military Commander or someone who is effectively acting as military commander"

Considering that based on the facts revealed in the trial Number 1, the defendant I Letkol Inf. Asep Kuswani was sits as Military District Commander 1638 Liquisa since September 1997 until December 1999; -

That as the one who sits as Military District Commander, the defendant had effective subordinate, several officer as staff and several Commander Koramil with the entire organic troops; -

Considering that based on the examination above, the Court decide that the defendant I had a capacity as a military commander or someone who was effectively acting as Military Commander, so then the element Ad 1 towards the defendant I Letkol Inf. Asep Kuswani has been fulfilled; -

Element ad. 2 "Responsible to any crime committed in the jurisdiction of Human Rights Court, conducted by army under the command and effective control, or under the power and effective control:"

Considering that in order to examine the elements above, the court refers to the examination result Article 9 letter a, stated has been proven that on 6 April 1999 has happened crime against humanity in the form of murder in Father Rafael's residence located in the church of Liquisa area committed by Besi Merah Putih group with Manuel Sousa as their leader;

Considering that what stated in element ad 2 "crime committed in the jurisdiction of human rights court", is a criminal action that has been examined and stated proven to Article 9 letter a, which is "murder"; -

Considering that to prove whether or not the element ad 2 above has been fulfilled toward the existence of the defendant I Asep Kuswani, then the question need to answer is:

"Is there any link between chain of command and effective control on the problem between the defendant I Asep Kuswani with Besi Merah Putih with their leader Manuel Sousa?", or in the contrary whether or not Besi Merah Putih group was a group of army in the chain of

command and effective control, or under the power and effective control of the defendant I Asep Kuswani?";

Considering that the answer of that question as follow:

That the definition of someone having a link to the chain of command to someone else only if there is a permanent regulation stated that official position of someone to someone else vertically as a superior with inferior or vice versa; -

That the fact in trial Number 9 stated Besi Merah Putih as part of Pro Integration group was a group of local people of East Timor formed spontaneously on their own will in order to create a security group in their surrounding;

That the witness Fransisco Salamali along with the witness Antonio Da Conceicao Santos has given their testimony explained that Besi Merah Putih from Pro Integration group had entered the house and attacked the refugees from Pro Independence group inside Father Rafael's residence, with Manuel Saosa as their leader; -

That based on the fact revealed in trial Number 12 and 22, there were no other groups who attacked the refugees in Father Rafael's residence but Besi Merah Putih, lead by Manuel Sousa;

That during the examination trial there were no evidence, documents nor witnesses, that showed any relation as superior and inferior between Manuel Sousa and his group Besi Merah Putih in one side and the defendant I Asep Kuswani in other side;

That even if the defendant I have heard the name Besin Merah Putih, but the defendant I did not know further and never have an effective command with them;

That even when the defendant I had a group of army under his effective command, which are Kasdim, Koramil, and other TNI soldier in BKO, but none of the evidence could shown the involvement any of his soldier in the riot or clash in Father Rafael's residence that caused human life.

Considering that based on the things above, the court decide that between the defendant I Asep Kuswani and Besi Merah Putih had no chain of command or effective control. And otherwise, Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant I Asep Kuswani.

Considering that based on the explanation above, the question can be answered with:

"Between the defendant I Letkol Inf. Asep Kuswani and Besi Merah Putih followers which is a part of Pro Integration group has no chain of command," and otherwise Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant I Asep Kuswani".

Considering that with the answer about connection between the defendant I Asep Kuswani and Besi Merah Putih group, then the key question number 3 has been answered, which is "Whether the defendants were responsible to the gross violation of human rights happened?", and the answer is "the defendant I Letkol Inf. Asep Kuswani did not responsible on the gross violation of human rights happened".

Considering that based on the explanation above, the Court decide that the element ad 2 Article 42 verse (1) stated "responsible to any crime action committed by an army under his chain of command or effective control, or under his power or effective control" toward the defendant I Letkol Inf. Asep Kuswani has not been fulfilled; -

Considering that because one of the element of Article 42 verse (1) has not been fulfilled, therefore other elements need no further examination, and Article 42 verse (1) Act No. 26 year 2000 hereby stated legally not proven; -

Considering that Article 42 verse (2) Act No. 26 year 2000 will be examine as follow:

Considering that the complete version of Article 42 verse (2) Act no. 26 year 2000, stated as follow:

"A superior, whether police officer or other civilian, were responsible on any crime related to

gross violation of human rights conducted by his subordinate under his power and effective control, because the superior did not do any appropriate control toward his subordinate, in the form of:

- a. The superior know and deliberately neglecting the information clearly shown that his subordinate is committing or just committed a gross violation of human rights; and
- b. The superior did not take any proper and suitable action needed to prevent or to stop the action or to hand over the perpetrator to the officer in charge for further investigation, inquiry, and indictment."

Considering that the article above consist of elements a follow:

1. "A superior, whether police officer or other civilian,
2. "Were responsible on any crime related to gross violation of human rights conducted by his subordinate under his power and effective control";
3. "Because the superior did not do any appropriate control toward his subordinate, in the form of: The superior know and deliberately neglecting the information clearly shown that his subordinate is committing or just committed a gross violation of human rights";
4. "Because the superior did not take any proper and suitable action needed to prevent or to stop the action or to hand over the perpetrator to the officer in charge for further investigation, inquiry, and indictment"

Element A 1. "A superior, whether police officer or other civilian,

That the terms "a superior" means the person has official position as superior, and has organic member or official staff as his subordinate;

That a person who has subordinate, has power entrenched in his position to control his subordinate;

That the terms "whether police officer or other civilian" refers that the superior can be police officer, can also government official or civil servant;

That based on the fact revealed in the court Number 1 and 2, the defendant I Letkol Inf. Asep Kuswani was a Commander in Military District or Military District Commander 1638 Liquisa;

-

That the superior of Military District is not a superior for police or any other civil superior, as mentioned by the elements of the article above; -

Considering that based on the examination above, the court decides that to the defendant I Letkol Inf. Asep Kuswani, the element of Ad. 1 "a superior, whether police officer or other civilian" has not been fulfilled;

Considering that one of the element from Article 42 verse (2) has not been fulfilled, then the other elements need no further examination, and to the indictment related to Article 42 verse (2) Act No. 26 year 2000 legally not proven;

Considering that based on the Article 42 verse (1) and verse (2) Act No. 26 year 2000 which was a part of the primary indictment not proven, thus to the Article 37 Act No. 26 year 2000 that regulate about criminal depiction and Article 55 verse (1) the 2nd Criminal Code that regulate about any further action, according to the Court need no further examination; -

Considering that related to the first-primary charge to the defendant I Letkol Inf. Asep Kuswani legally and certainly not proven, therefore the defendant I Letkol Inf. Asep Kuswani should be freed of the first-primary charge; -

II The First-Primary Indictment to the Defendant II AKBP. Drs. Adios Salova:

Ad. 1 element "Military Commander or someone who was effectively acting as military commander".

That based on the facts revealed in trial number 3 and 4 the defendant II AKBP Adios Salova was sit as the head of resort police Liquisa, East Timor, since 1998 until 1999 and in his daily task responsible directly to the head of regional police East Timor in Dili and had subordinate

the deputy chief of resort police and several Officers and the head of sector police within Liquisa area; -

That the defendant II AKBP Adios Salova had a power to control groups of soldier under him as long as they were member of Polri;

That the defendant II was not a military commander, and had no power to control the army under effective military command. Therefore the defendant was not a Military Commander and not someone who was effectively acting as Military Commander; -

Considering that based on the explanation above, the defendant II was not a military, so the element of effective military commander not fulfilled; -

Considering that because one of the element in the Article 42 verse (1) Act No. 26 year 2000 was not fulfilled, then other elements need no further examination, and the Article 42 verse (1) stated legally and certainly not proven;

Considering that the Article 42 verse (2) Act No. 26 year 2000 will be examined as follow:

Considering that refers to Article 42 verse (2) Act No. 26 year 2000 on the examination to the defendant I above, the elements are as follow:

1. "A superior, whether police officer or other civilian,
2. "Were responsible on any crime related to gross violation of human rights conducted by his subordinate under his power and effective control:
 - a. "Because the superior did not do any appropriate control toward his subordinate, in the form of: The superior know and deliberately neglecting the information clearly shown that his subordinate is committing or just committed a gross violation of human rights";
 - b. "Because the superior did not take any proper and suitable action needed to prevent or to stop the action or to hand over the perpetrator to the officer in charge for further investigation, inquiry, and indictment"

Considering that the elements will be examined as follow:

The element Ad. 1 "A superior, whether police officer or other civilian,

That the terms "a superior" means the person has official position as superior, and has organic member or official staff as his subordinate;

That a person who has subordinate, has power entrenched in his position to control his subordinate;

That the terms "whether police officer or other civilian" refers that the superior can be police officer, can also government official or civil servant;

That based on the fact revealed in the court Number 3 and 4, the defendant II AKBP Adios Salova was sit as the head of resort police since 1998 until 1999 and in his daily task responsible directly to the head of regional police East Timor in Dili and had subordinate the deputy chief of resort police and several Officers and the head of sector police within Liquisa area; -

That the defendant II AKBP Adios Salova had a power to control groups of soldier under him as long as they were member of Polri;

Considering that based on the explanation above, the Court decides, the element ad. 1. "A superior, whether police officer or other civilian, has been fulfilled.

The element ad. 2. "Were responsible on any crime related to gross violation of human rights conducted by his subordinate under his power and effective control".

Considering that in order to examine the elements above, the court refers to the examination result Article 9 letter a, stated has been proven that on 6 April 1999 has happened crime against humanity in the form of murder in Father Rafael's residence located in the church of Liquisa area committed by Besi Merah Putih group with Manuel Sousa as their leader;

Considering that what stated in element ad 2 "gross violation of human rights", is a criminal action that has been examined and stated proven to Article 9 letter a, which is "murder"; -

Considering that to prove whether or not the element ad 2 above has been fulfilled toward the

existence of the defendant II AKBP Adios Salova, then the question need to answer is: "Is there any link between chain of command and effective control on the problem between the defendant II AKBP Adios Salova with Besi Merah Putih with their leader Manuel Sousa?", or in the contrary whether or not Besi Merah Putih group was a group of army in the chain of command and effective control, or under the power and effective control of the defendant II AKBP Adios Salova?";

Considering that the answer of that question as follow:

That the definition of someone having a link to the chain of command to someone else only if there is a permanent regulation stated that official position of someone to someone else vertically as a superior with inferior or vice versa; -

That the fact in trial Number 9 stated Besi Merah Putih as part of Pro Integration group was a group of local people of East Timor formed spontaneously on their own will in order to create a security group in their surrounding;

That the witness Fransisco Salamali along with the witness Antonio Da Concecao Santos has given their testimony explained that Besi Merah Putih from Pro Integration group had entered the house and attacked the refugees from Pro Independence group inside Father Rafael's residence, with Manuel Saosa as their leader; -

That based on the fact revealed in trial Number 12 and 22, there were no other groups who attacked the refugees in Father Rafael's residence but Besi Merah Putih, lead by Manuel Sousa;

That during the examination trial there were no evidence, documents nor witnesses, that showed any relation as superior and inferior between Manuel Sousa and his group Besi Merah Putih in one side and the defendant II AKBP Adios Salova in other side;

That even if the defendant II have heard the name Besin Merah Putih, but the defendant II did not know further and never have an effective command with them;

That even when the defendant II had a group of army under his effective command, which are Wakaplolres, Kasats, and other member of POLRI, but none of the evidence could shown the involvement any of his soldier in the riot or clash in Father Rafael's residence that caused human life.

Considering that based on the things above, the court decide that between the defendant II AKBP Adios Salova and Besi Merah Putih had no chain of command or effective control. And otherwise, Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant II AKBP Adios Salova.

Considering that based on the explanation above, the question can be answered with:

"Between the defendant II AKBP Adios Salova and Besi Merah Putih followers which is a part of Pro Integration group has no chain of command," and otherwise Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant II AKBP Adios Salova".

Considering that with the answer about connection between the defendant II AKBP Adios Salova and Besi Merah Putih group, then the key question number 3 has been answered, which is "Whether the defendants were responsible to the gross violation of human rights happened?", and the answer is "the defendant II AKBP Adios Salova did not responsible on the gross violation of human rights happened".

Considering that based on the explanation above, the Court decide that the element ad 2 Article 42 verse (1) stated "responsible to any crime action committed by an army under his chain of command or effective control, or under his power or effective control" toward the defendant II AKBP Adios Salova not fulfilled; -

Considering that because one of the element of Article 42 verse (2) has not been fulfilled, therefore other elements need no further examination, and Article 42 verse (2) Act No. 26 year 2000 hereby stated legally not proven; -

Considering that based on the Article 42 verse (1) and verse (2) Act No. 26 year 2000 the primary indictment not proven, thus to the Article 37 Act No. 26 year 2000 that regulate about criminal depiction and Article 55 verse (1) the 2nd Criminal Code that regulate about any further action, according to the Court need no further examination; -

Considering that related to the first-primary charge to the defendant II AKBP Adios Salova legally and certainly not proven, therefore the defendant II AKBP Adios Salova should be freed of the first-primary charge; -

III The First-Primary Indictment to the Defendant III Leoneto Martins:

Ad. 1 element "Military Commander or someone who was effectively acting as military commander".

That based on the facts revealed in trial number 5 the defendant III Leoneto Martins was sit as Bupati of Liquisa region, since 1994 until 1999 and responsible directly to the Governor of East Timor;

That the defendant III, as the functional holder of the head of the region and Government Representative, was responsible for governmental aspect, coordinate the development, and maintain community welfare in all aspects.

That the defendant III Leoneto Martins was not a Military Commander and had no power to control an army under an effective military command. Therefore the defendant was not a Military Commander and not someone who was effectively acting as Military Commander; -

Considering that base on the explanation above, the defendant III was not a part of military, therefore the element as effective military commander not fulfilled; -

Considering that because one of the element of Article 42 verse (1) Act No. 26 year 2000 was not fulfilled, therefore other elements need no further examination, and the Article 42 verse (1) hereby stated legally and certainly not proven;

Considering that the Article 42 verse (2) Act No. 26 year 2000 will be examined as follow:

Considering that refers to Article 42 verse (2) Act No. 26 year 2000 on the examination to the defendant I above, the elements are as follow:

1. "A superior, whether police officer or other civilian,
2. "Were responsible on any crime related to gross violation of human rights conducted by his subordinate under his power and effective control:
 - a. "Because the superior did not do any appropriate control toward his subordinate, in the form of: The superior know and deliberately neglecting the information clearly shown that his subordinate is committing or just committed a gross violation of human rights";
 - b. "Because the superior did not take any proper and suitable action needed to prevent or to stop the action or to hand over the perpetrator to the officer in charge for further investigation, inquiry, and indictment"

Considering that the elements will be examined as follow:

The element Ad. 1 "A superior, whether police officer or other civilian,

That the terms "a superior" means the person has official position as superior, and has organic member or official staff as his subordinate;

That a person who has subordinate, has power entrenched in his position to control his subordinate;

That the terms "whether police officer or other civilian" refers that the superior can be police officer, can also government official or civil servant;

That based on the fact revealed on the Court at number 5, Defendant III Leoneto Martin was sit as Bupati of Liquisa region since the year 1994 until 1999 and responsible directly to the Governor of East Timor;

That the Defendant III held the function as a leader of a region and central government representative, bear the responsibility in civil governmental field, coordinate the development, and maintain society interaction or civilian;

That refers to his job and authority; it was true that the Defendant III Leoneto Martin was not a police officer or a military officer, but a civil officer;

Considering, based on things above, the Court opinion was, element ad 1. "a superior, either police officer or other civil" has fulfilled,

Element ad.2 "Responsible in crime for gross violation of human right done by his subordinate who is under his authority and his effective control."

Considering, in order to examine the element above, the Court refer to the examination of Article 9 Letter a that has been approved on 6 April 1999 happened a violation against human right in forms of massacre on the Father Rafael's Residence inside the church of Liquisa area, done by group Besi Merah Putih, with Manuel Sousa as their leader;

Considering that what stated in element ad. 2 "gross violation of human rights", is a criminal action that has been examined and stated proven to Article 9 letter a, which is "murder"; -

Considering that to prove whether or not the element ad 2 above has been fulfilled toward the existence of the defendant III Leoneto Martins, then the question need to answer is:

"Is there any link between chain of command and effective control on the problem between the defendant III Leoneto Martins with Besi Merah Putih with their leader Manuel Sousa?", or in the contrary whether or not Besi Merah Putih group was a group of army in the chain of command and effective control, or under the power and effective control of the defendant III Leoneto Martins?";

Considering that the answer of that question as follow:

That the definition of someone having a link to the chain of command to someone else only if there is a permanent regulation stated that official position of someone to someone else vertically as a superior with inferior or vice versa; -

That the fact in trial Number 9 stated Besi Merah Putih as part of Pro Integration group was a group of local people of East Timor formed spontaneously on their own will in order to create a security group in their surrounding;

That the witness Fransisco Salamali along with the witness Antonio Da Concecio Santos has given their testimony explained that Besi Merah Putih from Pro Integration group had entered the house and attacked the refugees from Pro Independence group inside Father Rafael's residence, with Manuel Saosa as their leader; -

That based on the fact revealed in trial Number 12 and 22, there were no other groups who attacked the refugees in Father Rafael's residence but Besi Merah Putih, lead by Manuel Sousa;

That during the examination trial there were no evidence, documents nor witnesses, that showed any relation as superior and inferior between Manuel Sousa and his group Besi Merah Putih in one side and the defendant III Leoneto Martins in other side;

That even if the defendant III have heard the name Besi Merah Putih, but the defendant II did not know further and never have an effective command with them;

That even when the defendant III had staff and subordinate, consist of expert staff and assisstants but none of the evidence could shown the involvement any of his soldier in the riot or clash in Father Rafael's residence that caused human life.

Considering that based on the things above, the court decide that between the defendant III Leoneto Martins and Besi Merah Putih had no chain of command or effective control. And otherwise, Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant III Leoneto Martins.

Considering that based on the explanation above, the question can be answered with:

"Between the defendant III Leoneto Martins and Besi Merah Putih followers which is a part of Pro Integration group has no chain of command," and otherwise Besi Merah Putih was not a group of army under the chain of command and effective control of the defendant III Leoneto Martins".

Considering that with the answer about connection between the defendant III Leoneto Martins and Besi Merah Putih group, then the key question number 3 has been answered, which is "Whether the defendants were responsible to the gross violation of human rights happened?", and the answer is "the defendant III Leoneto Martins did not responsible on the gross violation of human rights happened".

Considering that based on the explanation above, the Court decide that the element ad 2 Article 42 verse (2) stated "responsible to any crime action committed by an army under his chain of command or effective control, or under his power or effective control" toward the defendant III Leoneto Martins not fulfilled; -

Considering that because one of the element of Article 42 verse (2) has not been fulfilled, therefore other elements need no further examination, and Article 42 verse (2) Act No. 26 year 2000 hereby stated legally not proven; -

Considering that based on the Article 42 verse (1) and verse (2) Act No. 26 year 2000 the primary indictment not proven, thus to the Article 37 Act No. 26 year 2000 that regulate about criminal depiction and Article 55 verse (1) the 2nd Criminal Code that regulate about any further action, according to the Court need no further examination; -

Considering that related to the first-primary charge to the defendant III Leoneto Martins legally and certainly not proven, therefore the defendant III Leoneto Martins should be freed of the first-primary charge; -

Considering, that based on first-primary charge did not proven legally and certainly unfulfilled to Defendant I, Defendant II, and Defendant III so the Court examining and considering the First-Subsidiary Charge as follow:

First-Subsidiary Charge:

Considering, that in order to examine first-subsubsidiary charge, the Court has pay attention to outline and content of the Articles in that charge of the Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, The articles was: Article 42 verse (1) jis Article 7 letter b and Article 9 letter a and Article 37 Act number 26 year 2000 toward Defendant I. Letkol. Inf. Asep Kuswani, and Article 42 verse (2) jis Article 7 letter b, Article 9 letter a and Article 37 Act number 26 year 2000 toward Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, is equal and only as a part of Article of first-primary Charge; Considering, based on that things, that based on that articles, than in order to examine and proof first-Subsidiary Charge toward Defendant I, Defendant II and Defendant III, the Court recognize it is sufficient to referring and occupy from the examination on first-primary charge which stated it was not proven legally and certainly unfulfilled., so The First-Subsidiary Charge towards the Defendant I,II,III has to be stated not proven legally and certainly unfulfilled, and to Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, Has to be stated free of Second-subsubsidiary Charge;-

Considering that because of First-Primary Charge or First-Secondary Charge were not proven legally and certainly unfulfilled, the next second-primary charge will be examine as follow:

Second-Primary Charge:

Considering, that General Prosecutor's Second-Primary Charge related with Article 42 jis, Article 7 letter b, Article 9 letter h, Article 40 Act number 26 year 2000 jo, Article 55 verse (1) the 2nd Criminal Code will be examine as follow:

Considering, that General Prosecutor's articles of Second-Primary Charge consist of articles which contain full elements of criminal action description, and there were complimentary

articles for qualification and the role of the defendants in proving crime action;
Considering, that if the Court has pay attention to outline of Articles on second-primary charges above, it can be formulated as the General Prosecutor's purpose to proof that the Defendants were guilty as gross human rights crime action in the form of "Torture" on the base of responsible command and effective control or under authority and effective control towards the gross violation of Human Rights that happened;

Considering that in order to examine and prove the elements exist in every Second-Primary Charge articles above, first the questions below must be answered:

- a. Was it true that Gross Violation against Human Rights had happened?
- b. Who was the Perpetrator of that Gross Violation against Human Rights?
- c. Could the Defendants take responsibility of Gross Violation against Human Rights that had happened?

Considering, that to answer above questions has to be done in appropriate order, that the next question could be answered after the former question were answered;

Considering, that Article 42 Act No 26 Year 2000, which is the rule of new command responsibility, will be discussed after the articles which is formulation of the gross violation of human rights was proved;

Considering, that Article 7 letter b Act no 26 Year 2000, stated as: "Gross Violation against Human Rights covering: ... b. Crime against humanity".

That above article gave only one type of gross human right violation, which is crime against humanity and did not include part of criminal action that has to be proved furthermore;

That to be knowledgeable about formulation and discuss the existing parts of meaning from above article, it should be related to more charge article, so that this article can be proved if there are compliments of other article which elements has been proved;

Considering, that Article 9 letter h Act No 26 Year 2000, Stated as:

"Crime against humanity as stated in article 7 letter b was an action done as part of Wide or systematical attack, known that the attack were directly towards the civilian, as: h. torture against certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law...".

Considering, that above article contained these elements:

1. Element "Action done as part of wide attack or systematical";-
2. Element "Known that the attack was directly towards the civilian";-
3. Element "Action that has been done is a torture to certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law"

Considering, that above elements will be examine in sequence:

Element ad 1. "Action that has been done as a part of wide or systematical attack"

Considering, that in order to examine that element, it is sufficient by referring the examination on same elements in first primary charges, that element ad.1. "Action that has been done as part of wide or systematical attack" has fulfilled

Element ad 2. "Known that the attack deliberately directed toward to civilian"

Considering, that in order to examine that element, it is sufficient by referring the examination on same elements in first primary charges, that element ad.2. "Known that the attack deliberately directed toward to civilian" has fulfilled

Element ad.3. "Action that has been done is a torture to certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law"

Considering, that the terminology of "Torture" as formulated in article 351 Indonesian Criminal Code, does not give the clear definition; but according to fix jurisprudence, the

meaning of Torture is an action deliberately to create uncomfortable feeling, pain or harm. Then again according to Article 351 verse (4) Criminal Code stated that torture is equal to an action to damage someone's health deliberately;

Considering, based on above description, torture contains these elements:

- a. "Deliberately"
- b. "create uncomfortable feeling, pain or harm or damage someone's healthy"
- c. "Towards certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law"

Element a. "Deliberately":

Considering, that in order to examine that element, it is sufficient by referring the examination on same elements in first primary charges, that element a. "Deliberately" has fulfilled.

Element b. "creates uncomfortable feeling, pain or harm or damages someone's health"

Considering, that explanation of this element is an alternative one, so it will be has fulfilled if one of the option, in that element, has been done;

Considering, that uncomfortable feeling, pain, or harm, or damage someone's health was equal as someone's condition that suffer injuries, and had to be taken care for recovery;

That, by common people knowledge about medication, if someone suffers injuries and had to be taken care for recovery, it was sure that the people felt pain, or felt uncomfortable feeling and his/her health has been damaged:

That based on the fact which was revealed on the Court at Number 27, the attack on Pastor Rafael's residence in Church Liquisa complex by mass of Besi Merah Putih caused 5 (five) victims dead and 20 (twenty) victims injured;

That based on the fact which was revealed on the Court at Number 11, 12 and 22, it is true that followers of Besi Merah Putih, whose lead by someone named Manuel Sousa, attacked and causing injury, even dead, of Pro Independence civilian, taking shelter in Pastor Rafael's Residence;

Considering that based on the above examination, the Court opinion on elements b. "creates uncomfortable feeling, pain or harm or damages someone's health" has fulfilled.

Element c. "Towards certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex or other reason that has been universally confirmed as forbidden things according to the international law" examine as follow:

That based on the fact which was revealed on the Court at Number 8, 9 11, 12 and 27, It showed that the attack by Pro Integration group followers of Besi Merah Putih led by Manuel Sousa, were towards the unarmed civilian refugee, and were pro independence political understanding.

Considering, that based on the above examination, the Court opinion on element c. "Towards certain groups or a union based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law" has fulfilled.

Considering, that all of the elements a, b, and c, has fulfilled, then element ad 3. "Action that has been done is a torture to certain groups or unions based on same political principles, races, nationality, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law" has fulfilled.

Considering, that all the elements in article 9 h, has fulfilled, then the article of charge by general prosecutor has been proven in the Court. And if it was related to article 7 letter b in the same charge above, then it can be concluded that the charge of general prosecutor saying "there has been a gross violation of human right in the form of torturing on certain group or union based on same political principle, race, ethnic, culture, religion, sex, or other reason that

has been universally confirmed as forbidden things according to the international law" has fulfilled.

Considering that based on above things, questions on number 1, and number 2 has been answered that:

1. It is true that there has been a gross violation of human right in the form of torturing on certain group or union based on same political principle, race, ethnic, culture, religion, sex, or other reason that has been universally confirmed as forbidden things according to the international law";

2. Perpetrator of the violation are the group followers of Besi Merah Putih led by Manuel Sousa,

Considering, that the next Court will examine about the question on point 3: Can the defendant I, defendant II and defendant III take responsibility upon those gross violation of human rights?

Considering that to answer that question, then the next article will be examined on Second-primary charge is the article 42 Act number 26 years 2000 as follow:

Considering that in order to examine and proof the elements of articles 42 Act number 26 year 2000, it is sufficient revering on the result of the examination and proof of the same charge elements on above first-primary charge, fortunately elements on article 42 Act Number 26 Year 2000 is not fulfilled, so that second-primary charge has to be stated legally and certainly unfulfilled, and the Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins had to be stated release of the second-primary charge.

Considering, that Article 42 Act number 26 Year 2000 is part of the second-primary were not proven, so through Article 40 Act 26 Year 2002 which control crime provision and Article 55 verse (1) 2nd Crime Court which control about followed action, according to the Court did not need further examination;

Considering, that second-primary charge did not proven legally and certainly unfulfilled towards Defendant I, Defendant II and Defendant III, so that the Court will examine and considering Second-primary subsidiary as stated below:

Second-Subsidiary Charge:

Considering, that in order to examine second-subsubsidiary charge, the Court has pay attention to outline and content of Articles in that charge of the Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, The articles was: Article 42 verse (1) jis Article 7 letter b and Article 9 letter h Article 40 Act number 26 year 2000 toward Defendant I. Letkol. Inf. Asep Kuswani, and Article 42 verse (2) jis Article 7 letter b, Article 9 letter h jis Article 40 Act number 26 year 2000 toward Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, is equal and only as a part of Article of Second-primary Charge; Considering, that based on that articles, than in order to examine and proof Second-Subsidiary Charge toward Defendant I, Defendant II and Defendant III, the Court recognize it is sufficient to referring and occupy from the examination on Second-primary Charge which stated it was not proven legally and certainly unfulfilled., so Second-subsubsidiary Charge towards the Defendant I,II,III has to be stated not proven legally and certainly unfulfilled, and to Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, Has to be stated free of Second-subsubsidiary Charge;-

Considering, that based on the examination of all above charges by Ad Hoc General Prosecutor, both First-primary charge, First-subsubsidiary charge, Second-subsubsidiary charge, and Second-Subsubsidiary charge, were not proven legally and certainly unfulfilled. By that

Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins, Has to be stated free of Ad Hoc General Prosecutor's Charge.

Considering, that before the final decision, the Court recognize to reveal these things:

Considering, that the label Pro Integration and Pro Independence group turn up in the examination of clash of mass or people who gather round in the Liquisa Church Complex area, that is Pro Independence who gather inside the Priest's residence inside the Church's fence, while the Pro Integration gather outside the Church's fence;

Considering, that the labeling of group as stated on Ad Hoc General Prosecutor's Charge which is objector exception by the defendant's lawyer team were reasonable enough and make the charge clear., by that the lawyer team exception, as long as related to those labeling is unreasonable and neglected;

Considering, that the exception made by The Lawyer team, furthermore, according to the Court, has been examine enough and considered both in temporary ruling and final ruling of this case;

Considering, that absence witnesses in the Court's testimony although has been appropriately called by Court then been read by the request of Ad Hoc general Prosecutor although it has been denied and refused by the Defendants in the Court;

Considering, that based on the regulation, what is meant by witness' testimony as legal evidence is the presence of witness that was given upon oath directly in front of that Court.

Considering, that by witness' testimony that been read has been denied by the Defendants, so the law power as witness' testimony has become weak and can not be made as basic consideration in examine and proof Ad Hoc General Prosecutor's Charge. These things have created a lost for Ad Hoc General Prosecutor in order to proof his charge.

Considering, that the witness' testimony cancelled in the Court without strong reasons, is a sign that there is a doubt on the witness himself.

Considering that the mistake on charge as a crime against humanity has to be based on reasons by the law and makes sense for the judges. And not based on mysterious consideration or mass media prejudice upon the Defendants which never been proved in the Court;

Considering, in attempt to release the Defendants without the Court process, it will violate those who has became the victims or will against the Defendants' justice feeling themselves;

Considering, that in the contrary, equal punishment without clear evidence, automatically will violate promises that has been made for several time and not suitable for wise men's hearts;

Considering, that Islam religion norms stated: "avoid crime punishment (hudhud) as long as there is no uncertainty that make the judge uncertain (syuhbat);

Considering, that all the Defendants were released from all the charge, then the cost of this case will be burdened to the state, and for all the Defendants, were given the rehabilitation by adding the rehabilitation sentence on this final decision below;

Considering that the evidence given to the Court including photo of Father Rafael's home residence surrounding, and Church Liquisa, and photo copy of attached letters in file on questions to the panel of judges fortunately the General Prosecutor can not show the original one, based on that matter, the Court decide those evidence remain attached in the dossier, as stated in the final decision below;

Considering, based on all examination and consideration above, finally the Court decide on what have written in the final decision below has been based on enough law reason, so that it will be considered right and fair for all side and did not exceed the authority given to Ad Hoc Human Right Court;

Pursuant and consider all the legal law, including Article 7 Letter b, Article 9 Letter a and Letter h, Article 37, Article 40, Article 40 verse (1) and verse (2) Act number 26 Year 200;

Article 55, Article 351 and Article 340 Criminal Code; Article 191 verse (1), Article 194, Article 197 Customary Law; Article 14 verse (1) Government Regulation number 27 Year 1983, and other related regulations;

T O J U D G E

I. Stated the Defendants one by one: Defendant I. Letkol. Inf. Asep Kuswani, Defendant II Ajun High Commissioner Police Drs. Adios Salova, and Defendant III Leoneto Martins were not proven legally and certainly not guilty in doing crime action that has been charge in first-primary charge, first-subsidary charge, second- primary charge and second subsidiary charge;

II. Release the Defendant I, Defendant II and Defendant III from the first-primary charge, first-subsidary charge, second- primary charge and second subsidiary charge;

III. Restore the rights of the Defendants in their ability, positions, and their Rank also their Status.

IV. Charge the cost of the trial to the State

V. Stated the evidence consist of:

1. Photo copy of Special Record Number R. / 184 / Lapsus / IV / 1999 date: 7 April 1999;

2. Photo copy of Crime Scene Statement 2 July 2000 ;

3. 6 (six sheet) Photo of Church Liquisa Complex

Still attached in the case file.

So that decides in the Ad Hoc Human Rights Panel of Judges meeting on Thursday, date 28 November 2002, with the panel of judges consist of Cicut Sutiarto, SH, MH as the Chair in Ad Hoc Panel of Judges; Jalaludin, SH., Abdurahman, SH, MH., Rachmat Syafel, MA., and Amiruddin, SH. , as the member in Ad Hoc panel of Judges based on the decision by Human Rights Court Leader in State Court of Central Jakarta number 06 / Pid.Ham. / Ad Hoc / 2002 PNJkt,Pst., date: 3 June 2002. The Decision said in open Court for public on Friday, 29 November 2002 by Chair of Ad Hoc Judges Together with members of Ad Hoc Panel of Judges, helped by substitute Court secretary on that Court: Matius B.Situru, SH. And Tri Widodo, SH., MH., also attended by T.B Peter Silalahi, SH and Harry Ismi, SH., MH., as General Prosecutor and the Defendants accompanied by their lawyer team.

Member of Panel of Judges Chair of Panel of Judges

1. = Jalaludin, SH.= = Cicut Sutiarto, SH., MH.=

2. = Abdurahman, SH, MH. =

3. = Prof.Dr.H. Rachmat Syafei, MA =

4. = Amiruddin, SH =
Substitute Court Secretary

1. = Matius B. Situru, SH =

2. = Tri Widodo,SH.,MH. =