

Judgment

Defendant Endar Priyanto

**Indonesia Ad Hoc Tribunal
Judgment of Endar Priyanto**

**JUDGMENT
No. 05/Pid.Ham/AD.Hoc/2002/PN.Jkt.Pst.**

"FOR JUSTICE BASED ON BELIEF IN THE ONE GOD"

The Panel of Justices of the Ad Hoc Human Rights Tribunal at the Human Rights Court of Justice of Central Jakarta examining and trying the criminal case of Human Rights Violations in the first degree in a regular proceeding, rules as follows, in the case of the Accused:

Name : ENDAR PRIYANTO.
Place of Birth : Solo, Central Java.
Age/Date of Birth : 45 years/ May 10, 1957
Sex : Male
Nationality : Indonesia
Religion : Islam
Residence : Komplek Hankam, Jalan Salak B-69 Cibubur
Jakarta Timur
Occupation : TNI-AD member, former Dandim 1627/Dili
Rank: : Lieutenant Colonel
Education : AKABRI.

The Accused was not detained;

The Accused was represented by a Legal Counsel team.

I. Colonel Chk.AB Setiawan, SH.MBA., Navy Lieut.Col. (Kot) Bambang Soedarko, SH, Navy Lieut.Col.(KH) MD. Purnomo, SH., Navy Lieut.Col.(K) Nurhasirah M. SH, Lieut.Col.Chk. Apang Sopandi, SH, Lieut.Col.Chk Djodi Supanto, SH, Navy Major (KH) M. Adnan Madjid, SH. MH., Major Sus S. Damanik, SH, Navy Major (KH) Sigit Wahyu W, SH. MH., Major Chk. Simamora, SH, Major Sus Bambang Eko Suharyanto, SH, Major Chk. Subagio Santoso, SH, Major Chk. Widarto, SH, Captain Chk. Z. Effendi SH, Captain Sus Bambang Widarto, SH. MH., Captain Chk. Subagiyo, SH., Navy Captain (KH) Hari Aji Subranto, SH, Captain Sus Daswanto, SH, First Lieut. Chk. (K) Marhalo, SH, under Special Power of Attorney dated June 21, 2002.

II. RM. Rahyono Abikusno, SH.LLM, Agus Takabobir, SH, Moh. Assegaf, SH, Yan Juanda Saputra, SH, Ida Ayu Sri Utami Wijayanti, SH, Hari Muh. Djoko Prakoso, SH, Joao Meco, SH, under Special Power of Attorney dated June 24, 2002.

The Ad Hoc Human Rights Tribunal,

Having read:

1. The Legal Brief and Attachments on the case of serious human rights violations by the Accused: ENDAR PRIYANTO.
2. Decision of the Head of the Human Rights Court of Justice of Central Jakarta No: 05/Pid.HAM/Ad-Hoc/2002/PN.Jkt.Pst., dated June 3, 2002, concerning the Impaneling of Justices to examine and try the case;
3. Decision of the Panel's Chief Justice No: 05/Pid.HAM/Ad-Hoc/2002/PN.Jkt.Pst., dated June 3, 2002, concerning Determination of Trial Date;

Having heard:

1. The reading of the Charging Document by the Public Prosecutor, File Case No: 07/HAM/Timor.Timur/05/2002 dated May 31, 2002;
2. The reading of Preliminary Verdict by the Panel of Justices No. 05/Pid.HAM/Ad.Hoc/2002/PN.Jkt.Pst, that essentially states that it is within the jurisdiction of the Central Jakarta Ad Hoc Human Rights Tribunal to try the case against the Accused and that the Ad Hoc District Court's Charging Document dated May 31, 2002 Np.07/Ham/Tim.Tim meets requirements and the Public Prosecutor's charge is therefore acceptable
3. The reading of the Charges (Requisitoir) by the Ad Hoc District Court dated November 11, 2002, that essentially demands the Panel of Justices for the Central Jakarta Ad Hoc Human Rights Tribunal to rule:

1. To find the Accused:

Full Name : Lieutenant Colonel Inf. Endar Priyanto

Place of Birth : Solo - Central Java

Age/ Date of Birth : 45 years / May 10, 1957

Sex : Male

Nationality : Indonesia

Address : Komplek Hankam Jalan Salak B-69

Cibubur Jakarta Timur.

Religion : Islam

Occupation : Member of TNI-AD, Former DANDIM

1627/Dili

Rank : Lieut.Col.

Education : AKABRI.

Lawfully and convincingly, guilty of the criminal offense of: "SERIOUS HUMAN RIGHTS VIOLATIONS IN THE FORM OF CRIMES AGAINST HUMANITY", as regulated and liable under:

First Charge: Article 42 paragraph (1) items a and b jis article 7 item b, article 9 item a, article 42 paragraph (3), article 37 Law No.26 year 2000 concerning Human Rights Tribunals.

Second Charge: Article 42 paragraph (1) items a and b jis article 7 item b, article 9 item h, article 42 paragraph (3), article 40 Law No.26 year 2000 concerning Human Rights Tribunals.

2. To sentence the Accused to 10 (ten) years imprisonment.

3. To declare the evidence:

Senpi, towels, ammunition and Photostat documents may be used as evidence in other cases.

4. To order the Accused to pay court costs amounting to Rp.7,000 (seven thousand rupiah).

4. The reading of the personal plea of the Accused Endar Priyanto that essentially appealed to the Panel of Justices to take justice into the fullest consideration in reaching a judgment.

5. The reading of the plea by the Accused's Legal Counsel Team that essentially presents the view that the Accused Endar Priyanto is not proven guilty as charged in the First Charge and the Second Charge; and therefore the Legal Counsel Team requests the Panel of Justices to rule:

5.1 That the Accused is lawfully and convincingly proved not guilty of the criminal charges leveled against him by the Ad Hoc Public Prosecutor.

5.2 That therefore the Accused should be freed from all charges leveled against him by the Ad Hoc Public Prosecutor.

5.3 To restore the honor, respect and dignity of the Accused to their original state prior to this Case.

5.4 To charge all case costs to the State.

6. The Public Prosecutor's Replication (Replik) that essentially maintains the original charges that were read and delivered to the Ad Hoc Panel of Justices on Monday, November 11, 2002.

7. The Rejoinder (Duplik) by the Accused's Legal Counsel that essentially retains the original defense as read and delivered to the Ad Hoc Panel of Justices on Monday, November 11, 2002.

In considering that according to the Ad Hoc Public Prosecutor's Charging Document Case File No.: 07/Ham/Timor-Timur (05) 2002 dated May 31, 2002, the Accused is charged with the following serious human rights violations:

FIRST:

The Accused Endar Priyanto in his capacity as Military District Commander 1627/Dili under SKEP-KASAD No. SKEP/504/X/1997 dated October 1, 1997 concerning Terminations and Appointments in TNI-AD Positions, on April 17, 1999 or at another time in April 1999 at the residence of Leandro Isac in Dili and at the residence of Manuel Viegas Carrascalao on Jalan Antonio De Carvalho No.13 Dili, East Timor or at another location within Dili City, East Timor, in which it is within the jurisdiction of the Ad Hoc Human Rights Tribunal at the Central Jakarta District Court to examine and rule on the case of the Accused under article 2 KEPPRES No.96 tear 2001 dated August 1, 2002 concerning amendments to KEPPRES No.53 year 2001 concerning Establishment of an Ad Hoc Human Rights Tribunal at the Central Jakarta District Court, the accused in his capacity as Military Commander or as someone effectively acting as Military Commander may be held accountable for criminal acts within the jurisdiction of the Human Rights Tribunal, perpetrated by the troops under his effective command and control, or under his effective power and control and the criminal acts resulted from the lack of proper control over his troops, when committing serious human rights violations that include crimes against humanity that were one of the acts perpetrated as part of a widespread or systematic attack in which he was aware that the attack was aimed directly at the civilian population in the form of killings, namely:

The Accused as Military Commander whose duties among others were to foster security in the region and to provide assistance and coordination to elements responsible for security, was aware or under the circumstances should have been aware that his troops were in the act of, or had recently committed the act of committing serious human rights violations but the Accused did not take appropriate and necessary actions within his power to prevent or halt these violations or to surrender the offenders to the relevant authorities for examination, investigation and prosecution.

These acts the Accused committed in the following manner:

On Saturday April 17, 1999 a PAM Swakarsa Inauguration or a Grand Roll-Call for the Inauguration of PAM Swakarsa was held on the grounds of the Office of the East Timor

Governor, with Joao Da Silva Tavares as Inspector of Ceremonies in his capacity as Commander of Pasukan Pejuang Integrasi (PPI) and Eurico Gutteres as Commander of Ceremonies in his capacity as Deputy Commander of Pasukan Pejuang Integrasi (PPI), and attended among others by East Timor Governor Abilio Jose Osario Soares. At the ceremony Eurico Gutteres delivered an address that was broadcast live over the radio and contained the following words of threat:

- All CNRT leaders should be eliminated.
- The family of Manuel Viegas Carrascalao specifically should be eliminated.
- Kill the CNRT leaders.
- Pro independence people should be killed.
- Kill Manuel Viegas Carrascalao.
- The Carrascalao family should be killed.
- Kill Leandro Isac, David Dias Ximenes, Manuel Viegas Carrascalao.

Following the Grand Roll-Call for the Inauguration of PAM Swakarsa some PPI troops left the ceremony grounds and formed a procession using four-wheeled vehicles and several two (2) wheeled vehicles or motorcycles, and from the rear of Leandro Isac's house carried out a direct attack by shooting at the people inside the witness' house, who were comprised of pro-independence refugees, destroyed the entire content of the house, and then went on to attack the house of Manuel Viegas Carrascalao located in Jalan Antonio De Carvalho No.13 Dili, East Timor, assaulting the occupants inside the house of Manuel Viegas Carrascalao who were pro-independence refugees numbering some 136 people from Tauriseai, Alas, Ainaro, Maubara, Liquisa, who had been threatened and terrorized by a pro-integration group comprised of AITARAK (DURI) and Besi Merah Putih (BMP) members.

The Accused as Military Commander at the time was aware, or under the circumstances was aware that there would be disorder and violence among the differing East Timor population on Integration with the Nation and Union State of the Republic of Indonesia in the City of Dili, in particular as the Referendum approached, the Accused was responsible among others for security in his jurisdiction, but did not take maximum preventive measures to anticipate the attacks on refugees who were inside the house of witness Manuel Viagas Carrascalao. As a result of the Accused's talks 12 persons were killed among whom was the son of witness Manuel Viegas Carrascalao who was familiarly called Manelito.

The 12 persons killed in the attack were:

1. Mario Manuel Carrascalao (Manelito), interred in Dili.
2. Raul Dos Santos Cancela, interred in Maubara.
3. Alfonso Ribeiro. (ditto)
4. Rafael Da Silva. (ditto)
5. Alberto Dos Santos. (ditto)
6. Joao Dos Santos (ditto)
7. Antonino Do Soares (ditto)
8. Crisanto Dos Santos. (ditto)
9. Cesar Dos Santos. (ditto)
10. Agustino B.X.Lay. (ditto)
11. Eduardo De Jesus. (ditto)
12. Januario Pereira. (ditto)

Among the offenders there were some TNI men, namely: 1. Jose Matheus, 2. Theofilo da Silva, 3. Antonio Beskau, 4. Antonio Gomes, 5. Miquel, 6. Duarte, 7. Carlos Amaral, 8.

Baltizar, who were dressed as militia, that is, wearing Black Jackets and helmets with red and white headbands, and along with a number of pro-integration fighters carried out the attack using homemade firearms, machetes, swords and bows and arrows.

These TNI members were recognized by witness Victor dos Santos, witness Alfredo Sanches, witness Florindo de Jesus and witness Santiago dos Santos.

The Accused's actions as detailed above are liable under article 42 paragraph (1) items a and b jis article 7 item b, article 9 item a, article 42 paragraph (3), article 37 Law No.26 year 2000 concerning Human Rights Tribunals.

SECOND:

The Accused Endar Priyanto in his capacity as Military District Commander 1627/Dili under SKEP-KASAD No. SKEP/504/X/1997 dated October 1, 1997 concerning Terminations and Appointments in TNI-AD Positions, on April 17, 1999 or at another time in April 1999 at the residence of Leandro Isac in Dili and at the residence of Manuel Viegas Carrascalao on Jalan Antonio De Carvalho No.13 Dili, East Timor or at another location within Dili City, East Timor, in which it is within the jurisdiction of the Ad Hoc Human Rights Tribunal at the Central Jakarta District Court to examine and rule on the case of the Accused under article 2 KEPPRES No.96 tear 2001 dated August 1, 2002 concerning amendments to KEPPRES No.53 year 2001 concerning Establishment of an Ad Hoc Human Rights Tribunal at the Central Jakarta District Court, the accused in his capacity as Military Commander or as someone effectively acting as Military Commander may be held accountable for criminal acts carried out within the jurisdiction of the Human Rights Tribunal, by troops under his effective command and control or under his effective power and control and these criminal acts resulted from the lack of proper control over his troops, when committing serious human rights violations that include crimes against humanity that were one of the acts perpetrated as part of a widespread or systematic attack in which he was aware that the attack was aimed directly at the civilian population in the form of ASSAULT, namely:

The Accused as Military Commander whose duties among others were to foster security in the region and to provide assistance and coordination to elements responsible for security, was aware or under the circumstances should have been aware that his troops were in the act of, or had recently committed the act of committing serious human rights violations but the Accused did not take appropriate and necessary actions within his power to prevent or halt these violations or to surrender the offenders to the relevant authorities for examination, investigation and prosecution.

This act above was committed in the following manner:

On Saturday April 17, 1999 a PAM Swakarsa Inauguration or a Grand Roll-Call for the Inauguration of PAM Swakarsa was held on the grounds of the Office of the East Timor Governor, with Joao Da Silva Tavares as Inspector of Ceremonies in his capacity as Commander of Pasukan Pejuang Integrasi (PPI) and Eurico Gutteres as Commander of Ceremonies in his capacity as Deputy Commander of Pasukan Pejuang Integrasi (PPI), and attended among others by East Timor Governor Abilio Jose Osario Soares. At the ceremony Eurico Gutteres delivered an address that was broadcast live over the radio and contained the following words of threat:

- All CNRT leaders should be eliminated.
- The family of Manuel Viegas Carrascalao specifically should be eliminated.
- Kill the CNRT leaders.
- Pro independence people should be killed.

- Kill Manuel Viegas Carrascalao.
- The Carrascalao family should be killed.
- Kill Leandro Isac, David Dias Ximenes, Manuel Viegas Carrascalao.

Following the Grand Roll-Call for the Inauguration of PAM Swakarsa some PPI troops left the ceremony grounds and formed a procession using four-wheeled vehicles and several two (2) wheeled vehicles or motorcycles, and from the rear of Leandro Isaac's house carried out a direct attack by shooting at the people inside the witness' house, who were comprised of pro-independence refugees, destroyed the entire content of the house, and then went on to attack the house of Manuel Viegas Carrascalao located in Jalan Antonio De Carvalho No.13 Dili, East Timor, assaulting the occupants inside the house of Manuel Viegas Carrascalao who were pro-independence refugees numbering some 136 people from Tauriseai, Alas, Ainaro, Maubara, Liquisa, who had been threatened and terrorized by a pro-integration group comprised of AITARAK (DURI) and Besi Merah Putih (BMP) members.

The Accused as Military Commander at the time was aware, or under the circumstances was aware that there would be disorder and violence among the differing East Timor population on Integration with the Nation and Union State of the Republic of Indonesia in the City of Dili, in particular as the Referendum approached, the Accused was responsible among others for security in his jurisdiction, but did not take maximum preventive measures to anticipate the attacks on refugees who were inside the house of witness Manuel Viegas Carrascalao. As a result of the Accused's negligence 4 (four) victims sustained injuries, as follows:

1. Witness Victor dos Santos (Apin), sustained wounds to his left middle finger.
2. Witness Alfredo Sanches, sustained stab wounds to his left upper back and his toes.
3. Witness Florindo de Jesus sustained hacking wounds to his left and right arms, his right ear was shot and hacked.
4. Miki, sustained hack wounds.

Among the offenders there were some TNI men, namely: 1. Jose Matheus, 2. Theofilo da Silva, 3. Antonio Beskau, 4. Antonio Gomes, 5. Miquel, 6. Duarte, 7. Carlos Amaral, 8. Baltizar, who armed with automatic weapons carried out the assault along with a number of pro-integration fighters using homemade firearms, machetes, swords and bows and arrows. These TNI members were recognized by witness Victor dos Santos, witness Alfredo Sanches, witness Florindo de Jesus and witness Santiago dos Santos.

The Accused's actions as detailed above are liable under article 42 paragraph (1) items a and b jis article 7 item b, article 9 item a, article 42 paragraph (3), article 37 Law No.26 year 2000 concerning Human Rights Tribunals.

In considering, whereas in order to condense this ruling the Panel will not include the testimony of all witnesses as detailed in full in the Court Proceedings Deposition (BAP), but the Panel will select and excerpt testimony relevant to the charges made by the Ad Hoc Public Prosecutor as follows:

Testimony of witness: MANUEL VIEGAS CARRASCALAO

Under oath, the witness essentially testified as follows:

- Witness knew of the Accused but was not acquainted personally with him and is not related to him by blood or by marriage.
- On April 17, 1999, when witness was on his way to the Airport to fetch his wife, he received a telephone call from his son Mario Manuel informing him that his house was under attack by

breaking the door down.

- At the time a PAM Swakarsa ceremony was being held at the East Timor Governor's Office that was attended by TNI, POLRI and PEMDA officials and was being broadcast on radio and one of the speakers was Eurico Guterres who stated that he would kill Manuel Viegas Carrascalao.
- After receiving the call from his son, witness attempted to return home but was held back by his companions, then witness headed to the house of the Dili Korem Commander to seek protection but his request was not granted.
- Witness then went to Bishop Belo's house and informed him the occupants of his house had been killed, including his son Manelito.
- Subsequently witness was brought by Police to East Timor Polda but Polda would come under attack and so witness was brought to Jakarta. But on his third day at Polda witness was able to visit his house to see the situation and witness saw that his son's body was covered with stab and gunshot wounds, and that his head was nearly decapitated.
- The attackers of witness' house were Policemen and TNI soldiers dressed in civilian clothes and witness knew this from the people who were eyewitnesses during the attack on the house.
- Witness' house was occupied by his children, his children's schoolmates, refugees from outlying regions and these occupants were unarmed.
- As a result of the attack on witness' house, 11 victims died and the house and grounds were splattered with blood.
- 4 days later witness' son was interred and at the time there was no medical autopsy.
- At the time a conflict was taking place between the Pro Autonomy group and the Pro Independence group.
- The Accused stated that there were various errors in witness' testimony, among them:
 1. That he had provided training from security provision to destruction.
 2. That he had ordered the attack.
 3. The number of fatalities.
 4. That people from outlying areas were in great fear, whereas everything was running normally.

Testimony of witness: SUDJARWO

Under oath, the witness essentially testified as follows:

- Witness was acquainted with the Accused and is not related to him by blood or by marriage.
- Witness was Dandim 1627 Dili replacing the Accused following a transfer of duties from the Accused on August 9, 1999.
- At the time of the transfer of duties, a staff meeting took place, and therefore the Accused came to know of the attack on the house of Manuel Viegas Carrascalao on April 17, 1999 from written reports and according to the reports as a result of the incident one of the fatalities was the son of Manuel Viegas Carrascalao.
- That witness did not know the number of fatalities and to witness' knowledge the incident occurred as a result of the conflict between Pro Autonomy and Pro Independence groups.
- That the attack of April 17, 1999 according to the Accused, did not involve members of Kodim 1627 Dili who at the time numbered 380 personnel.
- That under Protap the responsibility of Kodim in security provision was to provide back-up for Police, and TNI were to be mobilized only at the request of the local Police addressed to Kodim, which request would be forwarded to the Danrem, and only at the order of the Danrem would assistance be provided.
- That there was also a Battalion but it was not under Kodim, whereas witness knew nothing of the PAM Swakarsa and PPI (Pasukan Pejuang Integrasi) meeting.
- If any Kodim member was sighted during the April 17, 1999 attack, the person concerned

was not on duty under Kodim authority.

- Witness' testimony was corroborated in full by the Accused.

Testimony of witness: JOSE AFFAT AM.

Under oath, the witness essentially testified as follows:

- Witness knew of the Accused but was not acquainted personally with him and is not related to him by blood or by marriage.
- Witness heard of the grand roll-call on the grounds of the Office of the Governor of East Timor on April 17, 1999.
- The roll-call was held by the Pro-Integration group and after the roll-call they formed a vehicle convoy to drive around the city of Dili and then clashed with the Pro Independence group at the residence of Manuel Viegas Carrascalao.
- At the time of the incident witness as Camat of Maubara was in Maubara and did not attend the grand roll-call as he did not receive an invitation, nor did he provide financial assistance to residents of Maubara who attended the roll-call.
- That as a result of the clash witness took part in the burial of 2 bodies brought from Dili to Maubara, but witness did not know the identities of the bodies buried.
- The Dandim of Liquisa at the time was Asep Kuswani, whereas the Dandim of Dili was Endar Priyanto (the Accused) as informed by the Ad Hoc Public Prosecutor.
- Witness did not know the precise cause of death for the two dead persons as at the time of the burial the bodies were in coffins.
- Those who attended the roll-call were civilians from Maubara and there were no TNI men from Maubara.
- Witness did not recognize the names read out in the Charging Document such as: Jose Matius, Tia Dasilva, Miquel, Duarte, except for Carlos Amaral because the Dan Ramil of Maubara was on leave at the time.
- PAM Swakarsa was formed under a Decree by the Governor of East Timor and in Maubara there was no Governor's Decree and so there was no PAM Swakarsa in Maubara.
- In Maubara there were wanra and kamra, but no PAM Swakarsa.
- As there was no PAM Swakarsa in Maubara, no TNI member assisted and provided arms to PAM Swakarsa.
- At the time the status in East Timor was one of civilian order.
- The Accused confirmed all of witness' testimony.

Testimony of witness: DOMINGGUS M. DORES SOARES, SH.Msi.

Under oath, the witness essentially testified as follows:

- Witness was acquainted with the Accused but is not related to him by blood or by marriage.
- Witness acted as Bupati of Dili from 1994 to 1999 and as Bupati witness was informed that a grand roll-call would be held on April 17, 1999 on the grounds of the Governor's Office in Dili.
- At the time of the roll-call witness was in attendance and the Governor was scheduled to deliver a speech on the inauguration of PAM Swakarsa, but as the Governor was not present the IRUP was Joano Tavares who delivered a speech enjoining the community to work properly, while the Accused was not present.
- PAM Swakarsa was formed to ensure the success of the referendum and its members received an incentive amounting to Rp.150,000 from the respective Level II PEMDAs.
- After Joano Tavares delivered his speech, witness returned to his home and Erico Gueteres did not deliver a speech at the ceremony.
- Witness heard on the radio that a clash had taken place at the house of Manuel Viegas Carrascalao.

- A check revealed that the clash involved Liquisa residents and there was no connection with the PAM Swakarsa inauguration, the incident was purely a criminal case.
- 12 fatalities resulted from the clash.
- The Accused made no objection to witness' testimony.

Testimony of witness: AGUSTINUS B. PANGARIBUAN

Before the court after being sworn in accordance with his faith, witness provided the following testimony:

- Witness was acquainted with the Accused when the Accused acted as Dandim of Dili.
- From November 1996 to September 1999 witness was assigned to Dili Polres.
- On April 17, 1999, witness was in Denpasar, Bali to follow the PTIK entrance examination from April 10, 1999 to April 30, 1999.
- Witness heard of the incident in the home of Manuel Viegas Carrascalao over television.
- Witness had not known that there were refugees at the home of Manuel Viegas Carrascalao.
- Witness had never heard of RI Government's policy to carry out an attack to kill and assault at the home of Manuel Viegas Carrascalao.
- Witness had heard that Manuel Viegas Carrascalao was a CNRT figure.
- Witness had never heard that TNI and Police personnel were involved in the attack on the house of Manuel Viegas Carrascalao.
- Witness heard that as a result of the clash that took place in the house of Manuel Viegas Carrascalao, there were casualties, but witness did not know their number.
- While witness was taking the PTIK test, all of witness' duties were taken over by the Waka Polres.
- The investigation into the attack on the house of Manuel Viegas Carrascalao was conducted by Polda.
- The Accused made no objection to witness' testimony and accepted it.

Testimony of witness: JOAO DA SILVA TAVARES

Before the court after being sworn in accordance with his faith, witness provided the following testimony:

- Witness knew the Accused was former Dandim of Dili.
- On April 17, 1999 witness was in Maliana and was verbally invited by Eurico Guiteres to act as Inspector of Ceremonies at the grand roll-call for the inauguration of PAM Swakarsa on the grounds of the Governor's office in Dili.
- The event began at 09.00 local time (WITA) and after ½ hour's appearance witness went up the podium to act as Inspector of ceremonies.
- The grand roll-call was attended by approximately 5,000 people and witness delivered an address at the grand roll-call.
- Subsequently when the ceremony was over, lunch was held at the rear of the Governor's office and following that witness immediately returned home to Maliana.
- When the ceremony was over, the participants of the grand roll-call held a procession around the town.
- After returning home, witness heard that there had been a clash that resulted in the death of Manuel Viegas Carrascalao's son, but witness did not know who killed him.
- The distance from the Governor's office where the event was held to the Kodim headquarters was approximately 100 meters and to the house of Manuel Viegas Carrascalao approximately 300 meters.
- There was no policy from Kodim to kill the occupants at the house of Manuel Viegas

Carrascalao.

- There was no news of TNI personnel involved in the attack on the residence of Manuel Viegas Carrascalao.
 - The people of East Timor regarded witness as the commander of PPI.
 - At the group's every activity, witness received no orders from TNI/POLRI officials.
 - Some of the grand roll-call's participants carried their own home-made weapons.
- The Accused did not object to witness' testimony.

Testimony of witness: ALFREDO SANCHES.

Before the court after being sworn in accordance with his faith, witness provided the following testimony:

- Witness was not acquainted with the Accused.
- Witness had been examined by the Attorney General's Office and he is keeping to the testimony he provided in the Deposition (BAP) that he signed.
- Whereas at the time of the April 17, 1999 incident at the home of Manuel Viegas Carrascalao witness was in the house.
- Witness had been staying in the house from February 1999 to April 17, 1999.
- Witness was staying in the house of Manuel Viegas Carrascalao to take refuge out of fear of the Militia.
- On April 17, 1999 following the event at the Governor's Office, the Militia attacked Manuel Viegas Carrascalao's house.
- At the time witness was standing at the rear of the house just outside the kitchen door.
- The Militias shot at the door and then shot into the house.
- Witness ran to the rear of the house with his companions Florindo de Jesus and Eduardo De Jesus and into a bamboo grove and climbed up some bamboo trees.
- Then a Militia man named Armendo cried out: "There are three men up in the bamboo trees", witness was shot at by Fransisco Alberto and witness fell and stood on a wall.
- The man named Armendo then pulled down witness, witness fell and then was stabbed by Mateus.
- The victims who died in the attack were 11 residents of Maubara and 1 son of Manuel Viegas Carrascalao, while there were 2 wounded, Florindo De Jesus and witness himself.
- Witness' companions in the house of Manuel Viegas Carrascalao numbered some 100 people.
- These people were in Manuel Viegas Carrascalao's house seeking refuge from Maubara.
- The number of militia and TNI men who attacked was over 100.
- The TNI men were in their uniforms, while the militia men wore civilian clothes and headbands.
- Among the TNI men witness recognized Theophilo, Baltirar, Antonio Baskau.
- Witness recognized them as they were members of Maubara Koramil.

Testimony of witness: FLORINDO DE JESUS.

Before the court after being sworn, witness provided the following testimony:

- Witness was not acquainted with the Accused.
- On the day of the attack of April 17, 1999 on the house of Manuel Viegas Carrascalao, witness was at the house.
- Witness was at the house of Manuel Viegas Carrascalao when the incident occurred at 12:00 for 2 to 3 hours.
- The attackers were comprised of militia and TNI men from Maubara Koramil, carrying

homemade weapons, machetes, and army-issue weapons (organik).

- The TNI men from Maubara Koramil taking part in the attack included Antonius Beskau, Beltiriat, Duarte, Jose Mateus, Tefile and Carlos.
 - Witness recognized the 6 TNI men as witness himself was from Maubere.
 - At the time of the attack, the TNI men were not in uniform.
 - The attackers used a yellow truck and rammed the truck into the gate of Manuel Viegas Carrascalao's house.
 - After being treated in the hospital, witness heard that the number of dead from the house of Manuel Viegas Carrascalao was 12.
 - Witness was treated at Wira Husada TNI Army Hospital.
- The Accused rejected all of witness' testimony.

Testimony of witness: ABILIO OSORIO SOARES.

Given under oath in a Deposition (BAP), read out in court and essentially related the following:

- Witness was Governor of East Timor carrying out Government, Development and Community duties vertically and in coordination with related agencies, in general all central agencies in the region.
 - The East Timor issue became complicated following intervention by the International world and the engineered award of the Nobel Prize to Ramos Horta.
 - The Governor, in carrying out Government in his region is constantly in coordination with relevant agencies, in particular the muspida elements.
 - Witness instructed the Bupatis to form PAM Swakarsa with the goal of preventing inter group physical clashes throughout East Timor.
 - The name PAM Swakarsa itself was provided by Level II Pemda suscha s Antrak, BMP, Maludi Abblai, Madomi, and others assisting Level II Pemda to provide security and law and order among the community in addition to existing security apparatus.
 - The incidents occurring before and after the referendum and the attack on the house of Manuel Viegas Carrascalao, witness heard because this house happened to be located next to witness' relative's house.
 - The announcement of the referendum that was won by the Pro-Independence group was contrived by UNAMET.
 - Witness resided in Dili until September 9, 1999, however after the situation was deemed impossible, on September 9, 1999 witness departed for Mekana, and thereon to Kupang.
- The Accused made no objection to witness' testimony that was read out.

Testimony of witness: Drs. BASILIO DIAS ARAUJO, MA.

Given under oath in a Deposition (BAP), read out in court and essentially related the following:

- On April 17, 1999 witness attended Danrem Tono Suratman at his residence to receive a foreign dignitary, the Ambassador of Ireland and witness acted as interpreter.
- At approximately 12:00 Manuel Viegas Carrascalao and his daughter arrived at the Makorem.
- Manuel Viegas Carrascalao had come to see Danrem Tono Suratman to request arms, but the Danrem rejected this request by Manuel Viegas Carrascalao, who immediately returned home.
- Witness did not know about the PAM Swakarsa grand roll-call, as the activity was a Level II Pemda Dili activity. Moreover witness was kept busy with his interpreter activities.

- Witness did not know who perpetrated the attacks nor did he know about the casualties incurred, and all witness knew was that the problem was in the hands of Dili Polres.
- Although Witness was a Level I Pemda employee, he was not well informed about PAM Swakarsa.

Testimony of Witness: JUANICO DASIVA.

Given under oath in a Deposition (BAP), read out in court and essentially related the following:

- Witness knew of the incident of April 17, 1999, namely the PAM Swakarsa roll-call ceremony held on the grounds of the East Timor Governor from 08.00 to 11.00, when witness along with some companions were passing by the house of Manuel Viegas Carrascalao and heard people crying for help, and the truck witness was riding stopped, and witness and his companions headed toward Manuel Viegas Carrascalao's house and a fight broke out inside the house of Manuel Viegas Carrascalao, and witness and his companions helped one Besi Merah Putih man who had been shot but they did not know who had fired the shot. They also helped 4 other men from Liquisa to return home.
- Witness was a member of PAM Swakarsa who received a monthly honorarium of Rp.150,000 from the Veterimo Village Head.
- Witness had not received any kind of training.
- Witness owned a homemade firearm that witness had assembled himself from plumbing pipes. He owned a homemade firearm because he was often intimidated by the CNRT group.

Testimony of witness: SUPARNO.

Given under oath in a Deposition (BAP), read out in court and essentially related the following:

- Witness was assigned to East Timor in 1997 as Dancuk Mo.81 Ki Ban Yonif 744/B6 in Dili and witness reported to the Dan Ramil.
- Witness did not know of the attack on the house of Manuel Viegas Carrascalao, as witness was in Maubara which is approximately 40 kilometers away from Dili..
- Did Pak Amir have no information about his men who were involved in Dili.

Testimony of witness: Dr A.S.S. TAMBUNAN, SH.

Given under oath in a Deposition (BAP), read out in court and essentially related the following:

1. Witness described the responsibilities of a commander in TNI, in which the Military Doctrine applies, that is, a Commander is responsible for what his subordinates do or do not do. However this Doctrine does not apply to legal responsibilities.
2. Whereas violations of the law are the personal responsibility of the offender.
3. Whereas if such violations occur in the course of carrying out duties under one's unit, resulting in destruction to the property of the populace, and resulting in casualties (wounded, dead), responsibility lies with the State (article 50 KUHP).
4. Whereas military responsibility differs from judicial responsibility, both civil and criminal.
5. Whereas in military life, verbal orders are on the same footing as written orders, if the orders are simple, not complex, and easily understood, and if the orders are intended to achieve a military objective then responsibility for the implementation of the orders lies with the State.

In considering, that legal counsel have brought forward witnesses in mitigation of the charges against the Accused (a charge) as follows respectively:

Testimony of witness: EDUARDO DE YESUS.

Witness testified before the court under oath, and essentially related the following:

- Witness was not acquainted with the Accused, was not related to him and was not connected to him through work.
- Whereas Witness was at the home of Manuel Viegas Carrascalao from April 12, 1999 to April 17, 1999 as witness was being held hostage by Manuel Viegas Carrascalao's men.
- Whereas on April 12, 1999 when witness was walking along the perimeters of Maubara village, a Kijang vehicle approached witness and from the vehicle 4 men descended, one of which witness recognized as a former village head, who called out to witness, and when witness approached he was held and placed in the Kijang car and brought to the house of Manuel Viegas Carrascalao.
- Whereas at the time witness was threatened with the words: don't speak out, follow me. If you speak out, I will cut you up.
- Whereas in the car 2 people sat in the front seat and 5 in the back (including witness) with witness sitting in the middle hemmed in between two people to his left and right, and no one spoke.
- Whereas after witness descended from the car he was asked, "Why are you associating with the red and white people," as he was pushed into a yard covered with a tarpaulin tent and inside this place there were approximately 50 people.
- Whereas after he was inside witness came face to face with Dominggus Valestila who lived in the same sub-district as witness, and witness was also acquainted with him.
- Whereas while witness was in the house of Manuel Viegas Carrascalao witness did not see either Florindo de Jesus or Alfredo de Sanches, although witness was in Manuel Viegas Carrascalao's house for about five days.
- Whereas on April 17, 1999, at approximately 12.00 wita, witness heard Dominggus Palestela cry out the words, "Comta Gede" which means "we are here" and witness then saw a truck parked at the front, and not long afterward witness heard shouts from inside with the words "attack the people getting down from the truck".
- Whereas when witness looked out witness saw that Dominggus Palestela had fallen and his left arm was cut, and witness also saw many people fighting and walking here and there and then witness attempted to flee outside, and saw Victor Philipe get down from the truck and witness followed Victor Philipe.
- Whereas the clash took place for 10 to 15 minutes.
- Whereas Manuel Viegas Carrascalao's house had only 1 big door and 1 small door.
- Whereas witness did not see Policemen or TNI men arrive at the house of Manuel Viegas Carrascalao both during and after the incident.
- Whereas when witness was staying at the house of Manuel Viegas Carrascalao he was given corn to eat once a day and was not allowed to leave the house.
- Whereas witness saw that the people in Manuel Viegas Carrascalao's house carried blunt weapons, swords and knives.
- Whereas the first to launch the attack were the people inside the house of Manuel Viegas Carrascalao.
- Whereas witness did not see women and children inside the house of Manuel Viegas Carrascalao, only male adults.
- Whereas witness did not see when Manuel Viegas Carrascalao's men opened the gate, but all at once the men from inside the house ran out and attacked the people getting down from the

truck, and witness seized the opportunity to flee.

- Whereas the victims in the attack were the people who were inside the house of Manuel Viegas Carrascalao.

- Whereas witness saw that the attackers carried knives and bows and arrows.

- Whereas witness did not know that there were fatalities as a result of the attack on the house of Manuel Viegas Carrascalao who were buried in Maubara.

- Whereas witness did not see Maria Viegas Carrascalao.

- Whereas witness was not acquainted with Santiago Das Santos.

- Whereas in Maubara (witness' village) the only one named Eduardo De Jesus was witness himself, and none other.

- Whereas witness was acquainted with the Ramil Commander in Maubara, who was not at the site of the incident when the incident took place.

The Accused did not object to witness' testimony, and the Accused accepted witness' testimony.

Testimony of witness: DOMINGGUS BONDIA.

Witness testified before the court under oath, and essentially testified as follows:

1. Witness was not acquainted with the Accused, and has no family relationship with the Accused.

2. Whereas witness was acquainted with Florindo de Jesus as he came from the same village as witness.

3. Whereas some time in January 1999 witness' brother who was named Balenti was killed by Florindo De Jesus by the river in Maubara.

4. Whereas when witness heard Balenti's cry for help, witness immediately headed in the direction of the cry, witness saw that Balenti had fallen and was covered in blood and lying close to Balenti was a machete and not far a club, witness also saw that about five meters away Florindo de Jesus was being carried away by Alberto in a bloodied condition, and on Florindo De Jesus' shoulders there were cuts and his arms were hurt.

5. Whereas witness at the time did not go after Florindo, as witness thoughts were directed at Balenti, and witness called for help to Mariani and the two finally carried Balenti back home.

6. Whereas witness' family reported Balenti's death to Police, and Police searched for Florindo but he was not found, and witness never saw Florindo again in his village.

7. Whereas on April 17, 1999 witness was not at the house of Manuel Viegas Carrascalao but in the mountains in Maubara.

8. Witness heard that a clash had taken place in the house of Manuel Viegas Carrascalao after witness had come down from the mountains and witness also heard that there had been some deaths but witness did not know their number and their identities.

The Accused accepted and corroborated witness' testimony.

Testimony of witness: BOA VENTURA.

Witness testified before the court under oath, and essentially related the following:

1. Whereas witness was not acquainted with the Accused and had no family relations with him.

2. Whereas witness had once lived on Gugleur Maubara Village in Kabupaten Liquisa.

3. Whereas witness was acquainted with Florindo De Jesus, as they had been schoolmates at Elementary School and witness was also acquainted with Alfredo Sanches who was also a former Elementary School mate.

4. Whereas witness on April 17, 1999 was at the house of Manuel Viegas Carrascalao in Dili.

Witness was there because he had been captured by Manuel Viegas Carrascalao's men at night at witness' home. Witness had been accosted by a men armed with sharp weapons and was then seized.

5. Whereas after witness was seized and tied up witness was then brought on foot to Guisu Village, Lisadita Village, to Paulara, to Bau Bantur Village, Psenda, and then on to Liquisa. At night from Liquisa they went by truck to Dili to a house which turned out to be that of Manuel Viegas Carrascalao.

6. Whereas witness had been seized by CNRT under the suspicion of being a spy, and upon reaching Manuel Viegas Carrascalao's house witness was put in the yard and there witness met Dominggus Palistra. The yard was covered with tarpaulin and tin sheets, and was guarded by Manuel's men who were armed with knives, swords, and at night the guards carried manufactured firearms.

7. At around 12.00 hours wita witness saw a truck move slowly past the front of Manuel's house. Witness recognized the truck's driver, a Maubara resident of Chinese descent named Ateka, and witness then cried out in the Maumara dialect and his cries were heard by the men in the truck. The truck eventually stopped and most of the men inside the truck got down. But suddenly from inside Manuel's house there were cries of, "they are here! Attack." The men then rushed out from the house carrying sharp weapons and clubs and attacked the men who had come down from the truck.

8. Whereas witness saw a fellow hostage in Manuel's house, namely Dominggus Palistra who had been hacked by Manuel's men and had collapsed.

9. Whereas at that sight witness finally decided to flee through the gates by slipping past the fighting people, and at the crossroads witness got onto a public transport and returned to Maubara.

10. Whereas 3 (three) days later witness heard that 2 bodies had been buried in Maubara who were vistims in Manuel's house, but witness did not know their identities.

11. Whereas when witness was in Manuel's house from April 12, 1999 to April 17, 1999, he did not see Florindo De Jesus and Alfredo Sanches in the house of Mario Viegas Carrascalao. The Accused accepted and confirmed witness' testimony.

Testimony of witness: VICTOR PHILIPE.

Witness testified before the court under oath, and essentially related the following:

Whereas witness was not acquainted with the Accused and was not related by family to him.

Whereas witness was acquainted with Florendo de Yesus as they had gone to the same elementary school in Maubara, witness did not now Alfredo Sanches.

Whereas to witness' knowledge, Florendo De Yesus had been in a fight with Balentil and Balentil had died, and since then witness had not seen Florendo De Jesus and reportedly in his fight with Balentil Florendo had been wounded in the shoulders.

Whereas on April 17, 1999 at around 09.930 AM witness left for Dili along with 2 of his companions, Antonio and Alberto, to hear the explanation on the offer of autonomy made by the Indonesian Government, witness left in a truck with a group from Same who were similarly headed to Dili, in the truck there were some 40 people but he did not see that they were armed.

Whereas upon arrival in Dili, the truck was parked in the scouts' field, and witness and the group got down and walked toward the Governor's grounds that was located at a distance of about 200 meters and there witness saw that some 10,000 people were gathered in these grounds, and all eyes were directed ahead, to the person giving the address.

Whereas witness asked Antonio, "Who is speaking up ahead?" and was answered "Pak Eurico", part of which witness heard, "let the people of Timor unite, and remain in peace to

accept autonomy".

At around 12:00 when the ceremony was over witness and the group headed to the scouts' field to look for a truck from Maubara that had left earlier in the morning and finally witness got onto the truck and returned to Maubara.

Whereas on the trip home to Maubara the truck had to turn around and just before a house witness and all the rest heard cries of help coming from someone in the yard in the Maubara dialect, the Toto gede dialect. Hearing the cries the truck stopped and most of the passengers got down and headed to the gate of the house but suddenly from inside there were yells and several people rushed out from inside carrying sharp weapons such as machetes, spears and so forth.

Whereas, a fight eventually broke out between the people from Maubara together with people who happened to be on their way home from the Governor's field, and the people from inside Manuel's house.

Whereas, some 10 minutes after the clash had broken out a Police car arrived sounding its horn, and hearing the siren witness and his companions ran in the direction of the truck and returned to Maubara.

Whereas, witness joined in the clash armed with rocks collected from the vicinity of the scene of the incident.

Whereas no truck had rammed down the gate of Manuel's house in the clash, rather the gate was opened from inside by those rushing out.

Whereas upon arriving in Maubere witness only found out that the house where the clash had taken place was the residence of Manuel Viegas Carrascalao and witness heard victims had fallen in the clash.

Whereas some 3 days after the incident 2 (two) bodies were buried in Maubara, and witness took part in the burial along with the community and the Camat as well as Polsek and Koramil men.

Whereas the burial was conducted under Catholic rites led by Patekis, and prayers were said and a cross set up.

The Accused accepted and confirmed witness' testimony.

Testimony of witness: SALMAN MANAFE.

Witness testified before the court under oath, and essentially related the following:

Whereas witness was acquainted with the Accused in his capacity as Dandim of Dili, and at the time witness was acting as Kasdim there, and he was not related by family to the Accused.

Whereas on April 17, 1999, witness as Kasdim of Dili, at approximately 11.50 was informed through a Police Handy Talky that a mass clash was taking place at the house of Manuel Viegas Carrascalao, and witness reported this to the Dandim who was at Comoro airport to greet the dignitaries from Ireland, and the Dandim then instructed witness to make an immediate check of the scene of the incident.

Whereas witness along with 10 other men from Kodim, all clad in PDL camouflage uniforms as at the time they were on alert and armed with PHH anti riot clubs, riding in a Garrison car headed to the scene of the incident, and when they arrived many policemen were already there, and Police had set up a Police Line. The clash was already over, and witness then reported to the most senior Policeman there and declared his "readiness to assist". Witness and his men then proceeded to help survivors and the wounded onto Police cars.

Whereas at the time witness witnessed 1 fatality at the house of Manuel Viegas Carrascalao resulting from a machete wound, then witness took the initiative to call the Garrison to dispatch a hearse, and not long afterwards the car arrived, and the victim was loaded onto the car by witness' men and several policemen to be brought to the hospital.

Whereas when witness was at the scene of the incident, some 15 minutes later the Accused as Dandim arrived and witness immediately reported that several casualties had been brought to hospital, both the dead and the wounded.

Whereas the Defendant looked around inside the back yard and into the house of Manuel Viegas Carrascalao. Soon after the Danrem arrived at the scene of the incident, and the Danrem and the Accused then left for the hospital and before they departed they instructed witness to remain at the scene of the incident to assist Police and at around 13.30 wita witness and his men returned to Kodim.

Whereas at around 16.30 wita Level I Depsos in East Timor requested assistance for 5 coffins from Kodim/the Sub Garrison through witness, and then on the orders of the Accused 5 coffins were provided from the Garrison's supply.

Whereas Dili Kodim also functioned as a Sub Garrison in which one duty was to handle fallen soldiers, and so there was a supply of coffins in the Dili Sub Garrison, although the coffins were designated for fallen soldiers, if there were requests for assistance coffins could be provided with the approval of the Dandim.

Whereas at the time there was no ambulance at the scene of the incident and there were no ICRC personnel helping victims at the scene of the incident. Whereas since 07.00 the Accused had issued orders to monitor the PAM Sawakarsa inauguration event at the Governor's Office. Witness tasked Sergeant Elizario who was assigned to surveillance of the area around the Governor's Office and the port to monitor the proceedings of the roll-call and to anticipate any action during the event or after the event that might disrupt security and order.

Whereas witness did not hear the speeches made during the roll-call that were aired on the radio as there were no radio transistors at Kodim, only TVs and Handy Talkies.

Whereas since 07.00 there were orders from the Accused that men not assigned outside duty be kept on standby at Makodim.

Whereas according to reports on the ground the roll-call proceeded normally or evenly.

Whereas witness had not heard of any plans to attack the house of Manuel Viegas Carrascalao following the roll-call and was not aware that after the roll-call a procession would take place which route would pass by the house of Manuel Viegas Carrascalao.

Whereas according to information the masses clashing at Manuel Viegas Carrascalao's house consisted of people returning from the roll-call at the Governor's Office and people inside the house of Manuel Viegas Carrascalao.

Whereas no TNI or Police personnel were involved in the mass conflict, either in uniform or in plain clothes.

Whereas witness was not acquainted with all Maubara Koramil members as it was located some distance away and it was not under the jurisdiction of Dili Kodim.

Whereas Dili Kodim oversaw four Koramils and 50 Babinsas.

Whereas to witness' knowledge there was one fatality resulting from the mass conflict at the scene of the incident, subsequently there was a request for 5 coffins, which meant 5 more deaths and several wounded.

The Accused accepted and confirmed witness' testimony.

Testimony of witness: ELIZARIO DA LUX.

Witness testified before the court under oath, and essentially related the following:

Whereas witness was acquainted with the Accused in his capacity as Dandim. He was not related by family to the Accused.

Whereas witness was Bintara Intel at Kodim Dili under the Intelligence Section Officer (Pasi Intel).

Whereas on April 17, 1999 at around 07.00 witness and other Dandim men were at the morning Makodim roll-call. Later following the morning roll-call witness headed to his surveillance area comprising the area around the Governor's office, and the port sector and coastline.

Whereas in the vicinity of the PAM Swakarsa roll-call at the Governor's Office a troop of Policemen were already stationed to monitor the roll-call, at various points outside the grounds. The roll-call participants numbered some 6,000 who filled the grounds of the Governor's Office. To witness' knowledge no participant was carrying weapons.

Whereas in carrying out his surveillance of the area witness was not armed. Witness reported to the Kasdim that the roll-call had commenced and that it was proceeding smoothly or evenly, and that it had ended uneventfully.

Whereas witness was not aware that there would be a procession to parade around the town after the ceremony, and witness did not know of any plan to attack the house of Manuel Viegas Carrascalao.

Whereas witness did not clearly hear the body of the speech delivered by Eurico Guterres at the Governor's Office during the PAM Swakarsa roll-call.

Whereas at around 11.45 witness heard over the Handy Talky that a mass clash had taken place at the house of Manuel Viegas Carrascalao and that Kadim had then ordered witness over the Handy Talky to immediately check the scene of the incident.

Whereas upon arriving at the scene of the incident witness saw that the Kasdim was already present with his men in PDL camouflage uniforms carrying clubs and truncheons, and riot troops (PHH) were helping victims and witness was several Policemen.

Whereas some 25 meters away witness saw 1 victim lying on the porch of Manuel Viegas Carrascalao's house and that Police had already set up a Police Line.

Whereas at the time witness spotted an ambulance parked at the scene of the incident and then witness heard a request over his Handy Talky for the hearse from the Sub Garrison and later the hearse arrived, and the victim lying on Manuel Viegas Carrascalao's porch was carried to the hearse and brought to the hospital.

Whereas 10 minutes later Taslim ordered witness to return to Makodim and to make sure that Kodim personnel were not to go out anywhere but to remain on standby at Makodim.

Whereas witness had never heard of the involvement of TNI personnel in the mass conflict at the house of Manuel Viegas Carrascalao.

Whereas witness was not acquainted with personnel from Maubara Koramil.

Whereas since the option was offered the Dandim had banned all native TNI personnel from carrying arms for 3 months prior to April 17, 1999.

Whereas there was no connection between native TNI personnel and the organizations PPI, PAM Swakarsa, Aitarak or any other similar organization.

Whereas only 1 intelligence officer in plainclothes was at Dili port after moving from the Governor's Office on April 17, 1999.

The Accused accepted and confirmed witness' testimony.

Testimony of witness: ABILIO LOPEZ.

Witness testified before the court under oath, and essentially related the following:

Whereas witness was acquainted with the Accused in Jakarta and witness was not related by family with the Accused.

Whereas in 1999 witness was assigned as Bintara Village Counsellor at Maubara Koramil, Kabupaten Liquisa.

Whereas during witness' term as babinsa in 1999, the Ramil was Peltu Carlos Amaral and his deputy was Sergeant Major Suparno.

Whereas on April 17, 1999, the Koramil commander at Maubara was on leave in Semarang, Java, from March to April 18, 1999, as his wife was Javanese.

Whereas Maubara Koramil personnel numbered 15 men, 14 of whom were native East Timorese, the exception being Suparno who was Javanese.

Whereas on April 17, 1999, none of the Maubara Koramil men left Koramil headquarters, as on that day the Dandim had issued an order through Serma Suparno that all men at the Koramil were to be on standby and not to leave their quarters.

Whereas witness did not recognize the names listed in the Charging Document, except for Carlos Amaral and Antonio Gomes, while the rest he did not know and had never heard their names.

Whereas witness was acquainted with Praka Antonio Gomes, who was formerly a Maubara Koramil man but in February 1999 was transferred to Dili Kodim.

Whereas on April 20, 1999, two bodies were dispatched to Dili to be buried in Maubara and Serma Suparno was present for the burial.

Whereas witness had not heard that TNI Koramil men from Maubara were involved in the mass conflict in Dili.

The Accused accepted and confirmed witness' testimony.

In considering, that the testimony of absent witnesses were also read in Court that essentially related the following:

WITNESSES' TESTIMONIES:

1. WITNESS LEANDRO ISAAC

- Whereas witness was coordinator of the Political Commission of CNRT and Manuel Carrascalao was a member of the CNRT National Political Commission;
- Whereas on April 17, 1999 witness' house was attacked first by the Militia at around 10.00 East Timor Time, and when witness contacted Manuel Carrascalao's house his son reported that their house was also under attack by the Militia;
- Whereas at the time Manuel Carrascalao's house came under attack, witness was at the hospital, and did not witness the attack;
- Whereas the people attacking Manuel Carrascalao's house were Militia men from Barisan Merah Putih (BMP) and Aitarak;
- Whereas when witness' house came under attack witness did not report the incident to the security agencies;
- Whereas witness knew of the attack on Manuel Carrascalao's house from Manuel Carrascalao's son named Manelito;
- Whereas the motive for the attack on Manuel Carrascalao's house was because Manuel Carrascalao was a Pro Independence figure and a CNRT member and always reported the situation in Dili abroad;

2. VICTOR dos SANTOS al. AFIN:

- Whereas on April 17 witness was at the house of Manuel Carrascalao;
- Whereas at around 12.00 East Timor Time Militia men from BMP and Aitarak arrived on truck and were about to enter Manuel Carrascalao's house but were driven away by Manelito (Manuel Carrascalao's son), but then they entered the house again and surrounded it. At the time witness was hiding in the kitchen and militia men attacked witness with samurai swords, machetes, and home-made guns, witness was attacked and shot, and witness pretended to be dead. When police and Brimob arrived the militia men had disbanded. Witness then attempted

to flee by climbing a wall but was detained by Brimob, and witness was then ordered to ride in the ambulance together with Alfredo and Florindo to be brought to Wirahusada Hospital;

- Whereas among the militia men who attacked Manuel Carrascalau's house witness recognized a few;

- Whereas witness did not see any security forces/ TNI men in uniform behind the militia men, what witness saw were big and tall men with short-cropped hair, but they did not carry arms;

- Whereas at the time of the incident witness did not see the Accused at the scene of the incident;

3. WITNESS JULIO de SOUSA

- Whereas on April 17, 1999 witness was in Maubara;

- Whereas witness did not see the attack on Manuel Carrascalau's house, witness only of it from militias who had left Maubara for the ceremony and who on their return related the incident of the attack on Manuel Carrascalau's house;

- Whereas witness was aware that many people from Maubara had sought refuge in Manuel Carrascalau's house;

- Whereas witness was informed by the military in Dili that there had been 12 victims of the attack, 11 were buried in Lebukoe, Maubara Liquica and one in Dili, and the burials took place two days after the attack, and the burials were facilitated by TNI and Militia in camouflage uniform and fully armed.

4. WITNESS DOMINGOS BOAVIDA

- Whereas on April 17, 1999 witness was in his house in Maubara. Two days later the Deputy Danramil (Parno) came to witness' house bringing a list of names of the dead from Manuel Carrascalau's house, numbering 11 victims;

- Whereas the Deputy Danramil asked witness to accompany him to the burial place to identify the bodies, as one of witness' children had gone to Dili;

- Whereas at the burial place in Lebukoe witness did not see the body of his son but he did see the body of his brother's son named Raul, and at the time witness saw there were 11 bodies;

- Whereas attending the burial were relatives of the victims, guarded by soldiers, and the burial took place from 6 in the evening to 10 at night.

5. SANTIAGO SANTOS

- Whereas on April 17, 1999 witness was in a small house behind Manuel Carrascalau's house;

- Whereas witness was in Manuel Carrascalau's house to seek refuge, for witness had been pressured by the militia to join their group;

- Whereas on April 17, 1999 witness heard a live broadcast on the radio about the grand roll-call in front of the East Timor Governor's Office led by the Governor of East Timor and attended by the Danrem, Kapolda and Militia Leader Joao Tavares and Deputy Militia Leader Eurico Gueteres, and followed by all militia members. After the ceremony witness heard Eurico Gueteres giving the command to kill all CNRT leaders, in particular the family of Manuel Carrascalau. Not long after the militia arrived and gunfire from the home-made firearms was heard and then the militia attacked all the people inside the house with machetes and home-made firearms;

- Whereas witness did not see security troops in uniform attacking Manuel Carrascalau's house, but witness saw that they had secured the place after the incident;

- Whereas there were 12 dead victims, 11 of whom were buried in Maubara and 1 in Dili.

6. MARIA CHRISTIANA CARRASCALAU

- Whereas on April 17, 1999, from 12.00 to 13.00 East Timor Time witness was not at her

home;

- Whereas witness had left her house for Comoro Airport to fetch her stepmother;
- Whereas on April 17, 1999 witness heard over a live broadcast on the radio of the ceremony flying the red and white flag and the blood oath made on the grounds of the East Timor Governor's Office;
- Whereas witness heard the voice of Eurico Gueteres delivering a speech to kill the Carrascalau family;
- Whereas witness left with her father, but on the way witness' father received a telephone call from witness' brother (Manelito) saying that their house had been surrounded by Militia;
- Whereas witness and witness' father then headed to the house of the Danrem (Tono Suratman), and witness' father reported the attack on witness' house and witness' father asked for arms to protect himself but this was not granted;
- Whereas witness then left for Bishop Belo's house, and at the time there was gunfire all around, and there were many vehicles carrying shouting militias and witness heard reports that witness' house had been attacked, witness did not know who the attackers were, but according to the reports the attackers were from the Militia;
- Whereas there were 12 victims of the attack;

7. WITNESS ABILIO YOSE ORARIO SOARES

- Whereas on April 17, 1999 witness was in Dili and at the time witness held the office of East Timor Governor;
- Whereas the duties of governor included the vertical implementation of government, development and community related tasks in coordination with relevant agencies that were generally all central agencies in the region assisting the governor in the implementation of his regional tasks.
- Whereas the east Timor issue had become complicated following the intervention of the international community. The climax came with the engineered award of the Nobel Prize to Ramos Horta. Then there was the demand for independence and the granting of special autonomy. At the time witness had requested against holding a referendum and witness appealed for reconciliation, and a meeting was then held in Australia attended by Aposeti, UDT and Fretilin. And at the time witness instructed all Bupatis to form a Pam Swakarsa with the purpose of forestalling physical clashes between the opposing groups in all Level II Regions. Throughout the referendum Pemda formed 2 organizations, FPDK (Forum Persatuan Demokrasi dan Keadilan) and BRTT (Barisan Rakyat Timor Timur) aimed at amassing all East Timorese down to the village level. However in practice fraudulent acts were committed by Unamet and that was admitted by Unamet itself. Then the populace began to seek refuge;
- Whereas in undertaking regional government coordination is required with the relevant agencies, in particular Muspida elements (Commander, Police and Legal) and any issues that arise are discussed in this forum;
- Witness as Governor of East Timor Province was not assigned duties and responsibilities relating to the Tri Partite agreement;
- Whereas prior to the Referendum Level II Pemdases officially formed PAM Swakarsa organizations under a Governor's Decree. These were led by the respective bupatis and were tasked with assisting Level II Pemdas to provide security and order among the populace and PAM Swakarsa only held training for PBB;
- Existing task forces were only those from the center, namely the Inter Departmental Task Force headed by the Foreign Affairs Department and the Komnas Ham Task Force;
- Whereas witness knew of the attack on Manuel Carrascalau's house after the referendum was held, as witness' house was adjacent to this house;
- Whereas the announcement of the outcome of the referendum that was won by the pro

independence group was engineered by Unamet;

- The reason for forming Pam Swakarsa was the security disturbance occurring everywhere, the concept was to prepare personnel to secure the ballots during the referendum, there was no instruction from central government to form Pam swakarsa. Funds for this purpose was derived from APBD and all Pam swakarsa activities were always reported, but there was no direction from central government.

8. Drs. BASILIO DIAS ARAUJO, MA

- In the situation preceding the referendum, witness witnessed the excavation of a mass grave comprising four pits by the International red Cross. The murder was carried out by Fretilin leaders and in 1999 witness received a report from Michael Babo, an Ermera figure, on the killings of 11 pro integration people that were orchestrated by pastor Domingo Soares;
- Throughout the referendum witness heard numerous complaints of improbity on the part of Unamet and several NGOs monitoring the referendum, and all these complaints were reported to KPS and Unamet;
- Following the referendum, on September 2, 1999 these violations were reported to the three judges from Unamet's Electoral Commission, and after receiving the report the three judges admitted that there had been improbity and Judge Krigler then reprimanded Mr Jef Fisher as the referendum's responsible person and warned him not to repeat the mistakes;
- On April 17, 1999 witness attended on the Danrem, Tono Suratman, at his residence to receive some foreign dignitaries, as at the time witness was acting as interpreter;
- At 12.00 East Timor Time Manuel Carrascalau and his daughter arrived to see the Danrem to request arms but this was refused as Manuel Carrascalao was a CNRT member, and witness then returned home to Delta Comoro;
- Throughout the entire time witness was with the Danrem, the Danrem never issued an order as he was not accompanied by his staff and he did not carry any communication device at the meeting;
- Witness did not know about the inauguration ceremony for Pam Swakarsa held on April 17, 1999 on the grounds of the East Timor Governor's Office;
- Witness did not know who carried out the attack on Manuel Carrascalau's house.

9. JOAO SILVA TAVARES

- Whereas on April 17, 1999, witness acted as inspector of ceremonies on the grounds of the east Timor Governor's office as he had been invited by Eurico Gueteres, and the event was attended by the East Timor Governor and the entire officials of Level I Muspida. As inspector of ceremonies witness directed participants to build up nationalism and patriotism for the nation and state. The second speaker was Eurico Gueteres, who spoke of upholding discipline, and fidelity toward the state and the nation. The ceremony was followed by a common meal at the East Timor Governor's Office Assembly Hall. Participants to the roll-call consisted of some 1,500 people, from the Aitarak group under the leadership of Eurico Gueteres and the BMP group under the leadership of Manuel. After arriving in Atambua witness heard from bus passengers he met on the road that an attack had been made on Manuel Carrascalau's house, and one of the resulting victims was the son of Manuel Carrascalau (Manelito);
- According to information that witness obtained, when militias formed a procession around the town after the ceremony, and passed by Manuel Carrascalau's house, there were men and women who had been abducted and held in Manuel Carrascalau's house and these people ran out and shouted and the people in the procession got down from their trucks and entered Manuel Carrascalau's house and began attacking;
- Whereas witness was commander of the Halilintar (Thunderbolt) group, but that was only a name, and there were 124 Halilintar members, and witness himself trained them. And we had

weapons left behind by the Porto who departed East Timor, we had 62 firearms and we handed over all of these to the human rights worker assigned by the UN and the General from Untaet;

- Witness did not know to what end the roll-call on April 17, 1999 was held, witness was only invited by Eurico Gueteres and told to act as inspector of ceremonies.

10. WITNESS SUPARNO

- Whereas witness was assigned to East Timor from 1979 and before, during and after the referendum was held in East Timor witness' duties were routine administrative duties for koramil;

- Whereas on April 19, 1999, witness was stationed in Maubara, as the distance between Maubara and Dili is about 40 kilometers, witness did not know of the attack on Manuel Carrascalau's house;

- Whereas witness never received a direct order from the Dandim;

- Witness had heard of a Pam Swakarsa in Kec. Maubara, but witness did not know the name of the group or its leader, and to witness' knowledge Pam Swakarsa was tasked to assist in creating security in the respective neighborhoods or to keep watch in neighborhood security posts;

- Whereas witness had never had any contact with the Pam Swakarsa group;

- Whereas Maubara Koramil 03 had taken in a territorial troop that had been under BKO numbering some 20 men, witness did not recall what unit they came from, witness only knew they came from Sumatra, and were there to assist in Koramil territorial duties;

- Whereas in the Maubara Koramil area there was no Wanra, there was only Ratih (Trained Populace) who were dressed like Hansip, and numbered some 20 men.

11. Dr.A.S.S. TAMBUNAN, SH

- Whereas a military doctrine applies in the duties of a TNI commander, in that the commander is responsible for the actions and non-actions of the members of the unit he heads. The doctrine relates to military responsibilities and encompasses strength building and employing unit strength. A commander may not fault his men if a military

- operation/mission/task undertaken by his men fails, and he is responsible for the safety of the unit and his men and he is responsible for the maintenance of discipline and order in his unit;

- This military doctrine does not cover legal responsibility. If frequent violations of the law occur, then the maintenance of discipline in the unit he heads has failed or does not meet standards, therefore military responsibility differs from juridical responsibility, whether civil or criminal;

- Whereas the undertaking of a task may be under the orders of the superior in charge, but may also refer to official regulations. In the military world orders may be given in writing or verbally, and both have equal strength. This is usually the case for simple orders;

- Whereas under the article in Government Regulation No.24 Year 1949 on Military Discipline, the military superior giving the order is responsible for the purpose and undertaking of the order he gives. Responsibility here refers to military responsibility and not juridical responsibility, whether civil, or criminal;

- Whereas under article 5 paragraph 4 of the Military Discipline Regulation, a superior is required to supervise all of his subordinates' work. Thus a military superior is required to supervise the undertaking of an order given to subordinates, and conversely, a military subordinate receiving an order from his superior is required to report the result of the order's undertaking to his superior, as well as any other relevant matters;

- If tasks are not carried out in accordance with the order given to a subordinate, there may be two reasons for this, that the subordinate may not have understood the purpose and objective

of the order, or that the subordinate had indeed miscarried the order;

- Whereas military responsibility is intrinsic in the superior giving an order. However juridical responsibility hinges on the situation, if the order given by a superior is wrongly construed by the subordinate receiving the order, then juridical responsibility lies with the subordinate. But the superior giving the order is still subject to military responsibility;

- Whereas the superior giving the order is subject to military responsibility but juridically the subordinate is responsible, meaning that juridically the actions of the subordinate in terms of his function/position negate his superior's responsibility unless the actions of the subordinate violate the law although they are in accordance with the order or instruction from the superior, however this will depend on the case;

- Whereas the case in East Timor occurred under normal conditions or a state of peril, a state of peril being construed as provided for under Law No.23/PRP/1959 or under article 58 KUHPM.

12. CARLOS AMARAL

Whereas witness was acquainted with the Accused in a superior-subordinate relationship, but is not related by family;

Whereas witness acted as Danramil of Maubara from 1997 until the time that TNI departed East Timor;

Whereas on April 17, 1999, witness was traveling from Denpasar to Kupang after being on leave in Semarang, Central Java.

Whereas witness arrived in Kupang on April 20, 1999 and stayed in Kupang for some time before departing Kupang on April 25, 1999 and arriving in Maubara on April 28, 1999.

Whereas before departing on leave, witness and his wife reported to Liquisa Dandim and to the Danrem as his leave was taking him out of East Timor.

Whereas before leaving Maubara Koramil witness handed over his duties and the supervision of Maubara Koramil and its men to Sergeant Major Suparno as Bintara, for Maubara Koramil Administrative and Internal Matters.

Whereas on his return witness received a report from Serma Suparno that on April 17, 1999, a mass conflict had taken place at the house of Manuel Viegas Carrascalao in Dili and that 2 victims had died in the incident. Then on April 20, 1999 they were buried in the public cemetery in Maubara.

Whereas witness received a report from Serma Suparno that on April 17, 1999 no member of the Koramil had left the Maubara Koramil headquarters, all had been on stand-by as ordered by Liquisa Dandim.

Whereas to witness knowledge no member of Maubara Koramil was involved in the mass conflict at the house of Manuel Viegas Carrascalao on April 17, 1999.

The Accused accepted and confirmed witness' testimony.

In considering, that the court also heard the testimony of the Accused that essentially related the following:

Whereas the Accused was Dandim of Dili from September 1997 to August 9, 1999, and was then replaced by Letkol.Inf. Sudjarwo.

Whereas on April 17, 1999 at approximately 9.00 wita the Accused had gone to Comoro Airport for the security of the Irish dignitaries, as in addition to the Accused's duties as Garrison commander he was also tasked with indirect security.

Whereas the task at the Airport was more important in anticipating security for VIP guests, in light of the current situation and past experience, and the threats from Pro Independence groups, while Kodim duties were put in the hands of the Kasdim.

On April 16, 1999 in the evening the Accused was informed that a roll-call for the inauguration of PAM Swakarsa would be held on the Governor's grounds, on April 17, 1999. Whereas the permit for holding the roll-call was the jurisdiction of police, including all its consequences and excesses, while Kodim was prepared to assist upon request. Whereas the main task of the Accused as Dandim was to provide protection against all threats to the sovereignty of the State and provision of geo, demo and komses for space to endeavor. Whereas throughout the roll-call, the Accused maintained radio contact to monitor the situation, although the Accused was not invited to the PAM Swakarsa roll-call ceremony. Whereas at 11.30 the Accused received a report from the Kasdim via HT informing him that a mass conflict had broken out at the house of Manuel Viegas Carrascalao, and the Accused then ordered the Kasdim to mobilize the troops in Kodim on standby to head to the scene of the incident. The Accused then reported to the Dan Rem before heading to the scene of the incident himself, while the accused could not reach the Kapolres. Whereas at the time Kodim was in a state of alert, meaning that all troops were to be on standby at Kodim in full gear to anticipate any situation. Whereas at the scene of the incident the Accused observed that a Police Line had been erected, with many policemen present led by a Captain, while the Kasdim and several Kodim men were also there. Whereas the Kasdim reported that there were fatalities and wounded who had been brought to Wirayudha hospital, and that the violence had been brought into control by the security apparatus, and several Kodim men were providing help to victims. Whereas there were 5 fatalities resulting from the conflict as Level II Depsos had requested 5 coffins. Whereas the Accused had received no information about a mass attack on the house of Manuel Viegas Carrascalao, either preceding or following the roll-call, for since the option, the Bupati was occupied with activities in preparation for the referendum, and hence there had been no more muspida meetings. Whereas no TNI personnel under the effective control of the Accused, or any other TNI personnel, were observed in the conflict in Manuel Viegas Carrascalao's house. Whereas on April 21, 1999, the Accused had endorsed and signed a peace agreement between the Pro Integration and the Pro Independence groups.

In considering, that although the BAP refers to a list of evidence, in court the Ad Hoc Public Prosecutor has not exhibited this evidence despite requests by the Panel of Justices.

In considering, that having linked the testimonies of witnesses and the Accused, a number of facts of law have emerged:

1. Whereas the Accused Endar Priyanto held the office of Military District 1627 Dili Commander under Skep Kasad No.Skep/504/X/1997 dated October 1, 1997.
2. Whereas Kodim 1627 Dili oversaw 4 Koramils with 380 TNI personnel.
3. Whereas Kodim 1627 operations area included Kabupaten Dili.
4. Whereas on April 17, 1999, at approximately 09.00 - 11.00 wita a grand roll-call ceremony was held to inaugurate PAM Swakarsa in front of the East Timor Governor's Office.
5. Whereas at the close of the ceremony the BMP (Besi Merah Putih) group formed a procession and returned to Maubara following a route that passed by the house of Manuel Viegas Carrascalao.
6. Whereas BMP was a Pro Integration group and a Pro Independence group were inside the house of Manuel Viegas Carrascalao.

7. Whereas when the BMP group passed by the house of Manuel Viegas Carrascalao they heard cries for help from Maubara residents who had been presumed missing.
8. Whereas in the attempt by BMP to provide help a mass conflict broke out between the two groups.
9. Whereas the mass conflict resulted in a number of dead and wounded.

In considering, whereas by the facts of law uncovered in court in relation to the Ad Hoc Public Prosecutor's charges, is the Accused proved guilty of serious human rights violations as charged by the Ad Hoc Public Prosecutor.

In considering, whereas under the Ad Hoc Public Prosecutor's Charging Document the charges are set forth cumulatively as follows:

FIRST

Violation of article 42 paragraph (1) items a and b jis article 7 item b, article 9 item a, article 42 paragraph (3), article 37 Law No.26 year 2000 concerning Human Rights Tribunals.

SECOND.

Violation of article 42 paragraph (1) items a and b jis article 7 item b, article 9 item h, article 42 paragraph (3), article 40 Law No.26 year 2000 concerning Human Rights Tribunals.

In considering, whereas in order to determine if the Accused should be convicted or not under the Ad Hoc Public Prosecutor's charging document, the Panel of Justices shall refer to the provisions for conviction (Strat Voralissetzungen).

The science of criminal law recognizes 2 doctrines:

1. The monistic doctrine adopted among others by Prof.Mr.D.Simons, Prof.Mr.G.A. Van Hammer.
2. The monodualistic doctrine pioneered by Herman Kantorwicz and in Indonesia was introduced by Prof. Mulyatno, Prof.Ruslan Saleh and Prof. Andi Zaenal Abidin.

In considering, whereas the monodualistic doctrine first distinguishes the elements of the offense (actus reus) from the elements of the offender (mens rea), the elements of the offense (actus reus) comprise:

1. Fitting the formulas of the Law.
2. Violation of the law.
3. No reason for justification.

The elements of the offender (Mens Rea) comprise:

1. An offense (in the broad sense).
2. No reason for exoneration.

In considering, whereas in order to discover if the Accused's offense fits the Law, the elements of each of the Ad Hoc Public Prosecutor's charges must first be established.

FIRST:

The elements in article 42 are:

1. A person effectively acting as Military Commander responsible for serious human rights violations.
2. Perpetrated by troops under his effective command and control or under his effective power and control.

3. No appropriate control was exerted over the troops.
4. The military commander was aware or should have been aware that his troops were perpetrating or had just perpetrated serious human rights violations.
5. The military commander did not take appropriate and necessary measures to prevent or halt or surrender the perpetrators to the authorities.

Element in article 7 item b:
- Crimes against humanity.

Elements in article 9 item a and article 340 KUHP (Criminal Code):

1. A widespread or systematic attack directed at the civilian population.
2. Intent or will.
3. Premeditation.
4. Causing loss of life to others.

Element in article 37 and article 42 paragraph (3) is the provision of a criminal code.

SECOND:

The elements in article 42 paragraph (1) items a and b for elements No.1 to 5 are similar for the second charge as in the first charge, and as such the panel will not reiterate them, except for the element of assault.

The element in article 7 item b is also similar to that in the first charge, and as such the panel will not reiterate it.

Elements in article 9 item h are:

1. A widespread or systematic attack.
2. Assault against a certain group.

The element in article 40 and the element in article 42 paragraph (3) is the provision of a criminal code.

In considering, whereas the panel shall analyze the first element in the first charge by the Ad Hoc Public Prosecutor, namely:

A person effectively acting as Military Commander responsible for serious human rights violations.

In considering, whereas military commander refers to a military person/soldier who due to his position as granted through a letter of appointment controls several military units/soldiers.

In considering, whereas under Skep Kasad Np.Skep/504/X/1997 dated October 1, 1997 the Accused held the position of Military District Commander in Kabupaten Dili.

In considering, whereas on the basis of the above reference and connecting the facts of law as disclosed in court, the Accused Endar Priyanto was appointed under a letter of appointment as Military District Commander (Dandim) 1627 Dili from October 1, 1997 to August 9, 1999, overseeing 4 Koramils and 380 military personnel.

In considering, whereas as such the element of Military Commander is met.

In considering, whereas the first element includes serious human rights violations.

In considering, whereas serious human rights violations, under article 7 Law No.26 year 2000, include the crime of genocide and crimes against humanity.

According to the explanation in article 7, "crimes of genocide and crimes against humanity are in conformance with" the Rome Statute of the International Criminal Court (articles 6 and 7).

In considering, whereas Law No.26 year 2000 on Human Rights tribunals provides no clear definition except in article 9, crimes against humanity as referred to in article 7 item b are acts perpetrated as part of a widespread or systematic attack in which such attack is directed at the civilian population, such as:

- a. Murder
- b. Extermination
- c. Enslavement.
- d. Eviction or forcible deportation.
- e. Deprivation of liberty or deprivation of physical liberty in a willful manner in violation of the fundamental rules of international law.
- f. Torture
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or other comparable forms of sexual violence.
- h. Assault against a certain group or order based on political beliefs, race, nationality, ethnicity, culture, religion, gender, or any other reason that is universally banned under international law.
- i. Forcible disappearance or
- j. The crime of apartheid.

In considering, whereas both Law No.26 year 2000 that adopts articles 6 and 7 of the Rome Statute and as such is part of the International criminal code, and UN charter article 6c on the definition of crimes against humanity, are essentially similar in that they place emphasis on violence directed at the civilian population.

In considering, whereas before considering element ad.2, it must first be considered if serious human rights violations were committed in East Timor as charged by the Ad Hoc Public Prosecutor.

In considering, whereas the Ad Hoc Public Prosecutor in the Charging Document, pages 71 and 71, states that the incident of the attack on the residence of Manuel Viegas Carrascalao on April 17 1999 that resulted in casualties among the civilian population constitutes a serious human rights violation.

In considering, whereas determining if a serious human rights violation was or was not committed by the accounts above, in the panel's opinion will hinge on the answer to the question, was the attack part of a widespread or systematic attack directed at the civilian population in the form of murder and or assault.

In considering, whereas the Law providing no clear definition on a widespread or systematic attack, the panel shall refer to international judicial practices as well as international legal literature.

In considering, whereas the definition of a widespread attack according to Arne Willy Dahl (Judge Advocate General) of Norway, is one that is directed against a multiplicity of victims. There is also the view that a widespread attack refers to its massiveness, the scale of the crime and geography.

The definition of a systematic attack is based on the idea or principle of planned research or observation employing generally used procedures. In relation to human rights violations the definition of systematic may mean an activity bearing a similar pattern and consistent. Pattern here means interconnected structure or design, while consistent here constitutes a notion marked by unchanging position or interconnection, and also having a certain established character and directed repeatedly.

Another view on the definition of a systematic attack is an attack carried out pursuant to a preconceived policy or plan (Arne Willy Dahl - Norwegian Judge Advocate General).

In considering, whereas on the basis of the above definitions and the facts of law uncovered in witnesses' testimonies, the Accused's testimony, and other evidential endeavors, the panel is of the opinion that the incidents of April 17, 1999 constitute serious human rights violations, based on the following reasons:

1. The attack produced victims, both fatal and wounded, from the civilian population.
2. Whereas the attack was carried out in a systematic manner, as visible in the organized structure of the attacking group and the Pro Integration/autonomy group's use of homemade firearms, machetes and bows and arrows to consciously commit murder and torture resulting in death and injury directed against the group of victims, and the ample time span for the group to assemble until they numbered in the hundreds.
3. Whereas this group was organized as evident in that there was a group leader and subgroup leaders within the Pro Integration/autonomy group.

In considering, whereas the question now is whether the serious violation of human rights as proved in the above deliberations was in fact committed by the Accused's subordinates who were under his effective control.

In considering, whereas before replying to the question the Panel shall first need to discuss the next elements as in the elements below the Military Commander did not take effective control of his men in an appropriate manner, namely:

- The Military Commander or the individual was aware or under the circumstances should have been aware that his men were perpetrating or had just perpetrated serious human rights abuses, and the Military Commander or the individual did not take appropriate and necessary actions to prevent or halt the abuses or surrender the perpetrators to the authorities for investigation, examination and prosecution.

In considering, whereas in the panel's view the element "Commander" needs no further discussion as the element was previously discussed above and Commander here refers to the Accused Endar Priyanto in his capacity as Dandim of Dili East Timor.

In considering, whereas determining if the Accused did not take effective control of the men under his command, shall properly hinge on the reply to the following questions:

- a. Was the Accused as Commander indeed aware, or consciously disregarding information clearly indicating that his subordinates were perpetrating or had just perpetrated serious human rights abuses?
- b. Did the Accused as superior indeed fail to take appropriate and necessary actions within his

jurisdiction to prevent or halt the abuses or to surrender the perpetrators to the authorities for investigation, examination and prosecution?

In considering, whereas the legal facts uncovered in court reveal that the Accused was informed of serious human rights abuses perpetrated in the residence of Manuel Viegas Carrascalao on April 17, 1999 from the report of witness Salman Manafe as Kasdim 1627 Dili, however subsequently it was not proved that TNI personnel from Kodim 1627 Dili were involved in the incident.

In considering, whereas the Ad Hoc Public Prosecutor in his charge states that there were TNI members, namely Jose Matheus Theofilo Dasilva De Beskau Antonio De Gomes Miguel Duarte Amaral Carlos Baltilang, who took part in the attack on the people in Manuel Viegas Carrascalao's house, and according to the legal facts uncovered in court from the testimony of victim witnesses appearing in court (witnesses Florido de Yesus and Alfredo de Sanches), indeed TNI personnel were involved in the attack on Manuel Viegas Carrascalao's house who were from Koramil Maubara that does not come into the jurisdiction of Dandim 1627 Dili, however this was refuted by several other witnesses.

In considering, whereas in the above the Accused is stated to have been aware and informed, but as recounted above none of the Accused's subordinates were proven to have committed serious human rights abuses and furthermore the Accused did not disregard information, the issue now is whether the Accused should be held criminally responsible for the serious human rights abuses that took place in Dili.

In considering, whereas in this case responsibility pertains to the responsibility of a superior or commander, in which juridically no definition of command/commander exists in Indonesia other than normally employed within TNI, and under the Command Doctrine is the power by law to command and direct the unit of soldiers under his command, or the term command may also refer to:

- a. A unit.
- b. A direction or order.
- c. A special TNI-AD unit.

In ICTR (International Court Tribunal Rwanda), the judgment Akayebale Paragraph 458 states that various views on Mens Rea are necessary for Command responsibility, according to one view it stems from legal rules and the established obligation that a superior is criminally responsible for the acts committed by his subordinates without it being necessary to prove the criminal intent of the superior.

In considering, whereas command responsibility according to PLT Sihombing, SH.LLM (command responsibility in an essay), "Command unity is applied through the chain of command, which is the hierarchical channel from the highest command to the lowest command, wherein under the policy on decisions and orders originating from the top command and distributed hierarchically by command units to the implementation level, implementation decisions may only be made by officials with positions in the chain of command.

In considering, whereas based on the above analyses, it was not proved that the serious human rights violations committed in Dili were perpetrated by the Accused's subordinates and therefore it is irrelevant to consider the element that the "Commander" did not take

appropriate and necessary actions within his jurisdiction to prevent or halt these violations or to surrender the perpetrators for investigation and prosecution.

In considering, whereas the serious human rights violations were not proved to have been perpetrated by the Accused's subordinates in relation to the principle of Command responsibility, the panel concludes that the Accused should not be burdened with criminal responsibility for serious human rights violations not proved to have been committed by his subordinates.

In considering, whereas therefore the second and third elements are not fulfilled.

In considering, whereas the two principal elements above not having been proved, the Accused who is charged with the criminal act of serious human rights violations under article 42 paragraph 1 items a and b jis article 7 item b, article 9 item a, article 42 paragraph 3, article 37 Law No.26 year 2000 on Human Rights Tribunals, must be stated not proved guilty by law.

In considering, whereas based on the arguments set forth above, the Accused must be released from the first charge (vrijspraak).

In considering, whereas the charging document by the Ad Hoc Public Prosecutor is cumulative in nature, procedurally the panel shall deliberate on the second charge containing the following principal elements:

1. A Military Commander.
2. Presence of serious human rights violations perpetrated by his subordinates under his effective power and control.
3. The superior did not exert appropriate control over his troops, namely:
 - The military commander was aware of, or lawfully disregarded information clearly indicating that his troops were perpetrating or had just perpetrated serious human rights violations, and
 - The military commander did not take appropriate and necessary measures within his jurisdiction to prevent or halt or surrender the perpetrators to the authorities for investigation, examination and prosecution.
4. Crimes against humanity.
5. Assault directed against a certain group.

In considering, whereas the panel will first deliberate on article 7 item b jis article 9 item h as supplementary articles and article 42 paragraph 2 items a and b Law No.26 year 2000.

Article 7 item b stipulates that human rights violations constitute:

- a. Crimes of genocide.
- b. Crimes against humanity.

In considering, whereas deliberation of article 7 item b having been conducted under the first charge, therefore, mutatis mutandi, the Panel shall apply such deliberation to article 7 item b of for the second charge.

Article 9 item h reforms to one form of crimes against humanity as "Assault against a certain group."

In considering, whereas according to the facts of law uncovered in court, it is clearly proved that the perpetrators of the attack, who were joined in a Pro Integration group (Besi Merah

Putih), and employed homemade firearms, machetes and bows and arrows, had intentionally assaulted the victims in Manuel Viegas Carrascalao's house on April 17, 1999.

In considering, whereas as mentioned above one form of crimes against humanity is "assault" and the element of assault having been proved, the panel shall now consider the charge of serious human rights violations as regulated under article 42 paragraph 1 items a and b Law No.26 year 2000.

In considering, whereas the discussion of principal elements from article 42 paragraph 1 items a and b Law No.26 year 2000 was considered in the first charge above, therefore in the second charge the panel shall not repeat the discussion, however the panel shall mutatis mutandi apply the discussion for consideration in the second charge.

In considering, whereas the two principal elements from article 42 paragraph 1 items a and b not having been proved, therefore the Accused who is charged with serious human rights violations under article 42 paragraph 1 items a and b jis article 7 item b, article 9 item h, article 42 paragraph 3, article 40 Law No.26 year 2000 on Human Rights Tribunals should also by law be proved not guilty.

In considering, whereas therefore under the second charge the Accused must be released of all charges (Vrij Spraak).

In considering, whereas, on the basis of the entire considerations made, the Panel concludes by law that the Accused is proved not guilty by law to have committed the criminal act of serious human rights violations as charged in both the first charge and second charge.

In considering, whereas therefore the Accused should be released from all charges (Vrij Spraak).

In considering, whereas the Accused having been released from all charges, therefore to the Accused should be restored all rights, in terms of capacity, position and respect and dignity.

In considering, whereas the evidence list contained in the BAP was never exhibited before the court despite the panel's request to the Ad Hoc Public prosecutor to this effect, the panel shall not take such list into consideration.

In considering, whereas the Accused having been released from all charges, court costs shall be borne by the State.

In light of Law Number 39 Year 1999 jo article 10 Law Number 26 year 2000 jo article 19 paragraph 1, article 19 paragraph 1 KUHAP jo article 14 paragraph 1 Government Regulation No.27 year 1983 and other legislation associated with this case.

THE TRIBUNAL:

1. Pronounces the Accused Endar Priyanto lawfully and convincingly not proven guilty of the criminal act of serious human rights violations as charged against him under the First Charge and the Second Charge.
2. Releases the Accused from such charges.

3. Restores the rights of the Accused in terms of capacity, position and respect and dignity.
4. Charges all court costs to the State.

Thus was this judgment reached in a deliberative meeting of the Ad Hoc Panel of Justices in Central Jakarta District Court on Monday, November 25, 2002 by ourselves: Amril, SH as Chief Justice of the Panel, Edi Wibisono, SE.SH.MH, Amiruddin Aburaera, SH, HM. Kabul Supriyadhie, SH.MHUM, Sulaeman Hamid, SH, respectively as Member Justices, which judgment was pronounced on Friday, November 29, 2002, in a tribunal declared open to the public by the Chief Justice of the Panel, accompanied by Member Justices, and assisted by Rivita Lina, SH, and Parmin, SH, as Substitute Court Clerks and attended by K. Lere, SH, Harry Ismi, SH.MH, Ad Hoc Public Prosecutors and the Accused who was attended by his Legal Counsel Team.

Member Justices Chief Justice

Signed signed

1. Edi Wibisono, SE.SH.MH Amril, SH

Signed

2. Amiruddin Aburaera, SH

Signed

3. HM. Kabul Supriyadhie, SH.MHUM

Signed

4. Sulaeman Hamid, SH

Substitute Court Clerks:

Ravita Lina, SH

Parmin, SH