

Judgement

Defendant Abilio Jose Osorio Soares

Indonesian Ad Hoc Tribunal - Judgement of Abilio Soares

VERDICT

No. 01/PID.HAM/AD.Hoc/2002/ph.JKT.PST.

"FOR JUSTICE BASED ON BELIEF IN THE ONE GOD"

The Ad Hoc Human Rights Tribunal at the Human Rights Court of Justice of Central Jakarta that has examined and tried the criminal case of Serious Human Rights Violations in East Timor in the first degree in a Regular Proceeding, rules as follows, in the case of the Accused:

Full Name : ABILIO JOSE OSORIO SOARES

Place of Birth : Lacubar

Age/Date of Birth : 53 years/ June 2, 1947

Sex : Male

Nationality : Indonesia

Residence : Jl. Tim-Tim Km.II Kupang NTT and

Jl. Teluk Semangka, Duren Sawit, Jakarta Timur

Religion : Catholic

Occupation : PNS

Last Position : Governor of East Timor

The Accused was not detained;

The Accused was represented by a Legal Counsel team: Otto Cornelis Kaligis, SH, et al, based on Special Power of Attorney dated 04 March 2002;

The Ad Hoc Human Rights Tribunal;

After reading the files relating to the case;

After reading the Decision of the Head of the Human Rights Court of Justice of Central Jakarta No: 01/PID.HAM/AD.HOC/2002/PH.JKT.PST., dated February 21, 2002, concerning Appointment of Panel of Justices to examine and try the case;

After reading the Decision of the Head of Panel of Justices No: 01/PID.HAM/AD.HOC/2002/PH.JKT.PST., dated February 28, 2002, concerning Determination of Trial Date;

After hearing a reading of the Charging Document by the Public Prosecutor, File Case No: 02/HAM/TIM-TIM/02/2002 dated February 20, 2002;

After reading Preliminary Verdict No.01/PID.HAM/AD.HOC/2002/PH.JKT.PST., read by the Panel of Justices before the court on April 4, 2002, which states the following:

1. Objection submitted by the Accused's Legal Counsel Team is overruled;
2. The Charging Document submitted by the Ad Hoc Public Prosecutor read on Thursday, March 14, 2002 meets requirements and is therefore acceptable as grounds for examination in this case;
3. The Ad Hoc Human Rights Court of Central Jakarta shall continue to examine the Accused Abilio Jose Osorio Soares;

After hearing:

The criminal charge submitted by the Ad Hoc Public Prosecutor dated July 11, 2002 of Serious Human Rights violations in East Timor that states the following:

CHARGES

That the Panel of Justices for the Ad Hoc Human Rights Court of Central Jakarta examining and trying this case, rules:

1. To find the Accused: Abilio Jose Osorio Soares guilty of crimes against humanity under Law:

First : by violating Article 42 verse (2) a and b jis Article 9 letter a, Article 37 of Law Number 26 Year 2000 concerning Human Rights Tribunal

Second : by violating Article 42 verse (2) a and b jis Article 7 letter b, Article 9 letter h, Article 40 of Law Number 26 Year 2000 Concerning Human Right Tribunal.

As stated in the Public Prosecutor's Charging Document mentioned above.

2. To convict the Accused Abilio Jose Osorio Soares with a prison sentence of:
10 (ten) years 6 (six) months

3. To state that the evidence:

- 1) 2 (two) pieces of cloth drapery
 - 2) 1 (one) pair of brown slippers
- may be used in another case

4. To rule that the Accused pay court costs amounting to Rp.5,000,- (five thousand rupiah)

In considering, that after hearing the Defense Closing Brief by the Accused that in essence calls for the Panel of Justices to determine his support for the oppressed and the persecuted but that was never perceived by those fighting for Human Rights, due to having been absorbed and trapped in a biased, narrow and tendentious understanding of democracy, that therefore the law, justice and truth may be upheld;

And after also hearing the Defense Closing Brief by the Accused's Legal Counsel Team on July 18, 2002, which contents, in essence, are as follows:

1. Stating the Accused Abilio Jose Osorio Soares to be proven not guilty legally and with certainty by law, of the acts he is accused of on the first and second charges;
2. Freeing the Accused Abilio Jose Osirio Soares from all accusations (vrijspraak);
3. Or at the very least releasing the Accused Abilio Jose Osirio Soares from all legal charges

(ontslaag van alle rechtsvervolging);

4. Restoring the good name, esteem, dignity and position of the Accused Abilio Jose Osorio Soares to their original state;

5. Charging all trial costs to the state.

The Ad Hoc Public Prosecutor's Replication stating their charges will be maintained:

The Rejoinder of the Accused Abilio Jose Osorio Soares and his Legal Counsel that in essence respectively states the defense will be maintained;

In considering, that in accordance with the Ad Hoc Public Prosecutor's charges dated February 14, 2002, Case No.: 02/HAM/Timor Timur/02/2002, the Accused is accused of the following:

FIRST:

That he, the Accused Abilio Jose Osorio Soares as Governor KDH TkI of East Timor was installed on the basis of KEPPRES RI Number 260/M/Th.1997 dated September 16, 1997, on April 3, 4, 5, 6, 1999, on April 17, 1999, on September 4, 5, 6, 1999, or in the times in the months of April and September 1999, situated in Kabupaten Liquisa, in Kabupaten Covalima (in Suai town), in Kabupaten Dili and Administrative town of Dili or at least in the Province of East Timor which the Ad Hoc Human Rights Court at the District Court of Central Jakarta is authorized to examine and rule on the case of the Accused on the basis of Article 2 Keppres No. 96 year 2001 concerning changes to Keppres No. 53 year 2001 concerning Establishment of Ad Hoc Human Rights Court at the District Court of Central Jakarta, the Accused as Governor KDH Tk.I East Timor and as the superior of Bupati KDH Tk.II Kabupaten Liquisa, Leonito Martins, Bupati KDH Tk.II Covalima, Drs. Herman Sedyono, and Deputy Commander of Pejuang Pro Integrasi (PPI) Eurico Gutteres in Kabupaten Dili/Administrative town of Dili in Dili is criminally responsible for the serious human rights violations perpetrated by his subordinates, namely: Bupati KDH Tk.II Kabupaten Liquisa, Leonito Martins, Bupati KDH TK.II Covalima Drs. Herman Sedyono and Deputy Commander of Pejuang Pro Integrasi (PPI) Eurico Gutteres in Kabupaten Dili/Administrative town of Dili in Dili that was under his rule and effective control, as the Accused did not exert proper and correct control over his subordinates:

- The Accused knew or consciously disregarded information clearly indicating that his subordinates, namely: Bupati KDH Tk.II Kabupaten Liquisa, Leonito Martins, Bupati KDH Tk.II Covalima, Drs. Herman Sedyono, and Deputy Commander of Pejuang Pro Integrasi (PPI) were committing or had just committed serious human rights violations in the form of Murder perpetrated as part of a widespread or systematic attack aimed directly at pro independence civilian residents. In this case the Accused as Governor and as Head of Government in the Province of East Timor under Law Number 5 year 1974 concerning Principles of Regional Government was tasked to lead implementation of, and was fully responsible for the course of Regional Government and due to his position the Accused was responsible for the maintenance of peace and order in the region and was also obliged to determine policy to eliminate or prevent disturbances both preventive and repressive, which task and obligation were not conducted properly according to Law Number 5 year 1974, the Accused did not act or did not take suitable and necessary measures such as coordinating with security apparatus to prevent or halt the actions of his subordinates or to hand the perpetrators over to the authorities for examination, investigation and arraignment, such that attacks were perpetrated on civilian residents, namely:

- The attack by a pro integration group on pro independence civilian residents who had sought refuge in the residence of Pastor Rafael Dos Santos in the Liquisa Church compound that led to casualties of 22 (twenty two) deaths and 21 (twenty one) wounded;
- The attack by a pro integration group on pro independence civilian residents who had sought refuge in the residence of Manuel Viegas Carascalao in Dili, that led to casualties of 12 (twelve) deaths and 4 (four) wounded;
- The attack by a pro integration group on September 4 and 5, 1999, on pro independence civilian residents who had sought refuge in the Dili Diocese in Dili that led to casualties of 46 (forty six) deaths;
- The attack by a pro integration group on pro independence civilian residents who had sought refuge in the residence of Bishop Bello in Dili leading to casualties of 10 (ten) deaths and 1 (one) wounded;
- The attack by a pro integration group on pro independence civilian residents who had sought refuge in the Ave Maria Church in Suai (Kabupaten Covalima) leading to casualties of 27 (twenty seven) deaths;

The actions of the Accused were conducted in the following manner:

- That prior to the referendum on the future of the East Timorese people, the Accused held a meeting at the office of the Governor of East Timor Province in Dili, with Bupatis to brief them, in which among others, the Accused said that to anticipate all possibilities, political and referendum organizations had to be established under the name Forum Persatuan Demokrasi dan Keadilan (FPDK) and Barisan Rakyat Timor-Timur in each of the TK.II Kabupatens. These organizations were established to embody the aspirations of East Timorese who were pro integration in anticipation of the referendum, and to establish the organization Pengamanan Swakarsa (PAM SWAKARSA) under Law Number 20 year 1982 concerning National Defense and Security Code of the Republic of Indonesia;
- That based on the Muspida meeting in each Kabupaten and Kotamadya communal organizations were established as follows:
 - a) PAM SWAKARSA funded by the APBD (Regional Budget) of each Tier II region;
 - b) The existence of these communal organizations that grew spontaneously, was acknowledged de facto by the Accused and the source of their funding was from the pro integration communities themselves, such that:
 - In Kabupaten Covalina the following organizations were set up:
 - PAM SWAKARSA
 - FPDK (Forum Persatuan Demokrasi dan Keadilan)
 - BRTT (Barisan Rakyat Timor Timur)
 - MAHIDI (Mati Hidup Demi Indonesia)
 - LAKSAUR
 - In Kabupaten Liquisa the following organizations were set up:
 - PAM SWAKARSA
 - FPDK (Forum Persatuan Demokrasi dan Keadilan)
 - BRTT (Barisan Rakyat Timor Timur)
 - BMP (Besi Merah Putih)
 - In Dili Kabupaten and Administrative Town the following organizations were set up:
 - PAM SWAKARSA
 - AITARAK
 - Pejuang Pro Integrasi
 - MILISI
 - FPDK , BRTT
 - BMP (Besi Merah Putih)

- Oan Kilbur Ba Damai
- Liquisa
- Saka Ermere Darah Merah Putih
- MAHIDI (Mati Hidup Demi Indonesia)

Except for Pam Swakarsa these organizations, after the referendum, merged with PPI (Pasukan Pejuang Integrasi) and UNTAS (Uni Timor Satria) led by Eurico Gutterres;

- That the organizations cited above were acknowledged de facto by the Accused, and therefore he possessed authority and oversight as well as control over these organizations;
- That the Accused was aware at the time of the referendum to determine the options was held that fraud had been perpetrated at the ballots, and the Accused was also aware that sporadic disturbances, brawls, extortion, killings, arson, and other destruction were taking place among others in:

1. In Kabupaten Liquisa

- Nearing the referendum in East Timor specifically in Kabupaten Liquisa, security and public order were heating up, leading to hostilities, quarrels, and disputes between the Pro independence group and the Pro integration Besi Merah Putih (BMP) group, most of whose members were later to join Pasukan Pejuang Integrasi (PPI);
- These disputes, quarrels and hostilities continued to spread and on April 3, 1999, the pro independence group had made threats to kill the pro integration group Besi Merah Putih (BMP) in Dato village in kecamatan Liquisa, Kabupaten Liquisa;
- On April 4, 1999, a Pro independence mob led by Jasinto Da Costa Pereira set fire to houses belonging to the Pro Integration mob Besi Merah Putih because the Besi Merah Putih mob from Pekelara and Maubara had set fire to the house of Felisberto Dos Santos and killed his son Elidio who was a member of the Pro Independence group;
- On April 5 1999 the pro independence group, fearing they would be killed by the pro integration Besi Merah Putih group, began to seek refuge in the residence of Pastor Rafael dos Santos at the Liquisa Church compound, Pastor Henry from Maubara informing that the pro integration mob from the Besi Merah Putih group were coming to attack Liquisa;
- That acting on the information of Pastor Henry the pro independence group led by Jasinto Dacosta Pereira and his men proceeded to the Maubara Liquisa border to settle the planned attack by the pro integration group Besi Merah Putih, but when in Batu Blete they met the pro integration group Besi Merah Putih with the Tentara Nasional Indonesia (TNI) and policemen from Kepolisian Republik Indonesia (POLRI), the pro independence mob were fired at resulting in 2 dead and 7 wounded, including Jose from Hatukesi and Sirilio Dos Santos who were shot in the thigh;
- That at 13:00 WITA the pro independence group from various places had taken refuge in the residence of Pastor Rafael Dos Santos at the Liquisa Church compound, numbering some 2000 people.; at the same time Tentara Nasional Indonesia troops and policemen from Kepolisian Republik Indonesia (POLRI) had surrounded the Liquisa Church compound, and in a short while the Besi Merah Putih (BMP) mob arrived firing shots in the air resulting in panic and fear among the pro independence group;
- Next on Tuesday April 6, 1999, at approximately 07:00 WITA some 300 people from the Besi Merah Putih (BMP) pro integration group led by Manuel Sousa began to assemble and surround the residence of Pastor Rafael Dos Santos in the Liquisa Church compound, with some carrying firearms.
- Some carried home-made firearms, some carried machetes, some carried samurai swords,

some carried knives, some carried bludgeons, some carried sharp implements, some carried bows and arrows, or other hard objects, and shouted for the pro independence groups sheltering inside to exit the Church compound;

- At approximately 08:00 am Pastor Rafael Dos Santos was accosted by 2 (two) Brimob personnel named Damianus Dapa and Fransiskus Salamali who asked that Jacinto Da Costa Pereira and Gregorio Dos Santos be handed over to the prointegration group Besi Merah Putih (BMP), but this was refused by Pastor Rafael Dos Santos for fear they would be killed;

- At approximately 11:30 WITA, 5 (five) members of POLRI led by Police First Lieutenant Jhon Rea arrived at the residence of Pastor Rafael Dos Santos in the Liquisa Church compound to ask that Jacinto Da Costa Pereira and his companions be handed over, upon which Pastor Rafael Dos Santos assented on the condition that Jacinto Da Costa Pereira and his companions were brought to East Timor Polda in Dili and the Besi Merah Putih mob withdraw from Liquisa. At the time, the pro integration group Besi Merah Putih (BMP) threatened the pro-independence people taking refuge by yelling "leave the compound, or a second wave will come, and even if you are still in the Church, at 01:00 WITA we will attack the Church", while flinging stones at the residence of Pastor Rafael Dos Santos in the Church compound surrounded by a wall, thus adding to the extreme fear and terror as TNI troops from kodim 1638/Liquisa and Brimob/POLRI personnel from Liquisa Polres joined the pro integration mob from the Besi Merah Putih (BMP) group;

- At the condition submitted by Pastor Rafael Dos Santos, First Lieutenant Pol. Jhon Rea headed to Kodim 1638/Liquisa base to report as such, and to report that the pro integration mob from the Besi Merah Putih (BMP) group would attack the Liquisa Church compound if until 12:00 WITA Jacinto Da Costa Pereira was not handed over;

- In response to First Lieutenant Pol. Jhon Rea's report, the Deputy Commander of Korem 164/WD, Col.Inf. Mujiono, held a conference with Asep Kuswani as 1638/Liquisa District Military Commander, Drs. Adios Salova as Liquisa Resort Chief of Police (Kapolres), and Yayat Sudradjat as Dansatgas Tribuana VII, Leoneto Martins as Bupati Kepala Daerah Tingkat II Liquisa, and then appointed Leoneto Martins to convey the acceptance of the conditions made by Pastor Rafael Dos Santos, but the appointment was refused by Leoneto Martins, giving the reason that he feared he would be killed if he met Pastor Rafael Dos Santos, so that finally Wandanrem 164/WD reappointed/reassigned Lettu Pol. Jhon Rea to meet Pastor Rafael Dos Santos;

- At approximately 12:15 WITA, at the time Lettu Pol. Jhon Rea headed to the Liquisa Church compound, shots were heard in the location followed by an attack on the Liquisa Church compound by the pro integration group Besi Merah Putih (BMP) led by Manuel Sousa and Jose Afaat (Camat of Maubara), Tentara Nasional (TNI) troops among others named Jose Matheus, Tome Diogo, Abilio Alves, Carlos, Maurisio, Jeferino, Zaarias, Manuel Martins, Jaob and Kepolisian Republik Indonesia (POLRI) personnel among others Alfonso and Chico from the Liquisa Police Resort and carried out killings, some by shooting with firearms, home-made firearms, some hacked with machetes and samurai swords, some shot arrows, some stabbed with knives, and some bludgeoned with hard objects, at the pro independence group who were taking refuge in the residence of Pastor Rafael Dos Santos in the Liquisa Church compound, consequently resulting in casualties among the civilian pro independence group numbering 22 (twenty two) dead, namely:

1. Jacinto Da Costa Pereira
2. Agustinho
3. Joanico
4. Abrao Dos Santos
5. Augusto Mauzinho
6. Ameko Dos Santos

7. Narsizio
8. Hermino Dos Santos
9. Fernando Dos Santos
10. Laurindo Pereira
11. Mariki Dos Santos
12. Manuel Lisboa
13. Viktor Da Costa
14. Alberto Oliveira
15. Amandio Cesar Dos Santos
16. Cesar Dos Santos
17. Agostinho Dos Santos
18. Laurinda Dos Santos
19. Santiago
20. Jhoni/Mau Soko
21. Grave of unidentified victim of Liquisa case in Maubara cemetery
22. Grave of unidentified victim of Liquisa case in Maubara cemetery

2. In Kabupaten Dili/Dili Administrative Town

- On Saturday April 17, 1999 at approximately 19:00 WITA a meeting or grand roll-call was held to inaugurate PAM SWAKARSA on the grounds of the office of the East Timor Governor in Dili, attended by several officials in the region among others East Timor Governor Abilio Jose Osorio Soares (East Timor Governor), Domingos M.D. Soares, SH.MS (Bupati of Dili), Mathius MAIA (Administrative Mayor of Dili), Jose Da Silva Tavares as Commander of Pasukan Pejuang Integrasi (PPI) and Eurico Gutteres as superior or Deputy Commander of PPI/as Commander or superior of AITARAK group and Jose Ximenes;

- During the event Eurico Gutteres knew that his men (AITARAK/Pasukan Pejuang Integrasi troops or group, armed and with hostility toward the pro-Independence group) had delivered their speech to their men using the words, among others:

- All CNRT leaders must be wiped out;
- Kill all CNRT leaders;
- Pro independence people must be killed:
- Kill Manuel Viegas Carrascalao;
- The Carrascalao family must be killed;
- Kill Leandro Isaac, David Dias Ximenes, Manuel Viegas;
- Carrascalao, Kill the family of Manuel Viegas Carrascalao;

- After the Grand Roll-Call for the inauguration of PAM SWAKARSA was over, some members of Pasukan Pejuang Integrasi (PPI) left the ceremony and travelled in a procession to the house of Aleandro Isaac where among others they fired shots from the back door, destroyed the contents and fired shots in the direction of the car parking place at the rear of the house, and then proceeded to attack the residence of Manuel Viegas Carrascalao which was located in Jl. Antonio De Carvalho No.13, Dili, East Timor, occupied by 136 (one hundred thirty six) refugees from the pro independence group from Maubara-Liquisa, Turiscai, Alas and Ainaro, and as a result of that attack there were 12 (twelve) fatal casualties, whose names are:

- 1) Mario Manuel Carrascalao (Maneleito), interred in Dili;
- 2) Raul Dos Santos Cancela, interred in Maubara;
- 3) Alfonso Ribeirs, ditto
- 4) Rafael Da Silva, ditto

- 5) Alberto Dos Santos, ditto
- 6) Joao Dos Santos, ditto
- 7) Antonio Dos Soares, ditto
- 8) Crisanto Dos Santos, ditto
- 9) Cesar Dos Santos, ditto
- 10) Agustini B.X.Lay, ditto
- 11) Eduardo De Jesus, ditto
- 12) Januario Pereira, ditto

On Monday September 6, 1999, at approximately 11:00 WITA the pro integration group arrived at the residence of Bishop Bello in Dili, and after the pro integration group fired shots at Bishop Bello, they forced the refugees from the pro independence group who were taking shelter in Bishop Bello's house to immediately exit the house, after the refugees from the pro independence group in the Bunda Maria garden at the front of Bishop Bello's house, and not long after a cry of "attack" was heard and the pro integration group launched an assault by shooting at the refugees from the pro independence group, resulting in the death of a civilian from the pro independence group named Nunu and another unidentified person, and the pro integration group also destroyed and set fire to Bishop Bello's house;

3. In Kabupaten Covalima (Suai)

After the announcement of referendum results on August 30, 1999, for East Timor residents to vote to remain integrated with the Indonesian government, nation and state, or to declare themselves part (of an independent state and government), that was later won by the anti integration (pro independence) group, a heated situation then arose and tensions flared between the group declaring themselves pro independence / anti integration and the pro integration group;

- That in this heated situation the public from the pro independence group, monks and nuns, numbering approximately 2000 people took refuge in the compound of the Ave Maria Catholic Church;
- That on September 6, 1999, an attack was launched using home-made firearms and sharp weapons by the pro integration group, including among others: Izedio Manek, Olivio Mendoza Moruk Alias Olivia Mou, Martinus Bere, Motomus and Vasco Da Cruz who were members of Laksaur under the leadership of Olivia Maruk, on pro independence civilians including the monks and nuns taking refuge in the Ave Maria Church compound, that resulted in 27 (twenty seven) deaths among the civilians taking refuge in the Ave Maria Catholic Church:
 - a. 17 men comprising:
 - 14 ordinary residents
 - 3 priests
 - b. 10 women

For the serious human rights violations perpetrated above, the Accused was aware of, or consciously disregarded the information that clearly indicated that his subordinates, namely the Bupati of Liquisa, the Bupati of Covalina, the Deputy Commander of Pasuka Perjuangan Integrasi (Eusico Gutierrez) and other mass organizations including Pam Swakarsa that was under the guidance of the Government of East Timor in Dili, were perpetrating or had just perpetrated serious human rights violations in the form of the murder of pro independence civilians in the Liquisa Church compound, the Ave Maria Church compound, or in other

places in the territory of the Province of East Timor. For this incident, the Accused did not take suitable and necessary action within his jurisdiction to prevent or halt the acts, in which the Accused did not prevent, or take measures to order security apparatus to prevent the clash between pro integration and pro independence groups or to hand the perpetrators over to the authorities for examination, investigation and arraignment;

This act by the Accused is regulated and subject to criminal penalty under Article 42 verse (2) and b jis Article 7 letter b, Article 9 letter a, Article 37 Law No. 26 year 2000 concerning Human Rights Tribunal;

SECOND:

That the Accused Abilio Jose Osoares as Governor of East Timor installed on the basis of KEPPRES RI Number 260/M/Th.1997 dated September 16, 1997, on April 3, 4, 5, 6, 1999, on April 17, 1999 and September 1999, situated in Kabupaten Liquisa, in Kabupaten Covalima (in Suai town), in Kabupaten Dili and Dili Administrative Town or at least in the territory of East Timor Province in which the Ad Hoc Human Rights Court at the Central Jakarta District Court is authorized to examine and rule on the case of the Accused based on Article 2 Keppres No. 96 year 2001 concerning amendment to Keppres No. 53 year 2001 concerning Establishment of an Ad Hoc Human Rights Court at the Central Jakarta District Court. The Accused as Governor of East Timor and as superior of Bupati of Kabupaten Liquisa, Leonito Martins, Bupati of Covalima, Drs. Herman Sedyono and Deputy Commander of Pasukan Pro Inetgrasi (PPI) Eurico Gutters, in Kabupaten Dili/ Administrative Town of Dili in Dili was criminally responsible for the serious human rights violations perpetrated by his subordinates, namely: Bupati of Kabupaten Liquisa Leonito Martins, Bupati of Covalina Drs. Herman Sedyono, and Deputy Commander of Pasukan Pejuang Integrasi (PPI) in Kabupaten Dili/ Administrative Town of Dili in Dili that under his effective rule and control, as the Accused did not exert control over his subordinates in an appropriate and proper manner;

- The Accused knew of or consciously disregarded information that clearly indicated that his subordinates, namely: Bupati of Kabupaten Liquisa Leonito Martins, Bupati of Covalina Drs. Herman Sedyono, and Deputy Commander of Pasukan Pejuang Integrasi (PPI) were perpetrating or had just perpetrated serious human rights violations in the form of assault on a certain group or association based on equality of political views, race, nationality, ethnic origins, culture, religion, sex, or other rules that are universally recognized as prohibited under international law, that form an act perpetrated as part of a widespread or systematic attack directed immediately at pro independence civilians. In this case the Accused as Governor and as Head of Government in East Timor Province in accordance with Law Number 5 year 1974 concerning Principles of Regional Government was responsible for all aspects of the people's life, both in development and guidance of the people, and law enforcement and public peace and order, the Accused did not carry out or did not take appropriate and necessary measures such as coordinating with security apparatus to prevent or halt the actions of his subordinates or to hand over perpetrators to the authorities to be examined, investigated and arraigned, such that the civilian population was attacked, namely in:

- The attack by the pro integration group on pro independence civilian residents who had sought refuge in the residence of Pastor Rafael Dos Santos in the Liquisa Church compound that resulted in 22 (twenty two) people dead and 21 (twenty one) injured;
- The attack by the pro integration group on pro independence civilian residents who had

sought refuge in the residence of Manuel Viegas Carrascalao in Dili, that resulted in 12 (twelve) people dead and 4 (four) people injured;

- The attack by the pro integration group on September 4 and 5, 1999, on pro independence civilian residents who had sought refuge in the residence of Bishop Bello in Dili resulting in 10 (ten) people dead and 1 (one) injured;

- The attack by the pro integration group on pro independence civilian residents who had sought refuge in the Ave Maria Church in Suai (Kabupaten Covalima) resulting in 27 (twenty seven) people dead;

The acts by the Accused were carried out in the following manner:

- That prior to the execution of the referendum to determine the future of the East Timorese, the Accused held a meeting in the office of the Governor of East Timor Province in Dili with the Bupatis to brief them, among others the Accused said that to anticipate all possibilities, a political organization to participate in the referendum should be formed with the name forum Persatuan Demokrasi dan Keadilan (FPDK) and Barisan Rakyat Timor Timur in each kabupaten. This organization was formed to carry the aspirations of the Pro Integration people of East Timor in the face of the referendum, and to form organization Pengamanan Swakarsa (Pam Swakarsa) based on Law Number 20 year 1982.

- That based on the results of this Muspida meeting each Kabupaten and Kotamadya established the following communal organizations:

c. PAM SWAKARSA funded from the Regional Budget (APBD) in each 2nd tier region.

d. Communal organizations emerging spontaneously were acknowledged de facto by the Accused, with their source of funding from the pro integration community itself, such that:

- In Kabupaten Covalima the following organizations were set up:

- PAM SWAKARSA;
- FPDK (Forum Persatuan Demokrasi dan Keadilan);
- BRTT (Barisan Rakyat Timor Timur);
- MAHIDI (Mati Hidup Demi Indonesia);
- LAKSAUR;

- In Kabupaten Liquisa the following organizations were set up:

- PAM SWAKARSA;
- FPDK (Forum Persatuan Demokrasi dan Keadilan);
- BRTT (Barisan Rakyat Timor Timur);
- BMP (Besi Merah Putih);

- In Kabupaten and Administrative Town of Dili the following organizations were set up:

- PAM SWAKARSA;
- AITARAK;
- Pejuang Pro Integrasi;
- MILISI;
- FPDK, BRTT;
- BMP (Besi Merah Putih);
- Oan Kibur Ba Damai;
- Liquisa;
- Saka Ermere Darah Merah Putih;
- MAHIDI (Mati Hidup Demi Indonesia).

These organizations after the referendum merged with PPI (Pasukan Pejuang Integrasi and UNTAS/Uni Timor Satria) led by Eurico Gutteres;

- That the organizations listed above were reported to the Accused by the Deputy Commander of Pasukan Pejuang Integrasi (PPI) such that the Accused was aware of them and the Accused had authority and oversight over these organizations;
- That the Accused was aware that at the time the referendum to determine an Option was held fraud was committed at the ballots, and the Accused was also aware there was sporadic chaos, brawls, extortion, murder, arson, destruction, among others:

1. In Kabupaten Liquisa

- As the referendum approached in East Timor Province, specifically in Kabupaten Liquisa, security conditions and public order began to heat up, creating hostilities, brawls, and disputes between the pro independence group and the Besi Merah Putih (BMP) mob whose members later largely joined Pasukan Pejuang Integrasi (PPI);
 - The brawls, disputes and hostilities became increasingly widespread, and on April 3, 1999, the Pro Independence group had threatened to kill the Pro Integration group Besi Merah Putih (BMP) in the village of Dato kecamatan Liquisa Kabupaten Liquisa;
 - On April 4, 1999, the Pro independence mob led by Jasinto Da Costa Pereira set fire to the houses of the pro integration group besi Merah Putih because the Besi Merah Putih mob from Pukelara and Maubara had set fire to the house of Felisberto Dos Santos and killed his son Elidio who was a member of the Pro Independence group;
 - On April 5, 1999, the pro independence group, fearful of being killed by the pro integration mob Besi Merah Putih, began to take refuge in the residence of Pastor Rafael Dos Santos in the Liquisa Church compound. Pastor Henry from Maubara informed that that the pro integration group Besi Merah Putih was about to attack Liquisa region;
 - That acting on the information of Pastor Henry the pro independence group led by Jasinto Dacosta Pereira and his men proceeded to the Maubara Liquisa border to settle the planned attack by the pro integration group Besi Merah Putih, but when in Batu Blete they met the pro integration group Besi Merah Putih with the Tentara Nasional Indonesia (TNI) and policemen from Kepolisian Republik Indonesia (POLRI), the pro independence mob were fired at resulting in 2 dead and 7 wounded, including Jose from Hatukesi and Sirilio Dos Santos who were shot in the thigh;
 - That at 13:00 WITA the pro independence group from various places had taken refuge in the residence of Pastor Rafael Dos Santos at the Liquisa Church compound, numbering some 2000 people.; at the same time Tentara Nasional Indonesia troops and policemen from Kepolisian Republik Indonesia (POLRI) had surrounded the Liquisa Church compound, and in a short while the Besi Merah Putih (BMP) mob arrived firing shots in the air resulting in panic and fear among the pro independence group;
 - Next on Tuesday April 6, 1999, at approximately 07:00 WITA some 300 people from the Besi Merah Putih (BMP) pro integration group led by Manuel Sousa began to assemble and surround the residence of Pastor Rafael Dos Santos in the Liquisa Church compound, with some carrying firearms.
- Some carried home-made firearms, some carried machetes, some carried samurai swords, some carried knives, some carried bludgeons, some carried sharp implements, some carried bows and arrows, or other hard objects, and shouted for the pro independence groups sheltering inside to exit the Church compound;
- At approximately 08:00 am Pastor Rafael Dos Santos was accosted by 2 (two) Brimob personnel named Damianus Dapa and Fransiskus Salamali who asked that Jacinto Da Costa Pereira and Gregorio Dos Santos be handed over to the prointegration group Besi Merah Putih

(BMP), but this was refused by Pastor Rafael Dos Santos for fear they would be killed;

- At approximately 11:30 WITA, 5 (five) members of POLRI led by Police First Lieutenant Jhon Rea arrived at the residence of Pastor Rafael Dos Santos in the Liquisa Church compound to ask that Jacinto Da Costa Pereira and his companions be handed over, upon which Pastor Rafael Dos Santos assented on the condition that Jacinto Da Costa Pereira and his companions were brought to East Timor Polda in Dili and the Besi Merah Putih mob withdraw from Liquisa. At the time, the pro integration group Besi Merah Putih (BMP) threatened the pro-independence people taking refuge by yelling "leave the compound, or a second layer will come, and even if you are still in the Church, at 01:00 WITA we will attack the Church", while flinging stones at the residence of Pastor Rafael Dos Santos in the Church compound surrounded by a wall, thus adding to the extreme fear and terror as TNI troops from Kodim 1638/Liquisa and Brimob/POLRI personnel from Liquisa Polres joined the pro integration mob from the Besi Merah Putih (BMP) group;

- At the condition submitted by Pastor Rafael Dos Santos, First Lieutenant Pol. Jhon Rea headed to Kodim 1638/Liquisa base to report as such, and to report that the pro integration mob from the Besi Merah Putih (BMP) group would attack the Liquisa Church compound if until 12:00 WITA Jacinto Da Costa Pereira was not handed over;

- In response to First Lieutenant Pol. Jhon Rea's report, the Deputy Commander of Korem 164/WD, Col.Inf. Mujiono, held a conference with Asep Kuswani as 1638/Liquisa District Military Commander, Drs. Adios Salova as Liquisa Resort Chief of Police (Kapolres), and Yayat Sudradjat as Dansatgas Tribuana VII, Leoneto Martins as Bupati Kepala Daerah Tingkat II Liquisa, and then appointed Leoneto Martins to convey the acceptance of the conditions made by Pastor Rafael Dos Santos, but the appointment was refused by Leoneto Martins, giving the reason that he feared he would be killed if he met Pastor Rafael Dos Santos, so that finally Wandanrem 164/WD reappointed/reassigned Lettu Pol. Jhon Rea to meet Pastor Rafael Dos Santos;

- At approximately 12:15 WITA, at the time Lettu Pol. Jhon Rea headed to the Liquisa Church compound, shots were heard in the location followed by an attack on the Liquisa Church compound by the pro integration group Besi Merah Putih (BMP) led by Manuel Sousa and Jose Afaat (Camat of Maubara), Tentara Nasional (TNI) troops among others named Jose Matheus, Tome Diogo, Abilio Alves, Carlos, Maurisio, Jeferino, Zaarias, Manuel Martins, Jaob and Kepolisian Republik Indonesia (POLRI) personnel among others Alfonso and Chico from the Liquisa Police Resort and carried out killings, some by shooting with firearms, home-made firearms, some hacked with machetes and samurai swords, some shot arrows, some stabbed with knives, and some bludgeoned with hard objects, at the pro independence group who were taking refuge in the residence of Pastor Rafael Dos Santos in the Liquisa Church compound;

The injured numbered some 21 (twenty one) people, namely:

1. Jose Ramos
2. Fransisco Dos Santos
3. Joao Pereira
4. Abilio Dos Santos
5. Jose Nunes Serrao
6. Licas Soares
7. Mateus Panlero
8. Ricardo Rodrigues Pereira
9. Lakumau
10. Januari
11. Felis

12. Joao kuda
13. Armando
14. Antonio
15. Luis
16. Emilio
17. Lucas Dos Santos
18. Joao Dos Santos
19. Sebastiao
20. Ramirio
21. Matius Alves Correia

2. In Kabupaten Dili/Dili Administrative Town

- On Saturday April 17, 1999 at approximately 19:00 WITA a meeting or grand roll-call was held to inaugurate PAM SWAKARSA on the grounds of the office of the East Timor Governor in Dili, attended by several officials in the region among others East Timor Governor Abilio Jose Osorio Soares (East Timor Governor), Domingos M.D. Soares, SH.MS (Bupati of Dili), Mathius MAIA (Administrative Mayor of Dili), Jose Da Silva Tavares as Commander of Pasukan Pejuang Integrasi (PPI) and Eurico Gutteres as superior or Deputy Commander of PPI/as Commander or superior of AITARAK group and Jose Ximenes;

- During the event Eurico Gutteres knew that his men (AITARAK/Pasukan Pejuang Integrasi troops or group, armed and with hostility toward the pro-Independence group) had delivered their speech to their men using the words, among others:

- All CNRT leaders must be wiped out;
- Kill all CNRT leaders;
- Pro independence people must be killed:
- Kill Manuel Viegas Carrascalao;
- The Carrascalao family must be killed;
- Kill Leandro Isaac, David Dias Ximenes, Manuel Viegas Carrascalao, Kill the family of Manuel Viegas Carrascalao;

- After the Grand Roll-Call for the inauguration of PAM SWAKARSA was over, some members of Pasukan Pejuang Integrasi (PPI) left the ceremony and paraded/went in a procession to the house of Aleandro Isaac where among others they fired shots from the back door, destroyed the contents and fired shots in the direction of the car paring place at the rear of the house, and then proceeded to attack the residence of Manuel Viegas Carrascalao which was located in Jl. Antonio De Carvalho No.13, Dili, East Timor, occupied by 136 (one hundred thirty six) refugees from the pro independence group from Maubara-Liquisa, Turiscai, Alas and Ainaro, and as a result of that attack 4 (four) people sustained injuries:

1. Witness Viktor Dos Santos (APIN), sustaining injuries to his left hand and middle finger;
2. Witness Alfredo Sanches, sustaining injuries from stabs to the left shoulder and a left finger;
3. Witness Florindo De Jesus, sustained injuries from hacking to the left and right hands, his right ear shot and hacked;
4. Miki, sustained injuries from hacking;

On Monday September 6, 1999, at approximately 11:00 WITA the pro integration group arrived at the residence of Bishop Bello in Dili, and after the pro integration group fired shots at Bishop Bello, they forced the refugees from the pro independence group who were taking shelter in Bishop Bello's house to immediately exit the house, after the refugees from the pro independence group in the Bunda Maria garden at the front of Bishop Bello's house, and not

long after a cry of "attack" was heard and the pro integration group launched an assault by shooting at the refugees from the pro independence group, resulting in the death of a civilian from the pro independence group named Nunu and another unidentified person, and the pro integration group also destroyed and set fire to Bishop Bello's house;

3. In Kabupaten Covalima (Suai)

- After the announcement of referendum results on August 30, 1999, for East Timor residents to vote to remain integrated with the Indonesian government, nation and state, or to declare themselves part (of an independent state and government), that was later won by the anti integration (pro independence) group, a heated situation then arose and tensions flared between the group declaring themselves pro independence / anti integration and the pro integration group;
- That in this heated situation the public from the pro independence group, monks and nuns, numbering approximately 2000 people took refuge in the compound of the Ave Maria Catholic Church;
- That on September 6, 1999, an attack was launched using home-made firearms and sharp weapons by the pro integration group, including among others: Izedio Manek, Olivio Mendoza Moruk Alias Olivia Mou, Martinus Bere, Motomus and Vasco Da Cruz who were members of Laksaur under the leadership of Olivia Maruk, on pro independence civilians including the monks and nuns taking refuge in the Ave Maria Church compound, that resulted in casualties among the civilians taking refuge in the Ave Maria Catholic Church;

In the incident of serious human rights violations as referred to above, the Accused was aware of, or consciously disregarded information that clearly indicated that his subordinates, namely the Bupati of Liquisa, the Bupati of Covalima, the Deputy Commander of Pasukan Pejuang Integrasi (Eurico Gutteres) and other communal organizations among others PAM SWAKARSA under the guidance of East Timor Regional Government in Dili, were perpetrating or had just perpetrated serious human rights violations in the form of assault on pro independence civilians inside the Liquisa Church compound, in the Ave Maria Church compound, or in other places in the territory of East Timor Province. In the incident the Accused did not act appropriately, or take necessary measures within his jurisdiction to prevent or halt these acts, in which the Accused did not prevent, or take measures in the form of ordering the security apparatus to prevent the clash between Pro Integration and Pro Independence or to hand the perpetrators over to the authorities for examination, investigations, and arraignment;

The actions of the Accused do sufficiently constitute the elements of a criminal act against humanity, which may qualify as a serious human rights violation, as is regulated and under threat of criminal penalty in Article 42 verse (2) a and b jis Article 7 letter b, Article 9 letter h, Article 40 Law No 26 year 2000 concerning Human Rights Tribunal;

In considering, that the Public Prosecutor has submitted and demonstrated before the court evidence in the form of documents as specified in the evidence list: 2 (two) pieces of cloth drapery, and 1 (one) pair of brown slippers;

In considering, that the Ad Hoc Public Prosecutor and the Accused's Legal Counsel have submitted witnesses under oath according to their respective faiths that in essence presented the following:

1. Witness Brigadier General TNI M. Noer Muis.

- That since August 13 1999 the Witness was assigned Commander of KOREM Dili in East Timor.

- That Directional Commander connotes a task to command, control troops assigned for the implementation of the referendum.

- That under the New York Agreement, control of security during implementation of the referendum was entirely in the hands of police, and TNI were not permitted to reinforce the number of personnel, reinforce arms, nor redeploy troops during the referendum.

- That the Witness stressed to TNI soldiers that they were to assist in making the referendum successful, and that all members of the public should participate in the referendum according to prevailing rules.

- That after September 4 1999, there was a transfer of command of control from Police to the Pangdam as Commander of Operations.

- That regarding notable incidents occurring throughout the Witness' assignment from August 13 to September 4 1999, until the announcement of the referendum, according to the Witness' records there were scores of notable activities, in the form of clashes among the masses, both Pro Integration and Pro Independence, in particular during the campaign period.

- That among 20 (twenty) incidents was the incident of August 13 1999 that broke out in the Ulmera area of Kabupaten Liquisa in which a mob of Pro Autonomy people assaulted 4 Pro Independence people.

- That in all clashes occurring before command was transferred from Police to TNI, Police handled the cases, with TNI merely assisting if requested by Police and that was permitted by UNAMET insofar as prevailing conditions were met.

- That in the incident at Suai Church:

The witness and security forces took action to overcome the situation among others as follows:

- that on September 6, 1999, Witness received a report from the Suai KODIM Commander, that a conflict between a Pro Integration mass and a Pro Independence mass had broken out at the Suai Church. That security apparatus comprising TNI and POLRI assisted by the local PEMDA had exerted maximum efforts to overcome the conflict but that it continued and caused the death of 27 victims.

- that security apparatus comprising TNI and POLRI assisted by the local PEMDA separated the two conflicting sides, and part of the Pro Independence mass at the Suai Church were removed to the KODIM office, and POLRES office, and other safe places in the vicinity of Suai.

- that acting as DANREM, Witness ordered an investigation, and then secured the other masses to prevent further casualties, and took control of all troops, and report developments to the DANREM.

- That according to the DANDIM's report to Witness prior to the clash at Suai Church, there was a Muspida meeting at the Office of the Bupati of Suai.

- That according to the report of the Suai DANDIM, the Pro Independence mass numbering thousands of people had assembled in the vicinity of Suai Church. That the September 6, 1999, incident occurred following the announcement of the referendum results by UNAMET that according to the referendum agreement should have been made as planned on September 7, 1999, but was moved forward by UNAMET to September 4, 1999, and following the announcement Pro Independence groups provoked the Pro Integration group with their victory.

- That at the time the clash involving thousands of people occurred, the security apparatus comprising TNI and POLRI immediately headed to the scene of the incident at Suai Church, to separate the two conflicting groups. TNI and POLRI then removed thousands from both sides, in particular the Pro Independence group to safer places, namely KODIM HQ, POLRES, and in the vicinity of the Bupati's office.

- That the mass conflict did not total a small number, but was in the thousands, whereas the numbers of security apparatus both TNI and POLRI prioritized the security of over 2000 UNAMET personnel, and they were withdrawn from the Kabupatens and assembled in Baucau and Dili, therefore only a very limited number of forces remained in the Kabupatens, and no more men were available.
- That Witness received a report from the DANDIM of Suai that thousands had assembled at Suai Church from the Pro Independence group, and at the time the Pro Integration crossed Suai Church, shots were heard from the direction of the Church, and consequently the Pro Integration Group reacted by firing back at the Church.
- That in the incident in Suai on September 6, 1999, coordination in the scene of the incident was conducted by the DANDIM together with other security apparatus including the Bupati. Witness did not report the incident to the Governor because there was no chain of command with the Governor, and at the time a large-scale evacuation was taking place, and as far as Witness knew, the Governor's Office in Dili was no longer functioning on September 6, 1999. No one was in charge at the TELKOM office, nobody was at PDAM, the people at Immigration had fled, Bulog was vacated, all that remained was TNI and POLRI, and therefore Witness had no means of communicating his report to the Accused (Governor). Witness did not contact Governor and the situation was thus in chaos.
- That as the conflict was on a very large scale, Witness along with POLRI concentrated on containing the conflict and safeguarding over 2000 UNAMET personnel, securing vital installations of both TNI and POLRI, and the public's needs, therefore Witness did not observe and ask the Governor's whereabouts.
- That after the result of the referendum was announced widespread mass conflicts erupted all throughout East Timor, and communications equipment set on fire. Witness then reported these incidents to the Operations Commander as Witness' superior, and on September 6 the Operations Commander issued instructions to immediately safeguard the people to prevent further casualties, and then to continue the investigations by police, and to mobilize the troops at Suai. Witness did not report the incident in Suai to the Accused as Governor, as the chain of command did not specify reporting to the Governor.
- That Witness received a report from the DANDIM of Kabupaten Liquisa concerning the presence of PAM SWAKARSA in Suai, PAM SWAKARSA being a community group that appears when the situation in an area becomes non conducive.
- That regarding the conflict in the residence of Bishop Belo, a report dated September 6, 1999, stated that a conflict had erupted at the residence of Bishop Belo where the pro Independence group was assembled, and that during the incident Bishop Belo was evacuated to Mapolda.
- That Witness received reports that Bishop Belo had acted unfairly, and that in the residence of Bishop Belo there were ballot boxes for the referendum, therefore this had ignited the conflict, and Witness received a report that at Bishop Belo's residence there was one casualty. That the Pro Integration group were very aggrieved with Bishop Belo because he had mostly sided with the Pro Independence group.
- That coordination between TNI and POLRI involved the measures that would be taken during the referendum, whereas Witness had no knowledge of the coordination between POLRI and PEMDA, that only POLRI and PEMDA themselves knew of this coordination.
- That Witness received reports and himself witnessed that the Falantil group was armed, while some in the Pro Integration group carried home-made weapons.
- That previously the security apparatus together with the two conflicting groups had agreed to lay down arms, regrettably only the Pro Integration group were willing to disarm themselves, while the Pro Independence groups in particular Falantil refused to lay down their arms.

- That PAM SWAKARSA was a community group that dressed in civilian clothes as well as military-style shirts, but had no formal uniform, and Witness observed that the majority carried home-made weapons or weapons made from pipes, and these weapons were collected by security apparatus together with UNAMET.
- That in the disarmament process, security forces had carried various measures, namely together with other components from UNAMET, CIVILIAN POLICE, Military Observers from foreign countries and KPS elements attempted to disarm the two sides, but only the Pro Integration group were willing to put their weapons in storage whereas the Pro Independence group in their Base continued to use their weapons.
- That a further endeavor was to hold a meeting on August 27 or 28, 1999, in which an agreement was reached for disarmament, but until the end of the meeting, the Pro Independence group refused to lay down arm.
- That responsibility for security during the referendum was held by police, however this did not mean that KOREM should stand by, and KOREM would also be organized by UNAMET. At the time UNAMET had decided that only Police would be responsible to execute the security command for East Timor. TNI was to be decreased and to exit East Timor. Remaining TNI were to stay in their respective posts.
- That as Dan Rem, to Witness' knowledge conflict meant a fight, and a contest between 2 (two) opposing forces, but on a large scale is called a conflict, and on an extraordinary scale is called Chaos or a major conflict. Whereas in a war armed forces would be more dominant, an exchange of fire would occur, on a wider scale, and conducted by military. In a conflict a brawl may occur, or the use of sharp weapons or home-made weapons.
- That Witness heard from several Bupatis that the Governor/Accused had provided instructions to the Bupatis regarding the execution of the referendum.
- That there was no report from the DANDIM of Liquisa of the Bupati of Liquisa killing or ordering the killing of, Pro Independence groups/
- That Witness had heard of MILISI when he was in Kupang, that it was a term produced by the foreign media but to Witness' knowledge and from the reports of subordinate Unit Commanders before Witness was posted in East Timor there was nothing named MILISI.
- That the fraud by UNAMET was apparent from the beginning, as at the registration phase, which was not impartial, for instance UNAMET accepted native people as its local staff, but only those who preferred the second option, and the ballots were also placed near the places where Pro Independence groups gathered, similarly during the campaign period UNAMET clearly supported the second option.
- That during the implementation of the referendum on August 30, 1999, there were numerous complaints against Pro Independence supporters and against UNAMET personnel, reaching a climax when complaints by the Pro Integration group were not followed up by UNAMET.
- That the announcement of the referendum results that was originally scheduled for September 7, 1999, was moved forward to September 4, 1999, and complaints by the Pro Integration group was not followed up by UNAMET, and the accumulation of all of these acts by UNAMET was the primary cause of the disturbances in East Timor.
- That beginning September 5, 1999, at 19:30 hours WIB local time, Directional Command was transferred from POLRI to TNI because the situation had developed in a very destructive direction at the time, and after a major disturbance, PEMDA Dili in particular was not functioning normally.
- That as the situation had turned into Chaos everywhere, especially in Dili where thousands, even hundreds of thousands of refugees were concentrated. Government was no longer functioning as it should, and in connection to September 5, 1999, after the KODAL transfer, East Timor residents who wished to leave East Timor were allowed to depart East Timor.
- That according to the Dandim's report several priests had died, and it was also reported that

there were casualties in several locations, according to Witness since the beginning of the referendum up to the time Martial law was imposed the number of casualties did not reach 100 (one hundred).

- That Witness did not know the precise structural and non structural relationship between PAM SWAKARSA and PEMDA, as it was outside the jurisdiction of Witness as Danrem.

- That at the time of the incident in Maliana there were conflicts during the campaigns, but Witness did not see the casualties, Witness received reports that there were casualties at a house set on fire, and that some had been injured by rocks, but when Witness arrived at the scene of the incident the casualties were no longer there. During the campaign in Maliana several residents' houses were set on fire.

- That martial law was declared in East Timor by the President of the Republic of Indonesia on September 6, 1999, at 24:00 hours WIB.

- That on the day after the referendum result was announced on September 5, 1999, there were disturbances, and subsequently the TNI Commander and his staff along with several relevant officials arrived directly in East Timor to bring together the leaders of the Pro Integration and Pro Independence groups to urge them to accept the referendum result that was announced the day before and to socialize this result to the followers of the two sides, in order to instill into them that the referendum outcome was the choice of the people of East Timor for the future of East Timor.

- That the visit of the TNI Commander on September 11, 1999, was to accompany the UN Security Council Team, because Bishop Basilio in Baucau had been injured in a shooting, but it was later clarified by UN Security Council that this was untrue, similarly with other untrue reports by the foreign media, and after the UN Security Council became aware that these facts were untrue, the UN Security Council accepted an explanation of the developing situation after Martial Law was put into effect on September 7, 1999, as presented by the Commander of the then Military State of Emergency.

- That the President of RI had imposed Martial law, because without Martial Law, no law enforcement could control the situation. Therefore the transfer of control from Police to TNI and the imposition of a Military State of Emergency were the most appropriate measures to forestall more severe conflict in East Timor. Without the Kodal Procedure East Timor would have been devastated, a major war would have broken out, a civil war that would have led to numerous casualties.

- That prior to the referendum a number of meetings were held by POLDA, Witness attended the meetings but did not recall the number. To his mind Witness recalled that before the referendum sometime in August 1999, a meeting was held in Dili between POLDA and Muspida elements and attended by the Pangdam.

- That prior to September 4, 1999, the flow of refugees had begun, reaching a peak at the announcement of the referendum results on September 4, 1999, at 9:15, there were massive evacuations in all regions. Refugees leaving East Timor set fire to their own belongings before departing, and Witness observed that before September 4, 1999, burnings had taken place.

- That Witness observed the scale of disturbances to be massive, with security forces outnumbered by the two disputing masses, and on September 5, 1999, at the time the Kodal was transferred from POLICE to TNI, TNI's tasks comprised 4 issues:

1. Safeguarding all UNAMET personnel numbering over 2000 people.
2. Immediately curb widespread conflict.
3. Secure hundreds of vital projects throughout East Timor.
4. If necessary to fire at anyone threatening the personal safety of UNAMET personnel.

- That before the arrival of INTERFET many vital projects were able to be rescued and were in good condition, but after INTERFET arrived, Pro Independence groups descended from the mountains and set fire to the vital projects.

1. That Muspida Level I was practically not functioning after UNAMET arrived and opened an official office in Dili, and Government activities were by then not running normally.

2. That when the UNAMET Office was inaugurated in Dili, in Baligi the Accused was invited to attend as Governor, and on his way back the Accused was attacked by a Pro Independence group, resulting in destruction to the car of the Accused, and causing the Accused and his driver to flee, because none of the UNAMET officers came to his rescue. Since that time the authority of regional government in particular civilian authority, had disappeared.

2. Witness Drs. Herman Sedyono

- That Witness was Bupati of Covalima from October 1994 to November 1999 when East Timor was dismantled. Witness was appointed Bupati at the people's request through DPRD, and was nominated by DPRD.

- That notable incidents in Kabupaten Covalima occurred after the two options were launched, the anti integration community which had been fighting covertly appeared to gain encouragement, so that the situation in the area began to show sign of heating up. The Pro Anti Integration side, or the Pro Independence group began to conduct their activities openly, directed at Propaganda and terror that was not infrequently accompanied by violence and coercion.

- That the acts of terror were not infrequently accompanied by violence and coercion, is demonstrated in several incidents, among others:

1. The abduction of Pulavan residents.

2. The abduction of civil servants from Kodim.

3. Threats made to transmigrants from Bali and Java to leave immediately.

4. Extortion of money called "Apelo" using threats of death.

5. Residents' houses set on fire.

- That at a meeting between the Governor/Accused and the Bupatis in May 1999, the Governor/Accused stressed to the Bupatis that with the escalation of violence, PAM SWAKARSA had to be reactivated. At the time the Governor/Accused directed them to provide compensation funds to support welfare according to the respective capacity of the local Pemda. For Pemda level II Covalima the compensation provided was Rp.150,000 per person. This money was provided as compensation as ordinarily they worked in the fields or in rice paddies, and according to the Governor/Accused, was paid out from April to September 1999. The existence of PAM SWAKARSA was under the instruction of the Governor to Witness.

- That communal groups establishing themselves included the Pro Independence group, the anti Integration student group. The BRTT group, and others. Formal groups such as BRTT notified the Bupati but other groups did not do so.

- To the Witness' knowledge in carrying out his duties the Witness reported routinely to the Governor/Accused as his superior in the chain of command as regional head.

- That Witness knew of the incident in Suai Church on September 6, 1999, at the time Witness had just come from Atambua on September 6, 1999 at 11 in the morning bringing in 9 (nine) trucks to transport refugees evacuated to West Timor. During coordinations with the Dandim and the Kapolres, Witness heard shots, Witness then immediately provided coordination and headed to the incident location to stop what was happening, but as soon as he reached the enclosure at Suai Church, Witness was carried away to safety by Police.

- That Witness did not see the casualties at the Ave Maria Catholic Church in Suai, but

Witness heard there were 27 casualties, comprising 17 men, 10 women and a small child, and there was also a priest.

- That when Witness heard there were casualties, Witness asked the Kapolres to conduct an investigation and identify the perpetrators.

- That the incident in the Church lasted for some 2 (two) hours from 13:30 afternoon. Witness attempted to go in but was unable due to the situation. Many residents came out of the Church and embraced him while asking for help to protect their families, Witness estimated the number at approximately 1000 or 800 people.

- That Witness herded the people coming out of the Church on foot, Witness prevented assault on these people by hostile persons at the time, in order to avoid more casualties, Witness asked the Dandim and Kapolres to safeguard them and then bring them to the KODIM

- That Witness asked that coffins be made for the dead victims and that they should be interred properly, and that Witness asked an elder to say a prayer.

- That those taking refuge in the Suai Church compound were generally from the Pro Independence group, and that those outside the Church were from the Pro Independence group and the Pro Integration group, at the time exchange of gunfire was already taking place, most likely from these two groups.

- That in order to overcome the situation, Witness asked for help from both Polres and Kodim, and in several hours security was restored.

- That at the time the referendum result was announced on September 4, 1999, the Pro Independence group shouted in joy and celebrated inside the Church. Witness approached the Church and met with the Pastor, Witness then told the pastor that this attitude would elicit reaction from others, and that those inside should keep their peace and refrain from activities.

- That many refugees came crying, begging for rice and transportation so that they could be in a safe place, and they were brought to Belu, in particular transmigrants and their children.

- That Witness coordinated with the Bupati of Belu to find places to hold the refugees. Witness provided some 500 tons of rice to the refugees and set up health posts.

- That upon each activity or every day Witness reported to the Governor/ Accused, in particular when a notable incident in the area occurred Witness would quickly report. The reports would be in the form of letters if transportation was expeditious, or through facsimile.

- That Witness was invited by the Governor / Accused, in the first briefing the Governor / Accused briefed them on an option of special autonomy for East Timor, the second briefing set out the launching of two options, the first option being autonomy as offered by central government to East Timor Province, and the second option being secession or independence.

- That Witness confirmed he had never seen the evidence submitted by the ad Hoc Public Prosecutor.

- That upon the account of Witness the Accused confirmed that Witness' account concurred with events in the field and the Accused did not object. However the Accused wished to rectify the following:

That Bupatis were appointed by the Minister for the Interior and installed by the Governor on behalf of the Minister for the Interior.

3. Witness Suprpto Tarman

- That Witness had held the office of Bupati of Aileu, appointed since November 17, 1994, Witness was elected by DPRD Tingkat II Kabupaten Alieu until dismissed by the President in 2000.

- That to Witness' recollection, there never was a roll-call for the formation of PAM SWAKARSA, but there was a loyalty roll-call, precisely on April 17, 1999. At the time Witness did not attend as Witness and Witness' constituents arriving in a truck were halted by

an Anti Integration group in the Dare area. All members of the public that were with Witness were stopped in the Darea area of Kecamatan Lolara, and subsequently in order to prevent bloodshed Witness and his constituents returned to Aileu.

- That the invitation came from Chairman of FPDK, Dominggus, but the official invitation never reached the Witness but stayed with the Sekwilda, and Sekwilda reported the matter to Witness. Witness did not know who acted as Inspector of ceremonies and Commander of ceremonies as Witness was not present at the roll-call.

- That to Witness' recollection no incident occurred in Kabupaten Alieu because prior to the referendum Alieu was known as the safest, most orderly and most peaceful Kabupaten, and nothing untoward occurred in April 1999, but issues of conflict among the two sides were indicated or in April the indications were there.

- That the establishment of PAM SWAKARSA germinated in history, that Witness happened to be there since the beginning of integration, when East Timor was declared part of the Indonesian Republic, and the anti integration group Falintil fled to the jungle, from which they harassed the people, stealing the people's crops, terrorizing the people, issuing propaganda to the people, and therefore a spontaneous reaction sprang from the people and in fact this was effective in maintaining security in the area, and that was the beginning of PAM SWAKARSA.

- That initially the funding of PAM SWAKARSA did not exist, but nearing the implementation of the referendum, conflict and the political situation began to escalate among the two opposing sides, with propaganda from each side and more prominently from the independence group.

- That in light of this fact Witness was invited to a meeting by the Governor/Accused who called for PAM SWAKARSA to be reactivated, that in light of their sacrifices for the region, some funds were relayed by government as a token of its gratitude, for their willingness to make sacrifices for the region as they could neither farm nor seek employment for the sake of the security of their homeland. The funds were sourced from APBD with the approval of DPRD.

- That Witness provided assistance totaling Rp.100,000 per head as Kabupaten Alieu was the smallest of 13 Kabupaten, with a total population of 38,500 souls.

- That PAM SWAKARSA in Alieu was formed at each village and Kabupaten Alieu had 34 villages, and according to reports their total strength was from 200 to 300 people.

- That Witness knew well the personality of Governor Abilio Soares/ the Accused, Accused was consistent with the aspirations of his party at the time, that is, consistent with integration with Indonesia, and to this day the Accused has not changed. In terms of personality the Accused had the ability to socialize with anyone, including with the little people. The Accused had never committed a criminal act, nor an act of violence, much less killed. According to Witness the Accused was worthy to be appointed Governor as the Accused lacked nothing in his devotion to his duty.

- That before integration Kabupaten Alieu was a Fretilin base, 99% were Fretilin party members, and even today there still stands a multi-purpose building where Fretilin political opponents were held.

- That upon the announcement of the referendum's results, thousands of people fled to the Bupati's house where the grounds are wide, they were crying, Witness was moved to see them, Witness took the initiative to transport the refugees several times in small numbers until September 19, and all costs were paid by government.

- That when the situation deteriorated on September 19, 1999, Witness was only able to transport 5,000 people, and another 5,000 were left behind, and all were crying.

- That the efforts of the security apparatus and Pemda in this traumatic and panicked situation were:

Security apparatus, specifically Police and Kodim provided considerable assistance to PEMDA in finding trucks to transport the refugees, to refugees Witness provided 400 (four hundred) tons of rice, 3000 packets of instant noodles, and there was 17 tons of food for the refugees Witness left behind.

- That following the Governor/ Accused's instruction PEMDA had to be neutral to avoid violence, bloodshed and to coordinate with muspida and when the results of the referendum were disseminated the people came to Witness and asked "Pak Bupati, we are already free, why do we want to be free again".

- That Witness held a Muspida safari by making a tour of 34 Villages to explain what the referendum was and how to handle the referendum.

- That from the beginning Witness had objected to the presence of UNAMET, because from the onset it was not neutral, beginning with recruitment of UNAMET staff, from drivers, typists and others, none were pro integration, with the excuse that the pro independence people could speak English, Witness wrote a letter to protest UNAMET's actions but this was not heeded by UNAMET.

- That on the D day Witness in his capacity as Bupati was not allowed to approach the ballots, Witness was ordered by UNAMET to distance himself from the ballots. Then a time was set for voting at 9:00 AM but the pro independence group had submitted their votes from 6:00 to 7:00 AM.

- That Witness was frequently asked by UNAMET, "Where is MILISI", What's MILISI, Witness said "in here no MILISI, if you want to ask about army please". Then Witness said here there was only PAM SWAKARSA, and MILIIS was not identical to PAM SWAKARSA.

- That one week after the UNAMET office was opened in DILI, they opened an office in Kabipaten Aileu, by renting a house from Aileu DPRD Head Ricardo Dos Reis.

- That to Witness' recollection after the Tripartite agreement was signed there were 4 (four) meetings / gatherings with the Accused as Governor, and the last time Witness met the Governor / Accused was one day before voting day.

- That when houses began to be set on fire, before descending on Dili the owners of the houses set their own houses on fire, in Aileu numbering 50 (fifty) houses, and 30% of the Villages were set on fire, and 70% were not set on fire.

- That witness was not certain who had lit the fires, but they could have been the owners of the houses, or they could have been the opposing group, or a third party with a separate interest.

- That Witness together with the Kapolres left Aileu on September 19, 1999, while the DANDIM had been previously sent by the DANREM to Dili on September 13, 1999, Witness with 10 truckloads of refugees entered the region of Sonora, and Witness smelled dead bodies.

- That Witness wanted to go down and see the bodies to see whether they were male or female or perhaps he could recognize the bodies, but was constantly beset by gunshots from the direction of Remeksin, and Witness did not go to see the bodies.

- That the appearance of the BRTT and FPDK groups was the result of the formation of CNRT, Falintil, Emperu by Pro Independence groups, and they were political umbrellas, in order to counterbalance them BRTT and FPDK were formed which were the intellectual groups of the Pro Integration group.

- That international bodies that had entered Witness' area included referendum Observers and Monitors from Japan, New Zealand, NGOs from Indonesia. Students also joined in monitoring.

- That when Witness left Aileu, Witness felt confident that witness had not failed, but that the nation's politics had failed.

- That according to Witness the issue of the referendum was one of national sovereignty, of the integrity of the Indonesian Republic that was integrated for 27 years, Witness felt it was

more weighty than an ordinary Pemilu and that what Witness was facing was an International Conspiracy.

- That upon the Witness's testimony the Accused addressed several questions to Witness and after Witness replied to the questions, the Accused testified that Witness' account concurred with what had happened on the ground and the Accused did not object.

4. Witness Brigadier General Tono Suratman

- That Witness knew the Accused at the time as Governor of East Timor, whereas Witness was DANREM 164 Wira Dharma for the 13 Kabupaten in East Timor. Witness was the highest ranking military leader in East Timor, or the Territorial Command Executor, whereas the Pangdam was based in Bali.

- That Witness was assigned in East Timor as KOREM Commander from June 10, 1998, to August 13, 1999. Throughout Witness' assignment in East Timor there were 2 (two) important incidents, namely the clashes between Pro Integration masses and Anti Integration masses in 2 (two) Kabupaten, in Kabupaten Liquisa on April 6, 1999, and in Dili on April 7, 1999.

- That from the report of Liquisa Kodim Commander, in the incident in Liquisa on April 6, 1999, in Liquisa Parish, a clash occurred between Pro Integration people and Anti Integration people, with casualties numbering 5 (five) dead and over 25 (twenty five) wounded.

- That the incident occurred during the afternoon at 14:00 WITA, according to the reports of Dandim and Police the weapons used were sharp weapons, spears, machetes and home-made guns.

- That the weapons in East Timor from the former Portuguese occupation numbered some 27,000 guns, and some 3,500 TNI soldiers fell in East Timor, fell as a result of military attacks and ambushes;

- That there was indeed a grand roll-call in Dili on April 17, 1999, attended by people from 13 Kabupaten, the number of participants totaling some thousands of people and held on the grounds in front of the Governor's Office.

- That Witness did not receive an invitation, Witness heard a report about the grand roll-call from one of Witness' men. At the time Witness did not attend the grand roll-call because at the same time, Witness was receiving the ambassador from the European Union, a Delegation from the Department of the Interior, and the Inspector General from TNI Headquarters.

- That to Witness' knowledge not one TNI personnel attended the grand roll-call before the Office of the Governor in Dili.

- That what occurred in the Carascalao residence was a clash between Pro Integration people and Anti Integration people when a parade was taking place in Dili. Casualties numbered 12 (twelve) dead and 5 (five) to 6 (six) wounded.

- That at the time Police had conducted examinations and investigation and a report was filed.

- That in East Timor there were 13 Kabupaten comprising 64 Kecamatan comprising 662 Villages.

- That what Witness conducted as Danrem along with Kapolda was to approach the two contending sides, and implementing a peace move named Peace I, in which Witness emboldened himself, along with Muspida and the Governor / Accused to go to Bishop Belo to ask Bishop Belo as facilitator to assemble the two warring groups and urge them to agree to end hostilities and intimidation, and this was carried out in Dare East Timor.

- That the two groups each held to their respective existence, in particular the Pro Integration people who had long joined and become a part of the Indonesian nation and continued to defend the red-and-white, whereas the Anti Integration group desired to secede from Indonesia.

- That indeed there were violations perpetrated by UNAMET, namely when accepting UNAMET local staff, of which some 95% were Anti Integration people. This was evident

when the Governor/ Accused was present at the UNAMET Office to witness the installment and was thrown (objects) and his life even threatened.

- That from intelligence analyses and from what Witness himself observed, and from results of monitoring coordinated by Witness with Muspida nearly all the East Timor people preferred autonomy so according to Witness a large part of the population still loved the Indonesian nation,

- That as Danrem Witness had taken maximum measures, and the Governor / Accused had also done his maximum, but what Witness saw was the central government's lack of concern for UNAMET's fraudulent acts.

- That as executors in the field Witness had submitted his report to the Pangdam on these fraudulent acts, and the Pangdam had acknowledged them but central government took not a single measure, and case by case they accumulated so as to become a snowball.

- That an example of the helplessness felt was during the situation nearing the referendum, in which the number of troops to guard 662 Villages, 64 Kecamatan had been decreased from 10 battalions to 5 (five) battalions. What the power of TNI was from east to west in the face of incidents occurring in each Village as a result of the options could thus be surmised.

- That the reduction in the number of fighting troops in East Timor that should have been there as guard or security forces for the two sides was clearly evident, nevertheless the security was for UNAMET and not one UNAMET personnel was wounded or killed.

- That to Witness' knowledge, PAM SWAKARSA was a group of people formed from the people itself for security purposes owing to intimidations from the opponents.

- That PAM SWAKARSA existed before the referendum, since 1976, formed by the Indonesian people and prevalent in all regions in Indonesia and because of the mounting situation in East Timor, at the appeal of PEMDA those who were far from security forces formed PAM SWAKARSA in the interests of their own villages against threats and intimidation.

- That the role of the Governor / Accused in PAM SWAKARSA was not as Counselor, but as Head of Region the Governor / Accused urged for it as PAM SWAKARSA is regulated under Law No.20 year 1982.

- That the relationship between Witness and the Accused at the time of the incident was one of coordination, direct relationship being to the Pangdam and the Dandim. In addition to the Governor / Accused, coordination was also held with Kapolda.

- That Witness' action after receiving reports from the Dandim was to order the Dandim to prevent clashes, to assist in backing up Police, report each development and Witness reported back to the Pangdam on the incident in Liquisa.

- That after receiving reports from the Dandim on the incident, Witness then together with Kapolda and Bishop Belo visited the site of the incident.

- That after arriving at the site of the incident Witness ordered the Dandim to assist Police in helping the refugees in the Bupati's residence, and then to provide all the aid possible, Witness also dispatched a medical team there to provide medical care for both Pro and Anti Integration people.

- That Witness conducted coordination with the Governor / Accused at the time, and the response of the Governor / Accused at the time was to attempt several measures namely to summon and invite representatives from PEMDA and as far as possible to surrender perpetrators to Police.

- That during coordination with the Governor / Accused he constantly asked and appealed to Witness to take preventive measures and provide aid to the warring sides.

- That in order to overcome the situation on April 21, 1999, the TNI Commander held a peace conference in the residence of Bishop Belo.

- That Witness continuously dispatched orders to all KODIM to really to the lowest soldier the

instructions to be carried out, and Witness also made working visits to the 13 KODIM, and stressed the need to successfully expedite the referendum and for the two opposing sides to conduct a Reconciliation and jointly expedite the referendum successfully.

- That following the appearance of the second option, added pressure was exerted by the Anti Integration side, and incidents of intimidation and assaults occurred directed to the Pro Integration people, and there was the issuance of a kind of identity card (KTP) called Apelo.

- That nearing the incidents of April 1999, information from the intelligence apparatus was collected each day, each week and each month, on the current events in each area of Kabupaten East Timor.

- That under Article 3 of the Tripartite Agreement it is stipulated that the Indonesian government is responsible to maintain peace and security in East Timor, in order that the referendum be implemented fairly and peacefully in an atmosphere free from intimidation, violence and intervention by any party.

- That upon the Witness' testimony the Accused confirmed that Witness' testimony concurred with the events in East Timor and to his testimony the Accused did not object, however the Accused wished to add several points:

- That in East Timor in the case of important events the Muspida Meeting included the Head of the High Court and the Head of the Church thus making it a Muspida Plus.

- That regarding the attacks and clashes that took place it was correct that reports to the Danrem were also received by the Accused, only through the Bupati, and according to Bupati's report a group had visited the Church and asked for the help of Pastors in handing over the persons who had set fire to or destroyed houses, as they wished to avoid clashes, thus initially they were there not to carry out an attack.

5. Witness Drs. Brigadier General G.M. Timbul Silaen

- That from the end of July 1998 to the end of September 1999 Witness was assigned as Kapolda of East Timor.

- That Witness' relationship as Kapolda to the Accused as Governor, Regional Head of East Timur was coordinative within the muspida forum, and in incidental cases the relationship with the Governor / Accused was based on the Muspida Forum.

- That the task of security was based in the Tri Partite Agreement, first in the broad outlines of authority the Indonesian government was responsible for security during the referendum process. TNI and POLRI were to remain neutral, secondly a KPS or Disarmament Commission was to be formed in conjunction with UN to carry out disarmament.

- That Police were assisted by Civilian Police from the UN who were responsible for maintenance of order.

- That Police were responsible for the implementation process of the referendum. According to Witness responsibility for the election process encompassed registration, campaigning, and ballot casting as well as safeguarding the ballot boxes. All POLRI tasks were assisted by Civilian Police, thus in the Tri Partite Agreement there were no words stating that only police were responsible, as then, according to Witness, that would not have been accomplished. In the referendum process, responsible authorities included the government of the Republic of Indonesia and the TNI Commander.

- That in the event of disturbances, it was standard procedure for Polres to report to the Kapolda, and then Kapolda would make an assessment or at the request of subordinates, to dispatch additional troops for back-up. Witness could provide reinforcement without a request from Kapolres, Witness himself would assess the need depending on the Gradation of the incident in each Polres.

- That the incident in Liquisa on April 3, 1999 was in connection with a mob assault, as was

the incident of April 4, 1999 in Liquisa.

- That at the time of the incident in the Carascalao Residence Witness was on an official visit to Jakarta, but Witness received a report after the incident, and Witness visited the crime scene.

- That at around 15:00 WITA, from the airport Witness headed straight to the crime scene, and at the crime scene there were Police, Witness saw traces of destruction and traces of broken glass, then Witness summoned the Kapolres and asked for details of the incident and Witness ordered that the perpetrators be arrested and examined.

- That on April 6, 1999, Witness received a report that a clash had broken out in the Dili Diocese, at the time Witness was at the Command, Witness ordered his subordinates to conduct an investigation and actions at the crime scene. At the time there was no one roaming about in the streets, all had fled to Dili Town.

- That upon arriving from Jakarta Witness headed straight to Liquisa together with Bishop Belo and the Danrem, to view the crime scene. After arriving at the crime scene, it evolved that the clash did not occur in the Church, but adjacent to the Church at a distance of about 200 M from the Church, and still in the same compound as the Catholic Church.

- That when Witness arrived at the crime scene, no casualties were apparent only a police line, traces of blood, broken glass. Witness then together with Bishop Belo walked around the perimeter of the Church. Inside the Church was undamaged or there were no traces of damage, the damage was to the Pastor's residence or the Bishop's residence.

- That from the Kapolres' report at the crime scene, 5 (five) people had died and the number of wounded was uncertain.

- That at the crime scene Witness received reports that a clash had broken out between 2 (two) opposing groups using home-made weapons and sharp weapons, that resulted in casualties.

- That regarding the incident at the residence of Manuel Carascalao Witness did not meet with the Accused, but there was a meeting with the Accused and Muspida to discuss burial.

- That Witness did not know of the issue of PAM SWAKARSA, Witness only read about PAM SWAKARSA in the newspapers, that there was KAMRA which numbered 999 members. Recruitment of KAMRA was carried out by KOREM, from registration to training, and inauguration, after which they were handed over to Witness.

- That regarding the inauguration of PAM SWAKARSA on April 17, 1999, Witness received no report, but on his return from Jakarta on April 17, 1999, Witness visited the crime scene, and when Witness asked the Kapolres what was happening, the Kapolres replied that Aitarak was being formed by a group of youths, and Besi Merah Putih was also there.

- That normally the permit to hold a Grand Roll-Call would be issued by POLRI, and Witness did not know of the permit for that event as he was in Jakarta, Kapolres or Kadit Intel knew of this, and Witness was only concerned about capturing the perpetrators.

- That the Head of MUSPIDA was the Governor / Accused, it was the Governor who coordinated all Departments, but security and security splinters were the purview of Witness and Police but Witness and Police could not possibly work on their own.

- That on September 4, 1999, there was a telegram from Pangkoops NUSRA that said KODAL had been taken over by Pangkoops, and following that Witness had another assignment, which was to carry out the Hanoin Lorosae II operation.

- That many offenders had been captured and arraigned, especially before the referendum, many were sentenced, but nearing the referendum, in connection with justice system, the Prosecutors and Judges had fled East Timor.

- That most of the offenders arrested by Witness were from the Pro Autonomy group, as they were easier to capture, and they remained in their own communities, but the Fretilin group was harder to capture because it always operated a hit and run method.

- That to implement the Tripartite Agreement, the President appointed Faisal Tandjung as

executor in charge of security during the referendum, in coordination with 5 (five) Departments. Later a P3TT Task Force was formed, headed by Agus Tarmizi from the Department of Foreign Affairs. Under the Tri Partite Agreement, responsibility was not in the hands of Police but in KPS and the UN was also responsible, because KPS and UN were in charge of disarmament, in accordance with the contents of the Tri Partite Agreement.

- That since the UN's entry on May 5, 1999, UNAMET was in charge of everything and the Governor was powerless. Technically execution of the referendum was in the hands of UNAMET, although Indonesia was named implementer.

- That after the Tri Partite there was the Hanoim Lorosae operation, in which Witness had to carry out and prepare reinforcement of troops to undertake the referendum. Witness was assisted by 3500 personnel or 30 SSK from Jakarta on BKO to Witness in East Timor, and Witness was also assisted by Civilian Police (UN Civilian Police).

- That Witness had attended a meeting led by the Accused in which Muspida, the Kapolres, and Dandim were present, in connection to preparations for the referendum.

- That after Chaos broke out Police went to the residence of Bishop Belo and discovered ballot sheets, ballot boxes and pierced ballot sheets.

- That at the time of the referendum Police were ordered to carry out security but Police were only allowed at a distance of 50 to 100 M from the ballots, therefore the Indonesian Republic was unable to take any action because UNAMET was in charge of everything.

- That Witness took into protective custody 200 members of the Pro Independence group in East Timor Polda for 2 (two) months, in which Witness protected them and fed them, because it is the Universal duty of Police to protect those of opposing political views.

- That in the Liquisa case in connection with the prior sequence of incidents a murder was committed by Yacinto the former Village head who was a leader of the Pro Independence group, who subsequently fled near the Liquisa Church to the house of Pastor Rafael, and as a result of the murder by Yacinto a conflict broke out between the two groups.

- That most of the casualties resulting from this conflict were from the Pro Independence group, and it was true that thousands took refuge in Bishop Belo's house in the aftermath of the conflict.

- That after September 6, 1999, all communication had been cut off and there was no information on what was happening, the respective POLRES were taking care of matters, and all had come to a standstill.

- That to Witness' testimony, the Accused confirmed the Witness' testimony concurred with events on the ground and the Accused wished to add that in fact since the UNAMET office was inaugurated in Dili town on June 3, 1999, government was practically not functioning.

6. Witness DOMINGGUS M.D. SOARES

- That Witness was Bupati of Dili from September 29, 1994 to September 29, 1999.

- That Witness along with the 13 Bupatis had been invited by the Governor / Accused, in connection with preparations of option I and option II, and in the briefing given by the Governor / Accused at the time regarding the agreement of May 5, 1999, to urge the Bupatis to socialize and expedite the options.

- That in the Kabupaten PAM SWAKARSA had been formed at the instruction of the Governor / Accused, PAM SWAKARSA was a guidance program for the community in the effort to maintain security and public order after the emergence of option II that created much controversy.

- That the establishment of PAM SWAKARSA originated from a PEMDA Tingkat II program submitted to DPRD, PAM SWAKARSA numbered 1000 people. PAM SWAKARSA was a Government Program in accordance with Law No.20 year 1982.

- That the roll-call of April 17, 1999, was not the grand roll-call of PAM SWAKARSA but an announcement of the program to be used by the region following the emergence of option II.
- That those attending the roll-call of April 17, 1999 were representatives from each Kabupaten, but at the time not all Kabupaten attended, according to schedule the Governor / Accused would address the roll-call, but the address was replaced by someone else, an elder, because the Governor / Accused had left the roll-call.
- That the number of members from PAM SWAKARSA and other organization attending totaled some 100 to 200 people, they wore no uniform and carried no weapons.
- That the grand roll-call was conducted from 9:00 AM and ended at 11:00 WITA, and at the end of the grand roll-call they immediately left and did not hold a parade.
- That regarding the incident in the residence of Manuel Carascalao after the grand roll-call, Witness had no knowledge, as Witness was already home. Witness heard of the incident in the Manuel Carascalao residence from the radio and Witness immediately telephoned the Kapolres and asked the watch to check if the incident was connected in any way to the grand roll-call ceremony and it was found not to be so. This was a purely criminal case and was being handled by Polres and the perpetrators had been arrested, numbering some 20 people who would be immediately processed.
- That Witness did not go to the crime scene, because it was already in the hands of Kapolres and Witness asked that the case be resolved properly and thoroughly, and Witness did not attend the burial of the victims.
- That on April 6, 1999, there was an uproar over the declaration of war from Xanana that was reported in all the newspapers.
- That Witness had no knowledge of the incident of September 5, 1999, as he was at the time not in Dili. From September 2, 1999 Witness and several members were dispatched to Jakarta to protest the fraudulence carried out when the referendum was being held.
- That since the agreement of May 5, 1999 was effected, PEMDA played no role, there were only 3 (three) agencies responsible for the referendum, and these were KPS, the affiliate of KOMNAS HAM which carried out disarmament, UNAMET conducted the referendum and POLRI maintained public order.
- That one of the triggers causing the conflict between the groups was the fraud discovered to have been committed by UNAMET, these frauds by UNAMET being, among others the one-sided appointment of local staff, the absence of Witness in the referendum, such that they created the results themselves, and brought the ballot boxes to Dili without Witness.
- That other fraud occurred in SMP KRISTA the UNAMET headquarters in the morning at 5:30 WITA where ballot casting was already conducted, despite protests from the aggrieved parties that were not heeded by UNAMET.
- That Witness had objected to the fraud committed by UNAMET, but was ignored, indeed the announcement of the referendum results was moved forward to September 4, 1999, and thus the fraud by UNAMET was the main trigger to the conflict that was the beginning of the disaster.
- That since May 5, 1999 PEMDA had no civil role or was not functioning at all and the only agencies functioning at the time were UNAMET, KPS and POLRI.
- That Witness submitted periodical and yearly reports to the Governor / Accused, but very important matters were reported directly or he was summoned by the Governor.
- That the incident at the residence of Manuel Carascalao on April 17, 1999 was reported by Witness to the Governor / Accused, although that was Police's jurisdiction. At the time the Governor / Accused said that action should be taken, the situation secured and brought under control.
- That in the incident of August 26 1999, 2 (two) persons were killed and Witness did not know about the wounded. Witness only heard about the ambush by the anti autonomy group

and since May 5, 1999, PEMDA was no longer functioning, therefore it was not reported to the Governor / Accused.

- That in the hierarchical relationship between the position of Bupati and the position of Governor, the Bupati was accountable to the Governor, but was not the Governor's subordinate, but were equally responsible as head of a region.
- That PAM SWAKARSA was headed by the Mayor and the appointment of the Head of PAM SWAKARSA was at the initiative of members.
- That the incident at the house of Manuel Carascalao was perpetrated by PAM SWAKARSA from Liquisa who were on their way back from the grand roll-call.
- That the house of Manuel Carascalao was located in Jalan Antonio de Carvalho No. 13 that was at a distance of some 200 meters from the Governor's Office where the grand roll-call was held.
- That indeed there was a Bupati's Decree for each member of organizations.
- That to the testimony of Witness the Accused did not object and that it concurred with what the Accused knew. However the Accused wished to respond as follows:
- That the Accused did indeed appeal to the Bupatis to revive the PAM SWAKARSA system as a public order system such as siskamling (community security system).
- That Bupatis did not submit yearly reports to the Governor but to DPRD.
- That the acts of anarchy occurring in Dili were due to the injustice and fraud committed by UNAMET, during the referendum.
- That since May 5, 1999, Government had lost the confidence of the people owing to the conflict between the 2 (two) sides, and fueled by the fall of the new order which had been unpopular.

7. Witness MUJIONO

- That Witness was assigned to East Timor as Wadanrem 164 Wiradharma from June 6 to May 16, 1999, charged with assisting the Danrem in operational as well as unit building matters,
- That during Witness' term as Wadanrem in Dili the incidents that Witness knew of included: The clash on April 6, 1999 between the Pro Independence and Pro Integration groups in Liquisa town, which began with the ambush of the Pro Integration group by the Pro Independence group.
The clash on April 3 and 4, 1999 between the Pro Independence and Pro Integration groups, resulting from the Pro Independence group setting fire to 8 (eight) houses owned by the Pro Integration group that led to a violent fight, claiming the lives of 5 (five) and wounding some others, which number Witness did not know.
- That when Witness arrived at the KODIM base in Liquisa, the Dandim and the Kapolres had just concluded a negotiation with Pastor Rafael, in which essentially it was urged that the members of the Pro Independence group responsible for the act be handed over to the security apparatus, and during a repeat negotiation there were gunshots and a sweeping was conducted, and the two conflicting sides urged to halt their fighting.
- That in the incident of April 17, 1999, Witness received a report from KASI Intel that a clash had broken out in the residence of Manuel Carascalao initiated by the Pro Integration group. According to the report, on their way back the Pro-Integration group was harassed by the Pro Independence group, and a clash broke out, leading to the deaths of 12 (twelve) people.
- That following the tripartite agreement, the PEMDA apparatus, the security apparatus, attempted to hold a reconciliation initiated by the Governor / Accused, POLRI apparatus, Danrem and other apparatus.

- That Witness had heard of the options issue, namely option one and option two. Option one provided the broadest special autonomy whereas option two was independence, this option was also called Habibie's option.
- That prior to May 5, 1999, government was still functioning and there were still court sessions.
- That indeed there was a grand roll-call on the grounds of the Governor's office that was attended by 6,000 people from the Pro Integration group.
- That there were 5 (five) casualties from the refugees in the Church, resulting from the people's reaction at the time.
- That the grand roll call on April 17, 1999 was reported to the Danrem.
- That the Accused did not object to Witness testimony.

8. Witness Major General ADAM R. DAMIRI

- That Witness was assigned as Pangdam IX Udayana from July 5, 1998 to November 27, 1999. The mechanism of duties between Pangdam and Governor was only limited to coordination both through indirect meetings and over the telephone.
- That Witness as Pangdam always received reports from Danrem regarding notable incidents in the region East Timor. The reports were written as daily situational reports.
- That according to the report from the KOREM Commander on April 17, 1999, a clash had broken out in the house of Manuel Carascalao between the Pro Independence and Pro Integration groups that led to the deaths of 12 (twelve) people and a number of wounded of which the exact number Witness did not recollect.
- That the house of Manuel Carascalao was turned into a Refugee Camp by the Pro Independence group, at the time the Pro Integration mass passed by the house a clash broke out, possibly upon some provocation from the house of Manuela Carascalao, an exchange of insults led to a clash between the two groups.
- That it was not reported whether or not the casualties died of gunshot wounds, it was reported that the mobs carried sharp weapons such as machetes, whereas no report of firearms reached Witness.
- That Witness had heard about PPI and PAM SWAKARSA but Witness had never provided assistance in any form to PPI as that was not his responsibility as Commander.
- That PAM SWAKARSA was a community organization, such as a Security System conducted by the community in rural areas, growing and developing at the community's initiative to safeguard their home region.
- That upon receiving the report of a notable incident from the Danrem, Witness instructed the Danrem to prevent the conflict from spreading, to assist police in arresting provocateurs or bringing the perpetrators to justice. Further, any casualties should be evacuated and refugees safeguarded.
- That Danrem reported to Witness on the incident in the residence of Bishop Belo on April 6, 1999, in which a conflict broke out between the Pro Independence and the Pro Integration groups, as Bishop Belo's residence was made a refuge by the Pro Independence group, and in Bishop Belo's house was found ballot boxes. The conflict led to the death of a small child, and the rear part of Bishop Belo's house was set on fire.
- That Witness heard that on May 5, 1999, a Tripartite Agreement was signed between the Indonesian Government and the Portuguese Government, witnessed by the UN.
- That on the instruction of TNI Commander in accordance with the Tripartite Agreement, the Indonesian Government, in this case Police, was charged with law enforcement during the referendum in East Timor.
- That according to the agreement TNI was not permitted to undertake any action, and

therefore the TNI Commander redeployed some TNI troops out of East Timor back to their respective stations, TNI was obliged to occupy a military installation and was not allowed to conduct any operation, not permitted outside the barracks armed. At the time Witness wanted to provide back-up for Police but that had to be with the permission of UNAMET.

- That Kapolda, Danrem, and PEMDA had conducted a Sweeping in the region, but regrettably only the Pro Integration group disarmed, whereas the Pro Independence group and Falintil refused to disarm.

- That the measures taken by the Governor / Accused along with the KPS established, TNI, FALINTIL representatives, Pro Integration and Pro Independence representatives, to disarm both sides was unsuccessful, despite KPS' call for assistance to UNAMET.

- That in order to carry out its weighty tasks in fulfilling the Tripartite Agreement, government, in this case ABRI Commander, requested that East Timor POLDA personnel be reinforced, among others with assistance of 30 SSK from Java and vehicles and officers with experience serving the UN from AD, AL, Police, to aid East Timor POLDA in order to fulfill its duties to the maximum, and control of the 30 SSK would be in the hands of Kapolda.

- That East Timor Kapolda had taken measures in order to expedite and secure the stages of the referendum up to the implementation of the referendum.

- That Kapolda had done well in securing registration and up to the campaigning stage everything had gone smoothly despite small clashes between the two groups. The next stage was the truce week in anticipation of August 30, 1999, which was the date for implementation of the referendum.

- That according to Witness, Indonesia's accomplished its task well from the beginning up to ballot casting, and this was acknowledged by the International community including the UN, and East Timor POLDA and its ranks assisted by PEMDA and TNI were able to implement the referendum on August 30, 1999 safely and smoothly.

- That the following stage was vote counting and in the Tripartite Agreement it was agreed that announcement of the referendum would be held on September 7, 1999, but as the vote counting was completed the announcement was forcibly moved forward to September 4, at 9:00 hours WITA.

- That Witness did not know the reasons for moving the referendum announcement forward from September 7, 1999, to September 4, 1999, that Witness heard UNAMET argue to move the announcement up from September 7, 1999 since the vote counting was completed.

- That with the presence of UNAMET the people of East Timor had felt disadvantaged from the beginning of the referendum process, from registration, to the campaigning period and up to vote counting. Thus before September 4, 1999, there was a reaction from the people who felt disadvantaged by taking violent measures to object to the injustice of UNAMET.

- That the Pangdam / Witness, together with Danrem had coordinated with Integration leaders so that protests over the fraud committed by UNAMET in implementing the referendum did not resort to violence and major demonstrations, as it would be better to form a small team of representatives bringing proof of the fraud committed to Yan Martin of UNAMET.

- That according to Danrem's reports the situation after September 4, 1999 heated up with masses conveying their grievance through violence to show their dissatisfaction with UNAMET, problems arose outside Dili, and in Dili town itself fires were lit. Heated situations occurred in Dili town, Suai, Liquisa.

- That Witness received a report from Danrem that a conflict had broken out between the Pro Independence and the Pro Integration masses on September 6, 1999 in the Suai Church.

- That the incident in Liquisa on April 6, 1999 before the referendum was held was a clash between Pro Independence and Pro Integration groups on the residence of the Bishop of Liquisa.

- That sporadic clashes broke out everywhere, thousands of people sought refuge, fires were

everywhere, Police were hard put to overcome the situation, Muspida elements were no longer functioning normally, and therefore it was decided to take over KODAL (Directional Command) on September 5, 1999, at 19:30 hours WITA, with responsibility for control of operations in the hands of Pangdam/Witness, as Commander of Operations Command.

- That on September 7, 1999, KODAL changed to a state of martial law, taken over by the Martial Law Command, in order to take charge of the issue of conflicts in East Timor all military apparatus was mobilized under prevailing laws.

- That the consideration to impose Martial Law was due to the extremely chaotic conditions and at the time PEMDA had broken down.

- That KODAL's task in line with its operational concept was to restore security in the region of East Timor, to halt conflicts, and secure and rescue UNAMET personnel, as well as safeguard existing national assets.

- That around September - October 1999 Interfet forces arrived in East Timor, but even despite their arrival, the riots were not overcome, and indeed government assets that had remained safe before the arrival of Interfet, were then destroyed by the Pro Independence group.

- That on April 21, 1999, peace efforts were initiated, with the signing of a peace draft at the residence of Bishop Belo, attended by TNI Commander, Bishop Belo, the Governor / Accused, and representatives of the two warring sides, namely the Pro Independence group and the Pro-Integration group.

- That Witness coordinated with the Governor / Accused to disseminate the peace agreement, and the Governor / Accused proceeded to disseminate the peace agreement using KPS facilities.

- That the peace agreement implemented on April 21, 1999 was a clear indication of the Governor / Accused's concern for establishing peace between the warring sides, given that after 23 years of dispute the peace agreement was also signed by Xanana Gusmao.

- That in the draft for the peace agreement, it was agreed to erase all disaffection, acrimony, and in the realization the initial measure was disarmament, through appeals or by force through sweepings.

- That to Witness' recollection, Witness still continued to coordinate with the Accused on September 5, 1999, during the Menko Polkam's visit, and on September 7, 1999 in a meeting at the Governor's Office.

- That Witness was not clear about the instigators taken into custody at the East Timor POLDA, however East Timor POLDA had employed the process of law from arrest and examination, but Witness did not know about the following process up to arraignment in Court.

- That Law No. 22 year 1982 regulates the matter of Wanra, Wanra being a youth group recruited, developed and trained by TNI to assist TNI to safeguard a region. In the event a region was under peril through armed threats from Fretilin, they were lent old weapons to defend the region. Wanra took part in roll-calls and guard duty at Kodim.

- That Wanra was indeed under the control of Kodim, however PAM SWAKARSA was outside the responsibility of TNI, both in its development and in its control.

- That regarding the role of the Governor / Accused, to Witness' observation the Accused was not involved in conflicts, but instead attempted to prevent clashes between the two groups.

- That East Timor POLDA and Danrem had detailed knowledge of the fraudulent acts of UNAMET, during the referendum POLRI was not allowed in the vicinity of ballot boxes and had to be at a distance of 100 M from the ballot boxes, and prior to ballot casting many ballot sheets had been pierced, and many Pro Integration people were not able to cast their ballots.

- That it is correct that under the Tri Partite agreement in connection with point 6, it was stipulated that there would be international civilian police assistance in East Timor to act as

advisors to POLRI.

- That according to information relayed by Danrem to Witness it was reported that in Bishop Belo's house were found ballot sheets and boxes but Witness did not have the opportunity to ask for the evidence.
- That regarding Witness' testimony the Accused had no objection and it concurred with what Witness knew.

9. Witness Drs. MATIUS MAIA

- That Witness was Mayor, Head of Dili Administrative region, and Witness occupied the office of Mayor not through election but through appointment.
- That on April 17, 1998, Witness was in Dili town at the time, when PAM SWAKARSA was declared in Dili town, as PAM SWAKARSA had existed since 1975, 1976 and 1977.
- That Witness was invited to the roll-call declaring PAM SWAKARSA, and that the event was officiated by an elder from prominent fighters, who provided guidance and counsel to PAM SWAKARSA.
- That regarding the incident in the residence of Manuel Carascalao following the declaration of PAM SWAKARSA, Witness knew of the incident after receiving information and reports from Witness' subordinates, who reported that a mass conflict had broken out in the residence of Manuel Carascalao.
- That according to information that Witness heard from the community, the incident in the house of Manuel Carascalao led from a man who had disappeared and was thought to be dead, was in fact alive and held hostage in the house of Manuel Carascalao, and when the man shouted in the Liquisa language, "save me", a clash ensued.
- That the task of KPS was to safeguard and secure peace between the Pro Independence and and Pro Integration groups, and then to oversee disarmament or sweepings.
- That with the announcement of option II by President Habibie on January 27, 1999, the region's officials were redundant and powerless.
- That in Dili town there were 1000 (one thousand) PAM SWAKARSA members from 26 Villages, and their purpose was to safeguard their villages, with the approval of DPRD they were provided with an incentive of Rp.150,000.-/ month that was sourced from APBD.
- That during the roll-call declaring PAM SWAKARSA in Dili the Governor / Accused was present but did not lead the ceremony and the address was given by Joao Tavares.
- That AITARAK's existence was not the responsibility of government, the responsibility of government under prevailing rules was, KAMRA under police, WANRA under Kodim, PAM SWAKARSA under Government to safeguard communities.
- That when the referendum results were announced by UNAMET Witness was not invited to witness the ballot count and this created a dispute, and during the announcement of referendum results violence broke out in Dili town and scorched the town.
- That at the Witness' testimony, the Accused confirmed he did not object, and concurred with what Witness knew.

10. Witness LEONETO MARTIN

- That Witness became Bupati Tingkat II of Liquisa, from 1994 to 1998, and at the time Witness was Bupati the Governor was the Accused.
- That on April 3 1999 the Anti Integration group threatened the Pro Integration group at Kecamatan Liquisa and this was repeated on April 4, 1999, at Kampung Pukelara, resulting in the Pro Integration fleeing on April 4 and 5, 1999, the April 4 and 4, 1999, incidents were settled by Tripida, namely the Camat, Kapolsek and Koramil.

- That on April 5, 1999, Anti Integration people attacked Kampung Pukelara by hacking a woman named Paulina and set fire to the villagers' houses. At this incident the people of Maubara from the Integration Group chased them to Liquisa town and they sought refuge in the Church and in the house of Manuel Carascalao.
- That on April 6, 1999, the pro Integration people demanded that the people seeking refuge in the Pastor's house who carried sharp weapons should give themselves up to security authorities, but the demand was not met, and then Witness heard shots.
- That the distance from Witness' house to the Church was approximately 200 M, and as a result of the incident at the Liquisa Church, 5 (five) were left dead and 20 were wounded.
- That PAM SWAKARSA was formed in accordance with Law No.20 year 1982 but Witness did not know the number of its personnel as it was not followed up by a Bupati's Decree nor by a Governor's Decree.
- That PAM SWAKARSA members in Liquisa received assistance of Rp.50,000 per person, paid out once between June and July 1999, this fund was derived from APBD reserve funds. PAM SWAKARSA members in Liquisa numbered some 1000.
- That Witness had reported the incident in Liquisa to the Governor / Accused, including the casualties of dead and wounded, the Governor / Accused directed Police to investigate the case.
- That the dead victims were buried in Maubara in a public cemetery, and when the victims were interred Witness was not present.
- That on April 7, 1999, Witness along with Dandim and Kapolres visited the crime scene in the Pastor's residence.
- That implementation of the referendum was marked by fraud perpetrated by UNAMET, including in the announcement of referendum results which was scheduled for September 7 and was moved forward to September 4, 1999, therefore drawing protests.
- That on the Witness' testimony there was no confirmation of no objection;

11. Witness JOAO FERREIRA

- That on April 5 and 6 1999 Witness was present in the Liquisa Church. On April 5, 1999, MILISI launched an attack from Maubara at Liquisa Church and on April 6, 1999, a Brimob unit arrived, Witness thought Brimob's arrival was to safeguard, but around 13:00 WITA Kodim 168 launched an attack, together with MILISI who had entered Liquisa Church.
- That there were many people taking refuge in the Church, Witness could not count them, they were from CNRT;
- That many men carried out the attack on Liquisa Church and could not be counted, they carried sharp weapons and sticks.
- That during the attack security forces were 5 (five) meters from the Church, they were outside the Church.
- That when the attack was launched Witness heard gunshots, hearing gunshots Witness became afraid, Witness did not know who was shooting nor did he know which direction the shots came from.
- That as a result of the attack Witness himself was wounded, and other casualties aside from Witness were Da Costa, Augustinho, A. Dos Santos, Jonico, Narsizo, Manuel Lisboa, Anuko.
- That Witness sustained hacking wounds that caused him to lose consciousness, and Witness was treated in Hospital for one week.
- That Jose Ramos a member of Kodim in Liquisa brought a weapon into the Church compound and fired shots but Witness did not know who he shot, Witness also saw Tome Diogo a member of Liquisa Kodim inside the Church compound.
- That Witness was rescued to the house of the Bupati of Liquisa, all refugees from the

Church entered the house of the Bupati of Liquisa.

- That people had taken refuge in the Church because MILISI was about to launch an attack from Maubara.
- That before the clash broke out Witness saw 5 (five) policemen consisting of 3 (three) Brimob members and 2 (two) liqisa Polres members, arrive to meet the Pastor.
- That to Witness' testimony the Accused did not object.

12. Witness EURICO GUITERRES

- That indeed on April 17 1999, Witness was in the Governor's Office in Dili to attend the grand roll-call. Witness attended as Deputy Commander of PPI, those attending at the time included Joao Tavares, the Governor / Accused. At the time of the grand roll-call the Accused made no address at all.
- That Witness himself made the opening address, Witness called for the people of East Timor both Pro and Anti Integration to remain united to accept independence and remain part of the Union State of the Republic of Indonesia.
- That some 5000 people attended the grand roll-call, the majority being Pro Integration from everywhere whereas non from the anti Integration group attended, the grand roll-call ended at 12:30 WITA.
- That Witness did not know of the incident in the residence of Manuel Carascalao. Witness only knew of the incident after Witness returned from his mother's home in Dekora. That at the incident in the residence of Manuel Carascalao police immediately secured the attackers, and the house was closed with a police line. Witness heard that some 20 (twenty) people had been arrested.
- That as a result of the incident in the residence of Manuel Carascalao there were a number of deaths but Witness did not know the names.
- That Head of PAM SWAKARSA in Dili town was former Dili Mayor Matius Maia, and PAM SWAKARSA members were not from the only Integration group, but also from the Anti Integration group, they were headed by the Kelurahan or Village Heads across Dili under the leadership of the Mayor. Witness as a member of PAM SWAKARSA received a salary from Rp. 50,000 to Rp.100,000. PAM SWAKARSA was registered with the Mayor's Office.
- That Pejuang Pro Integrasi (PPI) emerged as a result of an agreement reached on May 5, 1999, in which the Pro Integration group were given freedom to establish its won group and its political wing at the time was FPDK headed by Dominggus Soares, BRTT headed by Yosep de la cruz, whereas from the Pro Independence group was formed CNRT headed by Xanana Gusmao and its military wing was Falintil.
- That on April 17, 1999, during the grand roll-call the ceremony was officiated by Joao Tavares, and Commander of Ceremonies was Jos Esmeres.
- That the task of PPI Commander was to coordinate all Pro Integration people in preparing to fight to win the referendum, and also to provide protection for the people threatened by terror and intimidation from the Fretilin.
- That Witness on April 6, 1999 was in Liquisa to meet the pastor on the orders of Bishop Belo, Witness came to inquire about what had happened at the time. Pastor Rafael recounted the incidents of April 4 and 5, 1999, in which people who were being pursued sought refuge in the Pastor's residence.
- That Witness told the Pastor that the residents sheltering there should be immediately evacuated back to their respective homes, and then Witness left the pastor and went to meet the former Bupati of Liquisa Leonito Martin, from Leonito Martin's account, Witness discovered that the Village head of Dato who had hacked a Besi Merah Putih family was

hiding in the Pastor's house. Then Witness returned to Liquisa Church to talk to the Pastor to surrender Yacinto the Village Head of Dato to police in order to resolve the matter.

- That Witness observed that near Liquisa Church many people had assembled carrying machetes, home-made weapons, Witness did not know what group they belonged to, Pro Independence or Pro Integration.

- That Witness departed for Maubara to see the people's houses that were set on fire, Witness observed that Maubara appeared like a dead town, and on his return from Maubara Witness came to know about the incident in Liquisa, so Witness went to Liquisa Church after the incident.

- That when Witness arrived the casualties had been brought to Kodim and to the Bupati's house, and no more casualties were found in the Church.

- That Witness reported the incident at the Liquisa Church to Bishop Belo and Bishop Belo decided that on September 7, 1999 he would visit Liquisa to view the situation.

- That in the structure of PPI, there were Battalion Commanders, Company Commanders, Platoon Commanders, as did Fretelin with Xanana as its Commander.

- That to Witness' testimony the Accused made no objection but Accused wished to add that he recognized the roll-call not as a PAM SWAKARSA roll-call but as a PPI roll-call. The Accused was invited to give an address but the Accused refused, as the Accused had to host a meeting with the Irish Foreign Minister that day.

13. Witness EMILIO BARITO

- That on April 5, 1999, at approximately 7 to 8:00 WITA Witness was in his Office and heard gunshots from Liquisa town and the Witness fled and sought refuge in the Church.

- That Witness entered the Church at 10:00 AM, and inside the Church Witness came upon nearly 3000 (three thousand) people who were seeking refuge.

- That on April 6, 1999, at approximately 13:00 WITA there was an attack on the refugees in Liquisa Church using firearms, home-made weapons and swords.

- That among those carrying out the attack were soldiers in civilian attire, and a uniformed policeman was outside the Church compound.

- That among those who carried out the attack with firearms, Witness recognized a TNI soldier, Tome Diogo, in addition some wore masks who Witness did not recognize.

- That Witness was hacked in the head but Witness managed to escape, in addition there were 9 (nine) fatalities, including Augusta who Witness was acquainted with, while others wounded included Witness' friend Zinunis, who sustained a hacking wound in the neck, and Joao Ferreira, with hacking wounds from a samurai sword.

- That Witness saw some 200 (two hundred) Policemen arrive, upon seeing them Witness they were there to provide protection and the refugees felt safe, but the attack continued, Witness and the refugees felt that Police failed to overcome the situation.

- That on September 5, 1999, at around 10:00 WITA in the morning Eurico Guterres arrived and immediately spoke with Pastor Rafael, and in accordance with the Bupati's request Eurico Guterres asked that any CNRT leaders in the Church should be surrendered, so that refugees who had not eaten since the day before could return to their respective homes.

- That Witness could still remember the names of those who died, they were Yacinto, Augusto, Augustinusino, Victor, Manuel Lisboa, Jonicio and Anuko and others whose names Witness did not recall.

- That as a result of shots fired at the Pastor's house glass and windows were destroyed, because Witness was frightened he hid on the floor.

- That Witness heard TOME DIOGO the TNI soldier say the words "attack, attack, kill them, attack them".

- That the people seeking refuge in the Church were ordinary people not CNRT, and no provocation had come from inside the Church.
- That the attackers were MILISI, and TNI in civilian clothes while Brimob were outside. Witness did not know if Bupati Leonito Martins was involved in the attack.
- That some 1000 (one thousand) people attacked the refugees in the Church.
- That to Witness' testimony the Accused made no objection.

14. Witness Police First Lieutenant SONY SANJAYA

- That Witness was a Brimob Platoon Commander stationed in Kabupaten Covalima, East Timor, at the time the referendum was held.
- That at the time of the incident in the Ave Maria Church in Suai, Witness at the time was evacuating refugees from residents' houses to the SMP, on that afternoon Witness heard gunshots, and after escorting the refugees Witness immediately headed to Suai Church.
- That when Witness was about to enter the Ave Maria Church in Suai, in the streets around the Church and in front of the market Witness saw many TNI and POLRI men, that were standing at ease outside the Church enclosure, then Witness approached and asked one soldier standing at ease outside the enclosure "what's up", and was answered "Pro Integration troops have gone into the Church".
- That at the time Witness was outside the enclosure and Witness saw many people inside the Church, then there was an exchange of gunfire. Witness knew that inside the Church there were many people wearing Pro Integration attire.
- That Witness found dead bodies in the Church, Witness estimated there were over ten dead bodies in the Church, and some of the bodies were clad in Pro Integration shirts Autonomy shirts.
- That when Witness identified the dead bodies, someone named some bodies as Pastor whose names Witness did not recall.
- That all of the dead bodies were collected by Witness' own men, with no assistance from others, eventually Witness shouted at the people there to help collect the dead.
- That in the vicinity of the Ave Maria Church there were TNI and POLRI personnel who made no attempt to prevent the incident, Witness saw them standing idly and just at ease. Witness asked why they had not held back the attack, and they replied they had not dared to do so as the numbers attacking were considerable at the time. Witness, himself, joined in attempting to put an end to the clash.
- That when the attack was over an evacuation was conducted jointly by TNI and POLRI including Witness.
- That Witness saw fires in the Suai Church compound, and during the attack Witness saw some Portuguese made firearms of the GP type and home-made weapons being used.
- That the bodies Witness collected, some came from inside the Church and some from inside the Church compound, or within the Church enclosure.
- That at the time the attack on Suai Church was taking place, Witness saw there Olivio Moro a Battalion Commander of Laksaur from the Pro Integration group, Witness saw him carrying a gun but did not recall the type.
- That Witness fired warning shots for the mass to retreat, Witness along with his men were one team. Witness ordered his men to fire only if Witness himself, opened fire.
- That Witness reported the incident to Kapolres, and Witness also saw that the Bupati and Dandim were held up at the market which was some 20 to 30 M from Suai Church.
- That Witness could not say who had fired the shots, the Pro Independence group or the Pro Integration group, but Witness heard rapid gunfire in the Church.
- That when Witness reported the incident to Kapolres, the Bupati wanted to approach the

Church but Witness prevented him, because the situation was unpredictable.

- That what moved Witness when he looked into the Ave Maria Church was the dead body of a woman holding the lifeless body of her child, and Witness saw that most of the dead had been hacked.
- That regarding the burning incident of September 5, 1999, Witness had attempted to check the fires maximally by dousing with water, but other riots with burnings erupted in other places, and eventually the fire spread evenly and Witness was unable to prevent it.
- That to Witness' testimony the Accused did not object.

15. Witness PRANOTO

- That Witness was Principal of a SLTP who was assigned to Suai from 1984 to 1999.
- That on September 6, 1999, while taking refuge in Betun, Witness met Lettu TNI Sugito at 14:00 WITA, Witness asked him where he was going and was answered to Suai, and Witness said he wished to go along.
- That Witness together with Lettu TNI Sugito arrived in Suai town at 17:00 WITA, then Olivio Mendoza Muruk from the Laksaur Group approached and recounted to Lettu TNI Sugito, that they had just clashed with the Pro Independence. Witness and Lettu TNI Sugito then headed to the Ave Maria Church at around 17:20 WITA. Witness saw that dead bodies were already collected in front of the church, Witness recognized 3 Pastors, namely Pastor Hilario, Pastor Fransisco and the third was a Javanese Pastor.
- That Witness and Lettu TNI Sugito along with the community there carried the 14 dead bodies to a Priory vehicle and the bodies of the 3 (three) persons were put in a utility vehicle owned by the Priory, and covered with atrapaulin. As it was late and dark, Witness and the community members returned home.
- That the next day at 6:30 WITA Witness and his friends had assembled, to transport the bodies there were 3 (three) vehicles, the Priory utility vehicle, a mikrolet and a Hospital-owned Panther.
- That Witness and his friends brought the bodies to the Metamao beach in East Nusa Tenggara for burial and then Witness along with the community led by Martenus Biri dug three graves for the Pastors, and 14 graves for the men and 10 for women.
- That the total number of dead came to 27 (twenty seven) people, included in that number was a small child.
- That when Witness lifted the body of Pastor Hilario Witness saw that that his hands, feet, shoulders, and head had hacking wounds.
- That Lettu TNI Sugito brought the 14 male bodies in the Panther vehicle, the utility vehicle carried the 3 (three) Pastors and the mikrolet carried the female bodies.
- That the bodies were buried in NTT territory on the Metamao beach, next to an old graveyard, the bodies were not buried in Suai Town owing to the unlikely situation.
- That to Witness' testimony the Accused did not object.

1. Witness GUILHERME DOS SANTOS

- That Witness is former Bupati KD Tingkat II in Bobonaro, from August 1994 to September 1999.
- That from April to September 1999 there were many incidents in Bobonaro, one incident was the murder of Manuel Soares Maulaka Gama on April 12, 1999 at 7:00 WITA in the morning when he was heading to Maliana.
- That Witness had reported the murder to the Governor / Accused, and as Level II Regional Head Witness was accountable to the Governor, Level I Regional Head, as Witness' superior.

- That Witness knew that PAM SWAKARSA was formed under Law No.20 year 1982 to defend the country, and Witness was not clear about the number of PAM SWAKARSA in Bobonaro as that would depend on the need.
- That PAM SWAKARSA was not paid a salary but given an incentive if they were deployed. Witness did not know who organized PAM SWAKARSA, clearly PAM SWAKARSA was trained and handled by Police or the military, and they were not armed.
- That nearing the referendum on August 30, 1999, the people had formed organizations that were each given a name. This was also reported to the Governor / Accused and the existence of the organizations were accepted positively, along with the presence of PAM SWAKARSA, to safeguard the respective communities.
- That in Bobonaro there were 2 (two) groups namely FPDK (Opposition Forum for Democracy and Justice) and BRTT (East Timor People's Front). These groups were formed to socialize the defense of autonomy to the widest extent.
- That the Governor / Accused had invited Bupatis from all Kabupatens to a meeting in preparation of the referendum, in particular for socialization to the people, and to ask that officials remain neutral and the people given the opportunity to opt for autonomy or not.
- That incidents occurred not only in Kabupaten Bobonaro, but all across East Timor there was violence, only this was not reported to Witness' superior, and the houses set on fire were owned by both Pro Independence and Pro Integration people.
- That other incidents that occurred, nearing registration or the referendum, many fraudulent actions were committed by UNAMET to allow the Pro Independence group to win.
- That the fraud by UNAMET was very clear, as during the ballot casting on August 30, 1999, at the ballot boxes there were no witnesses from the Pro Autonomy group, only the Pro Independence group were present, even Police were allowed only at a distance of 100 M from the ballot boxes, this was an outstanding fraud by UNAMET.
- That PAM SWAKARSA was directly headed by the Regional Head and not under Kodim or Police but they were trained by Police and Witness was Head of PAM SWAKARSA. The incentive payment for PAM SWAKARSA was obtained from APBD contingency funds and this was approved by DPRD. As this was a PEMDA policy Witness did not seek approval from the Governor / Accused.
- That Dadurus Merah Putih and Hamete Merah Putih were not PAM SWAKARSA, but groups formed by the communities themselves nearing the referendum day of August 30, 1999, and along with PAM SWAKARSA their aim was to maintain security and public order.
- That PAM SWAKARSA and these groups were not armed, whereas MILISI was armed. Since UNAMET arrived in East Timor it grouped BRTT, FPDK under MILISI.
- That to witness' testimony, the Accused did not object.

2. Witness DJOKO SUGIANTO

- That Witness was Head of KOMNAS HAM since December 1999.
- That the task of KOMNAS HAM was to ensure that human rights were upheld in the interest of the state, and there were 4 (four) prerogatives held by KOMNAS HAM, namely: 1. Conducting investigations, 2. Conducting studies, 3. Conducting monitoring and 4. Conducting mediation.
- That the arrival of Witness in East Timor on April 17, 1999, was to improve the work and tasks of KIHAMPIL (Independent Commission for Human Rights in Timor Loro Sae) and to anticipate the heated situation occurring from February to April 1999 so as to eliminate fears of serious human rights violations.
- That when Witness and his team were at the Mahkota Hotel, Witness suddenly saw a rally using vehicles and with firearms and ordinary weapons present. Then Witness heard that a

Sweeping was taking place and a grand roll-call on the grounds of the Governor's Office.

- That following the disbanding of the grand roll-call on the grounds of the Governor's Office, there was a Sweeping that led to the deaths of East Timor residents who were not from the Pro Integration group.

- That after the procession was over and the rally had died down, Witness and his companions visited the casualties at the hospital, apparently 17 (seventeen) people had died, and one policeman was wounded.

- That after the process of meeting with prominent figures from both disputing sides who said they were committed to peace, a peace agreement was drawn up. Then at the residence of Bishop Belo in Dili Diocese through the agreement was born KPS (Commission for Peace and Stability) that functioned to monitor and oversee implementation of peace. At the time those present at the residence of Bishop Belo were TNI Pangab, Pangdam, the Governor / Accused, Bishop Belo, Xanana Gusmao and leaders from the two opposing sides.

- That this agreement was effected on April 12, 1999, and approximately 4 (four) days later Witness assembled the leaders of the two opposing sides to appoint a Chairman.

- That at the time of the referendum on August 30, 1999, only Witness remained in Dili, Witness had allowed his companions to return to Jakarta. After the referendum was over Witness heard there was gunfire or gunshots in the vicinity of the KPS office, but who had fired the shots and who the victims were Witness did not know.

- That with the birth of the May 5, 1999, resolution, in one article it was stipulated that KPS together with UNAMET would attempt or enable to produce an agreement concerning implementation of the referendum and this was accomplished on June 18, 1999, in Jakarta.

- That under Resolution 1246 an agreement for a referendum was reached between RI and Portugal and based on existing terms. That concerning implementation of the referendum beginning with registration, ballot casting, collection of ballot boxes, to counting the entire process was placed in the hands of UNAMET, whereas KPS would merely monitor the presence of human rights violations.

- That at the time the referendum was implemented Witness heard from the Bupatis and Mayors and liaison officers that many things were not in order, from registration, to ballot casting, and even during ballot counting itself, so that fraud was found on the part of UNAMET.

- That grievances were addressed at the UN, in particular from the Pro Integration side, because recruitment of staff was sourced from the pro Independence side, both university and high school students.

- That up to June 17 or 18, 1999, KPS was working unevenly because Xanana Gusmao from the Pro Independence side was never able to attend.

- That to Witness' testimony the Accused had no objection, but the Accused also wished to add several points:

- The Accused was not a member of KOMNA HAM, but witnessed the peace vent at the residence of Bishop Belo.

- That under the May 5, 1999 agreement, PEMDA and Central Government were only to provide security which was provided through Police and implementation of the referendum was to be conducted by UNAMET.

3. Witness MARTINHO FERNANDEZ

- That Witness was Bupati of Viqueque, and Witness was in frequent contact with the Accused as Witness' superior and the Accused discussed with him the implementation of the referendum.

- That of 13 Kabupatens in East Timor, 3 (three) Kabupatens experienced riots and these were

Liquisa, Dili and Suai.

- That when Witness received reports from his community of any incidents, Witness would relay the reports to the Governor / Accused, and the Accused would suggest cooperation with security officers to secure the situation.
- That Witness along with Danrem had delivered a Letter from the Accused that Witness was to hand over to Fretilin in an effort toward reconciliation. The Accused had also floated an idea to build a monument for victims from UDT, Fretilin and Apodeti, all victims would be considered as heroes. The Accused then suggested the establishment of the organization "Klibur Oan Timur Ba damai".
- That PAM SWAKARSA was in villages to safeguard the village population, they received no salary but were provided some compensation money, that was derived from Kabupaten funds. The number of PAM SWAKARSA members was never reported to Witness.
- That following the New York agreement of May 5, 1999, many organizations were created such as BRTT and FPDK that were the initiative of pro autonomy people to win the referendum.
- That Fretilin men from the jungle had set fire to houses, Fretilin people in the jungle had weapons but nothing could be done about that, that during the referendum all arms were to be laid down.
- That since UNAMET arrived in Viqueque, two days later violence increased where previously there had been no violence.
- That Witness was once invited to an official meeting by the Governor / Accused, that they met as friends when Witness was in Dili, Witness frequently met the Accused.
- That regarding relations between UNAMET and Fretilin, according to reports from the people, UNAMET wanted Fretilin to win in the referendum.
- That to Witness' testimony the Accused did not object, but the Accused wished to add that indeed the Accused had formed the organization Klibur Oan Timor Ba Damai, which meant Timorese Towards Peace, which had progressed well, in particular with the participation of CNRT, but Xanana Gusmao sent a letter from prison in Jakarta forbidding CNRT people to join the organization.

4. Witness VIDAL DOMINGGUS DAUTEL SARMENTO

- That Witness' last office was as Bupati of Manatuto from 1998 to 1999.
- That Witness knew of the incidents nearing the referendum, Witness knew the Governor / Accused had never ordered the assaults.
- That the Governor / Accused together with Danrem and Bupatis had appealed to all the people of East Timor to prevent contention between the two groups, Pro Integration and Pro Independence.
- That Witness had heard from the people that UNAMET had provoked the Pro Integration group, and that indeed there were witnesses from the Pro Integration group at the ballots, one of them was a friend of Witness.
- That on August 29, 1999, a party of Australians led by a former Australian Prime Minister and numbering 12 people visited Witness' house and asked who would win the referendum, Witness replied the pro Integration Group, by about 85%.
- That UNAMET recruited witnesses for the ballots through pastors from the Pro Independence group, the list of witnesses was obtained from the Pastors.
- That Witness had seen an Australian train CNRT youths in military warfare at Tasihalum in Kabupaten Manatuto.
- That Reconciliation was conducted through a traditional oath taken by the pro Autonomy side and the Pro Independence side, by slaughtering a buffalo, drinking palm wine and

chewing betel leaves, they take an oath for the two sides to refrain from persecuting each other.

- That the fraud committed by UNAMET in Kabupaten Manatuto was reported by Witness to FPKD and BRTT leaders to be relayed to the Governor / Accused. That the people claimed they had received ballot sheets that were already pierced and ready to be placed in the boxes.
- That the youth on duty at the ballots were from the Pro Independence group, UNAMET officers stood some 3 M from the ballots, Police were on duty 50 M from the ballots and UNAMET was in control.
- That at this fraud by UNAMET Witness submitted a report to the Governor and Witness delivered copies to Kapolda and Danrem.
- That Witness did not attend the PAM SWAKARSA grand roll-call on April 17, 1999, on the grounds of the Governor's office.
- That in Kabupaten Manatuto there was a PAM SWAKARSA and it numbered some 150 people, they assisted police in setting up the ballots. This PAM SWAKARSA asked for a donation of rice, and so Witness delivered rice to them.
- That PAM SWAKARSA's task lay in their own village, they were handled by Bimpolda, at any disturbance they would inform Bimpolda, and the ballots would be secured. Witness only once provided assistance to PAM SWAKARSA, and that was the rice donated at the Camat's request.
- That government was no longer running effectively, only 50% was partly run by CNRT, and they would no longer deal with the leadership.
- That to Witness' testimony, the Accused made no objection.

5. Witness NICOLAY APRILINO SH

- That Witness was Chairman of the Foundation for the Study and Investigation of Human Rights and Social Issues, and also of the Advocacy Team at the East Timor Protestant Church, and later former member of DPRD Tk I Tim-Tim, KPS member and member of the UNAMET Observer Team.
- That Witness' task was to monitor the activities prior to and following the referendum.
- That the fraud committed by UNAMET had begun when local staff were being recruited for UNAMET, in which the local recruited were mostly from CNRT youths. Whereas not one from the Pro Integration group passed the selection process with the excuse that they were part of the Indonesian Government.
- That UNAMET visibly indicated its partiality by granting a looser campaign schedule to CNRT, whereas the campaign schedule for the Pro Integration was very limited.
- That during the referendum witnesses from the Pro Integration side were not involved in the ballots, ballot casting was opened at 5 o'clock in the morning and people opting for option II were prioritized. During the referendum the ballot boxes were not opened, illiterate people and the elderly were guided by the hand by CNRT youths to cast their ballots for option II, Witness objected but was ignored by UNAMET.
- That after the referendum the ballot boxes were taken to Baliday by Helicopter, and from Baliday half of the ballot boxes were brought to Darwin. So the count was made in Darwin.
- That since the option II was offered by former President Habibie on January 27, 1999, violence began to escalate, so it was not limited to the referendum period. From February to March the Fatafao people from Maubara had fled to Atambua, and some were placed in the Maubara fort, some fled to the Bupati's house, and some fled to Liquisa and Dili Town.
- That before UNAMET was formed there were already many white people in Dili and some posed as reporters, and some even went into the jungle. Witness himself saw many Australians and Japanese in the jungle.

- That the riots peaked after September 4, 1999, after the results of the referendum were announced. On that day in Dekora region CNRT youths and anti Integration groups had descended to celebrate. There the homes of migrants, Pro Autonomy people were stoned, the people were assaulted in the streets, and frequently Koramil personnel from Dekora were assaulted by CNRT youths.
- That Witness saw that in the violence that occurred in East Timor the Governor / Accused never played a role nor took part nor urged the people to violence, indeed the Accused appealed for violence to stop.
- That Witness read in Suara Timor Timur, the Governor / Accused always called for or instructed the people to be wary of provocation in Dili Town, and to maintain security and not to resort to violence.
- That other violence occurred during the last campaign of the autonomy side on August 26, 1999, this violence led to the deaths of 3 Pro Autonomy people in Dekora near the Kulugun bridge. At the time the pro Autonomy group were in a procession around the town and objects were hurled at them and they were even fired at from the workshop of a Chinese at the end of the bridge.
- That Witness had never held a direct dialogue with the Governor / Accused but at each KPS meeting they would meet along with representatives from PEMDA.
- That on July 7, 1999, Witness' house in Kintalki was rushed by CNRT, who called Witness a ninja or Maobu. Witness was also called an intel or informer whereas Witness had no knowledge of intelligence matters.
- That human rights violations that took place resulted from the Pro Integration group feeling injured and they rose in opposition.
- That the incident at the Liquisa church on April 5 began with an attack by CNRT youth led by the Village Head of Dato named Yacinto, then this was retaliated resulting in the people fleeing to Liquisa church where Pastor Rafael was. That at the time there was indeed provocation and intimidation by CNRT youths. Only later did the pro integration people rise in anger.
- That during the inauguration of BRTT at the Mahkota Hotel, Roving Ambassador Lopes De Cruz stated his objection to the option, and he opposed the option. If the option was carried out and if autonomy won blood would drip, and if autonomy lost blood would flow. It was a symbolic phrase to mean that if the referendum were carried out there would be civil war.
- That during the PAM SWAKARSA roll-call in Dili on April 17, 1999, Witness was there to monitor the event, and when PAM SWAKARSA paraded past the house of Manuel Carascalao, from inside the house there were cries for help, and from Manuela Carascalao's house attacks were made on PAM SWAKARSA people. The PAM SWAKARSA people from Liquisa then descended on the house, and after they were inside apparently one of their kinfolk was at the home of Manuel Carascalao, brought by Manuel Carascalao from Liquisa to his house on April 5 and 6, 1999.
- That when PAM SWAKARSA from Liquisa rescued their kinfolk who was at the house of Manuel Carascalao, Manuel Junior the son of Manuel Carascalao castigated an elderly man from PAM SWAKARSA with profanity and anger was ignited.
- That since the option was issued Witness saw that Governor and East Timor PEMDA had broken down completely, and no longer functioning, with everything determined by central government.
- That the fraudulent actions of UNAMET were reported to Deplu. That all ballot boxes were brought to Darwin by air and that Witness himself witnessed this when he came to the UNAMET office.
- That all incidents that Witness recorded in the field, Witness reported to KPS, that Witness together with Joko Sugianto, Florentini, BN Marbun came to the Maubara fort in Liquisa to

see the refugees.

- That to Witness' testimony the Accused made no objection.

6. Witness BASILO DIAS ARAUJO

- That Witness had worked at the Capital Investment Office in east Timor and the function of Witness was to act as official translator for the Governor and Danrem, from 1997 to 1999.

- That the Accused had ordered Witness to seek Pro Independence figures who could be embraced and Witness had seen the Accused invite Pro Independence figures to his house.

- That the Governor / Accused had asked the Australian Ambassador to facilitate a reconciliation meeting between all East Timorese in a third country and had also asked the Canadian Embassy for help in facilitating meetings between East Timor figures.

- That the Accused had brought up the fraud committed by UNAMET specifically on August 30, 1999, including the fraudulency committed from August 10 to August 30, 1999.

Witnesses from the Pro Integration group were not allowed at the ballots by UNAMET, and Pro Integration witnesses were also not invited by UNAMET during the ballot count.

- That Witness heard from Electoral Commission Judges from South Africa, South Korea and Northern Ireland, that the decision made at the time was UNAMET had admitted to the fraud.

- That UNAMET was no longer neutral, for example the UN spokesman became the mouthpiece of UNAMET in East Timor. He had stated that if you chose CNRT you elected to live in a big house, whereas if you chose autonomy you had elected to be in a small room of a large house.

- That the Pro Integration side had never signed off the results of the referendum.

- That on September 3, 1999, after a session chaired by 3 (three) judges from South Korea, South Africa and Northern Ireland was over, there was no opportunity to relay this to the Accused, as the next day the referendum results were announced. Witness planned to report the incident on September 4, 1999, but on September 4, 1999 the UN announced the results of the referendum.

- That Witness witnessed the grand roll-call on the grounds of the Governor's office but it was not a PAM SWAKARSA roll-call but a PPI roll-call, Witness did not take part in the roll-call but saw it while crossing from the Governor's office.

- That regarding the incident in the residence of Manuel Carascalao Witness did not witness it but Witness heard directly about it from Manuel Carascalao and his son who came to the Danrem's residence to request arms.

- That the UN Electoral Commission was a special commission higher than an electoral commission and they introduced themselves as judges. They convened in Baliday.

- That from September 1, 2, 3, Witness brought 600 witnesses to the session, the panel of judges repeatedly questioned the witnesses until the witnesses grew angry and rapped on the table.

- That officially on September 4, 1999, a letter was issued rejecting the referendum results.

- That all UNAMET's fraudulency should have been conveyed to the commission of 3 (three) judges but Witness did not know where they were.

- That to Witness' testimony the Accused made no objection, and he wished to add that the Electoral Commission judges were only known to the Pro Autonomy group on August 30, 1999, and their presence had been covered up so that it was not generally known.

7. Witness HERMINIO DA SILVA COSTA

- That Witness had been head of the Civil Servants Cooperative in East Timor.

- That Witness had heard of the attack in Liquisa, the attack was carried out by CNRT in Maubara assisted by pastor Rafael. Witness was informed that 2 (two) Pro Autonomy

members at a hotel were killed by CNRT, and the people who had committed the murders fled to Liquisa Church to hide.

- That on April 6, 1999, police came to ask Pastor Rafael to surrender the murderers to be brought to justice, but the pastor refused, and then a shot was fired from inside the church. That Witness heard that the incident in Liquisa church had resulted in deaths and injuries.

- That Witness heard through the radio that the Governor / Accused was appealing to the people to remain calm, and to the Pro Autonomy people whose members were killed by CNRT to refrain from taking action, and that all matters should be left in the hands of police to be resolved through the law.

- That the Governor / Accused's call at the time appealed to community leaders to refrain from taking matters into their own hands and to using violence to resolve the issue, and that everything should be reported to their leaders in their respective areas.

- That to Witness' testimony the Accused did not object.

8. Witness DRS. RAJA KARINA BRAHMANA

- That Witness was Sekwilda in East Timor from March 9 1993 to September 6, 1999.

- That on April 17, 1999, Witness was invited to a PPI roll-call and the invitation was signed by Dominggus Soares as Bupati Tk.II of Dili. Among those present at the event were the Governor / Accused, echelon one staff and echelon two staff. The meeting was initiated by PPI itself.

- That the Pro Integration force was henceforth known as PAM SWAKARSA and it had originated from themselves. Witness did not know if all kabupatens were present at the event.

- That in its activities PAM SWAKARSA did not receive special funds from central Government nor from PEMDA. But they had asked for assistance from the bupatis and also to the Governor according to the financial condition of PEMDA at the time.

- That PAM SWAKARSA present in the roll-call on the grounds of the Governor's office numbered approximately 1000 people. The AITARAK organization in their integration process joined with PAM SWAKARSA>

- That there was no administrative control over PAM SWAKARSA by PEMDA tk I and PEMDA Tk.II, but they did submit a budget for their funding and the Governor instructed them to see the sekwilda for assistance.

- That officiating the grand roll-call was Joao Tavares, who at the time called for determination to maintain East Timor as an integral part of the Union State of the Republic of Indonesia.

- That at around 5:00 to 6:00 in the evening Witness was informed that when the PAM SWAKARSA roll-call was over and they were in a procession heading home, as they passed by the house of Manuel Carascalao a verbal match and an exchange of jeers took place that led to a clash.

- That according to information received by Witness, there were 2 (two) people dead, and one was the son of Manuel Carascalao.

- That the Governor / Accused asked all kecamatans and kabupatens to set aside funds for social aid and for the success of the referendum.

- That during meeting with bupatis, the Accused asked the regions to maintain security in their communities, villages, kecamatan, and so on.

- That during the roll-call on April 17, 1999, it was true that some had brought sharp weapons, or home-made weapons. That to hold the roll-call of April 17, 1999, a permit was requested from PEMDA for use of the location. The event took place from 9 in the morning to 11.

- That Aitarak, Besi Merah Putih, Laksaur were Pam Swakarsa.

- That the incident in Kabupaten Covalima was reported to the Governor / Accused, and

acting on that report a Muspida meeting was held with POLDA, Dandim to overcome the situation.

- That in the Muspida meeting, the Governor / Accused always asked each regional head to seek a solution to prevent further violence.
- That some people who sought refuge did so on their own and some were helped by the authorities.
- That until the emergence of UNAMET, government was still functioning, but after the referendum government was practically at a standstill.
- That PEMDA always adopted a neutral position to the conflict between the 2 (two) groups, and even made efforts to get the two groups together in a meeting.
- That to Witness' testimony the Accused made no objection.

9. Witness FLORENTINO C. SARMENTO

- That Witness was a representative of KOMNAS HAM in East Timor until September 1999 and Witness was also a member of the Commission for Peace and Stability (KPS);
- That immediately following the announcement of the referendum by the former President of RI, B.J. Habibie on January 27, 1999 at midnight, the high spirits and euphoria that resulted were already leading to chaos and all the laws of the Republic were considered invalid in East Timor;
- That since the announcement by the RI President, BJ Habibie, that the East Timor issue was to be resolved through a referendum, government in East Timor was effectively unable to carry out its duties to fulfill its responsibilities;
- That the Governor / Accused had told Witness the referendum should not be carried out otherwise chaos would result. That the very brief period to prepare for a referendum, in addition to the volatile emotions of the people, whichever side won would create a vast problem for the people;
- That as a member of KOMNAS HAM Witness was assigned by the Accused to arrange a meeting between the two warring groups, specifically the armed group Falintil which was in the jungle, and the armed pro Integration, in order to refrain from violence when one side or the other won or lost in the referendum;
- That the Accused was never granted extra authority such as ruler of a state of civil emergency to seek settlement to issues, or held special authority. As Regional Head lacking extra and special authority the Accused on his own was unable to prevent the turmoil and horizontal conflict that spread rapidly in East Timor;
- That from what Witness observed in East Timor, it was Police assisted by TNI who worked in the field to prevent riots and rescue people, whereas UNAMET stood back and did nothing;
- That Witness departed East Timor on September 6, 1999, at that time the situation in East Timor was chaotic and had spread to the border, and even into ATAMBUA;
- That looking back on the history of East Timor, the essence of the conflict was civil war as a result of different political ideologies in 1975. That the troubles in 1999 should be linked to East Timor's history that has been full of conflict. After 20 years the horizontal conflict in East Timor has never been fully resolved;
- That Witness observed UNAMET demanded disarmament only from the Pro Integration group, whereas Falintil and the Pro Independence group were not disarmed. Yet the Commission for Peace and Stability (KPS) had agreed that both sides should be disarmed whatever the referendum results, to avoid destroying each other. But disarmament was not executed maximally;
- That regarding carrying of arms two groups were involved, one group living in the jungle who did not consider themselves Indonesians, and as such refused to surrender their arms, and

the other group in urban areas, so that security forces met with a great deal of difficulty in conducting sweeping of arms;

- That as member of the Commission for Peace and Stability (KPS) Witness received reports, specifically from government officials and from the Pro Integration side who reported when their members were attacked, and these reports were relayed to Police for further action and handling. In addition both the Pro Independence group and the Pro Integration group reported incidents of murder and assault, to the Commission for Peace and Stability (KPS);
- That to Witness' testimony the Accused made no objection, but wished to add several pints, among others:
- That the International Civilian Police in collaboration with Police were to disarm both sides, but in fact in the field only the Pro Integration group was disarmed;
- That during the signing of the peace agreement at the house of Bishop Belo, the Accused was present and cosigned the agreement as a witness to peace;

In considering, that in court the Accused's Legal Counsel had submitted 1 (one) expert witness under oath according to his faith that in essence presented the following:

Expert Witness Prof. DR. BAMBANG POERNOMO, SH

- That in light of prevailing laws regarding serious violations of human rights and according to prevailing international standards and according to development in science, the relationship of a superior in terms of responsibility has always been problematic and is unending such that it must be viewed case by case, the responsibility of subordinate and superior in war crimes and the responsibility of the subordinate in terms of crimes against humanity, should certainly be distinguished;
- That according to Witness there are 12 parameters that have to be met by an Ad Hoc Human Rights Court in trying serious violations of Human Rights, and these are:
 1. A Court that is entirely ad Hoc so as not to bear the impression of being an instrument of government;
 2. Human Rights violators are Civilian and Military, individually or in a group, not excluding the possibility of a conspiracy;
 3. Charges / plaintiff may be individual or through class action, not excluding by NGOs or community organizations;
 4. The first agency for a Human Rights Court is at the High Court level, not at each Kabupaten/ Mayoralty in the District Court;
 5. KOMNAS HAM as the investigative agency for Human Rights violations working on fact finding;
 6. Law enforcement agencies and qualified legal counsel with the special condition of extensive knowledge of human rights and with extensive experience to understand International Law standards;
 7. An understanding of the elements of human rights violations based on legal science doctrines;
 8. A balanced examination of the accuser and the accused;
 9. Elaboration is needed to determine civil, administrative and criminal sanctions, not excluding non penal sanctions;
 10. The court is authorized to issue a ruling in the event that reconciliation and truth are needed from the Commission of reconciliation and Truth;
 11. Human rights court activities / process to be in conjunction with the Commission for

Reconciliation and Truth in reflecting a two-phase justice system;

12. Investigators, Prosecutors and Justices are Ad Hoc;

- That in the Ad Hoc Human Rights Tribunal currently underway points 1 to 5 have been met, whereas points 6 to 12 have not been met. Furthermore, the Ad Hoc Human Rights tribunal must be accompanied by scientific justice and precision justice so as not to fall short of national and international expectations;
- That in further development of special cases or *lex specialis*, responsibility is vicarious responsibility, whereby the superior is responsible for the actions of the subordinate, for example, in the case of a health care worker without a medical degree, the responsibility lies with the doctor;
- That according to the history of criminal law, responsibility of superior and subordinate should be determined by a Decree or specific regulation, thus the Decree should be reviewed or the regulation reviewed to determine the relationship between superior and subordinate;
- That in determining the presence of a violation of the law or a crime, especially in connection with serious violation of human rights, several instruments should be applied simultaneously, namely reconciliation, compensation, and the limited criminal justice system. On this basis a human rights case is created from an alternative justice process, so it is not always similar to an ordinary crime, and if there should be a ruling for reconciliation or compensation such as paying damages to a community, this is possible in a human rights tribunal case;
- That in the alternative justice system, a serious human rights violation tribunal does not inevitably conclude with a sentencing, but may be concluded with a ruling for Reconciliation or Compensation;
- That a tribunal in a Court, including a Court for criminal or civil cases, should always refer to new developments, and should not be only final but could be non final. In a non final verdict, the criminal judge's sentence could be in the form of damages, and this is a civil case provided for in the Criminal Code;
- That further, a Tribunal need not be concluded with a sentencing but with a ruling, as this is a tribunal in an Ad Hoc Human Rights Court, and there is a big possibility of such a ruling, and thus the ruling could be reconciliatory or compensatory;
- That in practice since the 1980s the rule of limited criminal justice system was introduced, which means that a tribunal may not be influenced by a Keppres or a Ministerial SK, and therefore the judgment is left to the Panel of Justices, which is morally responsible, and is also determined by the conviction of the justices during the trial;
- That a serious violation of human rights should not be directed by Article 338 KUHP and Article 340 KUHP but should be directed by Law, whether genocide did indeed take place;
- That the first tribunal for serious violation of human rights in Indonesia should adopt scientific justice and precise justice;
- That according to interpretation of criminal law, chaos occurs when law enforcement can no longer be applied, for example in Aceh there is no law enforcement but chaos in Jakarta and in Aceh are distinct, Witness himself was unable to provide a definition;
- That the assistance of science is needed to prove if the Bupati or the Governor may be held accountable for the criminal acts committed by others;
- That to Witness' testimony the Accused made no objection;

In considering, that in court the testimony of the Accused was heard that in essence presented the following:

- That the Accused became Governor from 1992 to September 9, 1999, and was terminated as Governor through a Presidential Decree in 2000. A Governor is nominated and then elected by DPRD, and after elected is nominated to the president, until a presidential decree is issued for appointment as Governor.
- That the Accused was appointed Governor in 1992, through SK.239/M.thn1992 signed by President Soeharto, and the second time for the period 1997 to 2000, through SK No.260/M year 1997, also signed by President Soeharto.
- That the task of Governor was to undertake government of Tk.1. The Governor in question was a regional head, at the same time as a territorial head. As territorial head the Governor was accountable to the president and as regional head the Governor was accountable to DPRD Tk.I, and by law its is stipulated that the Governor is vice president in the region in question.
- That the assembly on April 17, 1999, on the grounds of the Governor' office, was not a PAM SWAKARSA roll-call but a PPI grand roll-call. At the time the Accused was invited by the Bupati of Dili to attend the ceremony.
- That the Accused said to the Bupati of Dili "what is the event for, if it is a PAM SWAKARSA event I will attend, but if it is not a PAM SWAKARSA event as Governor I cannot inaugurate a force that opposes other forces".
- That when the Accused came to the event, the Accused saw that it was not for PAM SWAKARSA but for PPI, and therefore the Accused refused to continue his presence there, and also refused to give an address.
- That the refusal of the Accused was based on the principle that if the Accused inaugurated the PPI roll-call, it would be an indication to the public that the Accused was for the group inaugurated, and this the Accused did not desire.
- That PAM SWAKARSA as a force existing in the community at the village level, PAM SWAKARSA being on a par with siskamling that was applied in Java or other places.'
- That those attending the PPI roll-call event on April 17 1999, were from 3 (three) kabupatens, namely Maliana, Liquisa, and Dili. The Accused was unwilling to attend at the time because PPI was a military wing of one of the contestants in the referendum, therefore if the Accused were to attend, Accused would have been obliged to attend an event of the opposing side. That to avoid this the Accused preferred not to attend the event.
- That as Governor the Accused had to be neutral, the Accused was cautious about matters that could affect regional leadership. Under the May 5, 1999 agreement, the Governor or regional government, was not allowed to intervene in referendum affairs.
- That when descending from his chambers on the 2nd floor, the Accused met Espedito from the Public Relations Bureau. The Accused asked him which group was holding the event, and the reply was that it was not PAM SWAKARSA, but the Accused continued on to the tent, coincidentally none of the Muspida were present. Subsequently the Accused left as he had to receive the foreign minister from Northern Ireland and to host an event for the visitor in his house. That during the luncheon the Accused was called by the Public Relations Bureau about the incident in the house of Manuel Carascalao.
- That attending the event was not PAM SWAKARSA, but FPI members, with some dressed in uniforms, and others wearing plain clothes, and PAM SWAKARSA never wore uniforms.
- That at that roll-call meeting, the Accused did not see any weapons, the Accused did see that some of the men on parade wore camouflage gear.
- That a report from the public relations bureau said there was a riot in the house of Manuel Carascalao as a murder had taken place there. The Accused then dispatched Kadit Sospol Colonel Samsu to check on the riot and to coordinate with the rest of Muspida, in particular with police and ABRI to view the incident immediately.
- That the Kadit Sospol's report that the Accused received from the Vice Governor, stated there were fatal casualties including the son of Manuel Carascalao. That night in his house the

Accused was accosted by his brother-in-law who said that in his house 7 people were hiding who had fled the house of Manuel Carascalao, and the Accused told him to save them and to report to security.

- That public order according to Law No.5 year 1974, under the Governor's authority, the Governor said, covered the security of civilians, the security of the cities, the security of offices, the security of the public.

- That in the Governor's office there was no hansip (civilian defense) but there was Pamong Praja, including at PEMDA Tk.II, Pamong Praja being an organization handled and trained by police but funded by the regional government.

- That Hansip was under the tutelage of ABRI, the Army, which trained civilians who assisted them in military tasks, under the police it was called kamra. Kamra comprised civilians whose assistance was requested by police in police tasks.

- That Kamra was recruited directly by Korem or Kodim, and after training were handed over to police, and then trained again by police to assist in police tasks.

- That when central government accepted the offer from the international community to hold a referendum in East Timor one of the tasks given to PEMDA was to provide support in expediting the referendum but PEMDA was not allowed active participation in the referendum.

- That the Accused assembled all bupatis, Dandim, Kapolres, Kajati, Kajari, in a meeting Muspida. In that meeting the Accused conveyed the tasks of each Tk II body in the referendum. The Accused requested bupatis to provide people who were prepared to assist in holding the referendum at the Tk II level in kecamatans and villages.

- That subsequently the bupatis provided PAM SWAKARSA members in each village to assist in the referendum and to expedite it. PAM SWAKARSA was also prepared to go on duty at the ballots, but was rejected by UNAMET, as UNAMET employed its own people.

- That the Accused did indeed request all bupatis to provide people for PAM SWAKARSA and that had been executed and provided by each bupati.

- That regarding the establishment of PAM SWAKARSA, PAM SWAKARSA was already present when the Accused was bupati, the Accused asked that the PAM SWAKARSA established be deployed for the referendum.

- That the Accused heard from others that the roll-call ceremony was officiated by Joao Tavares.

- That under prevailing law in Indonesia, the bupati is nominated by DPRD, elected and nominated by DPRD Tk. II to the Governor and Governor relays the nomination to central government namely the Minister for the Interior.

- That after a Decree was issued by the president through the Minister for the Interior, or a Ministerial Decree, on behalf of the president the Governor was assigned to install the bupati, and the Accused did so.

- That on April 6, 1999, the Accused was in Jakarta, the Accused heard from the Vice Governor about the incident in Liquisa.

- That at the time the Accused told the Vice Governor to coordinate with the security authorities to seek a way to overcome the situation and prevent it from spreading. The Accused asked the Bupati of Liquisa to reassemble the people whom the Accused had met in Dili.

- That the Vice Governor reported to the Accused that there was 5 (five) casualties, and the Accused immediately ordered the bupati of Liquisa to be summoned, and that further the Vice Governor should coordinate with Korem and POLDA to bring the problem under control to prevent it from spreading.

- That regarding the incident in the Dili Diocese on September 5, 1999, at the time the Accused was in the airport, the Accused received a telephone call from Jesimedes, a bureau

chief, informing him that there had been an attack in the Dili Diocese by the Pro Autonomy group on the anti autonomy group. The attack led from the anti autonomy group frequently entering the Dili port and creating problems there, and then fleeing and hiding in the Diocese, with the pro autonomy group giving chase, and this had resulted in a riot. It was reported that there was 1(one) casualty, the Accused happened to be close to Major General Adam Damiri, and the Accused asked him for help for security forces to curb the riot.

- That the Accused knew of the attack on the house of Bishop Belo on September 6, 1999, after receiving a report over the telephone, according to the report a certain group had attacked Bishop Belo's residence, at the time the Accused received the report from Alberto he was at home and no one could be dispatched, and the Accused planned to leave in the morning, but in the morning the Accused heard that the incident had been handled by police.

- That the Accused on that day did not go directly to the crime scene because the situation did not allow it and there was also the problem of security, as since September 4, 1999, there was no government activity in Dili Town, and the government's authority existed de jure but not de facto.

- That the Accused at the time acted by calling Dandim, Kapolda, Danrem, however they were not available but were out on duty. At the time shops were being set on fire, and the Accused was forced to turn back, and on the way back the Accused was blocked by intoxicated men who were looting the shops.

- That people fleeing and hiding in the Governor's residence on 3 hectares of land, numbered some 3000. The Accused coordinated with police to move some of the refugees to POLDA.

- That following the incident on September 4, 1999, the Accused asked security forces to prevent the riots from spreading, but they did not know who to arrest as everything was in chaos, with people looting, pillaging and killing, unable to be checked, and so they did nothing, intending to investigate when it was over, but at the time the Accused was in Atambua.

- That in terms of organization the bupatis were accountable to the Accused if APBN funds were involved, and in the case of incidents such as killings during riots, they were to attempt to resolve the problem and report to the Governor, but if they were unable to handle the problem they would report and ask for help. For instance "Pak Governor, there is an incident, my village was attacked by people from the jungle, my people have been abducted and carried away to the jungle, please help me, pak Governor, I was not able to deal with the problem". And then coordination would be conducted with Korem to locate the people.

- That in the incident in Liquisa after the Accused returned from Jakarta to Dili, there was a written report from the Bupati of Liquisa to the Accused as Governor.

- That the Accused asked that the incident be prevented from happening again, and the refugee problem had been settled, with those seeking refuge in the bupati's house and in the priory back in their respective places. In general, those seeking refuge in the bupati's house had fled the pastor's house and sheltered in the bupati's house.

- That on September 4, 1999 President Habibie made a speech and formally announced that the referendum result was accepted, in East Timor this was greeted with shock both by the victors and the defeated. The victors were shocked and ran into the jungle, and the defeated in Dili Town were outraged. From that time riots began to appear everywhere, and some people fired gunshots.

- That the announcement should have been made on September 7, 1999, but the Accused did not know why it was made on September 4, 1999.

- That people close to the Accused reported to the Accused the events in Dili at the time of the referendum. At the time the pro autonomy group had reported the fraud committed by UNAMET. The Accused said it was their prerogative to protest, as Governor the Accused himself could not join the protest, and if they had data and facts to back their claim they

should object and conduct a protest.

- That on September 3, 1999, FPDK reported to the Accused that it intended to lodge a protest in Jakarta and they requested funds, the Accused replied there were no funds, and at this time they should seek funds from the respective organizations, and if available they should proceed, but most important was to prevent conflict and turmoil, and to employ lawful means.

- That FPDK brought in witnesses from the regions to protest UNAMET, the Accused appealed to them to use lawful channels and not to resort to violence. Then suddenly the September 4, 1999 announcement was made, and the protests were aborted as the referendum result had been accepted by the president.

- That the protests from those defrauded by UNAMET had been so vigorous that UNAMET feared it would not be able to meet their demands, and UNAMET requested central government to move the announcement up from September 7, 1999 to September 4, 1999.

- That the organizations that were created in anticipation of the referendum in East Timor were FPDK, BRTT from the pro autonomy contestants, and the anti autonomy organizations were CNRT, FRETILIN, FALINTIL, and each of the two factions set up military wings, and the Accused as Governor could not ban them from doing so.

- That under the agreement of May 5, 1999, it was agreed to disarm the military wings of both pro autonomy and anti autonomy organizations. But in reality in the field, only the pro autonomy group was disarmed, while the pro independence group was not able to be disarmed, under the excuse that their weapons had been acquired from previous times.

- That as they were not willing to be disarmed, they were collected into 2 (two) pockets in all of East Timor, but this was also not entirely successful, and in fact according to reports they had received new weapons and grenades.

- That the May 5, 1999 agreement had not been implemented accordingly with regard to disarmament, as only the pro autonomy group had surrendered their weapons, whereas the anti autonomy group refused to do so.

- That during the ceremony in which weapons were surrendered to police by the communities, only a few firearms were handed over, the majority of weapons being home-made weapons and spears. The Accused as Governor may not have succeeded in his appeal to all the people to surrender their arms in accordance with the May 5, 1999 agreement, and it had applied only to the pro autonomy groups, and in their case they had organizations responsible for them, namely TNI, Police and Pemda. Whereas the pro independence group in the jungle were protected by the international community such that they could not be appealed to hand over their arms.

- That in the pro autonomy groups, there was no MILISI, according to some the term MILISI was armed civilians, but then both sides had armed civilians.

- That the policy to accept the referendum result in East Timor was a political move by central government, everything was decided by central government but the details were broken down at Tk.I in East Timor through the Department of the Interior, which at the time asked regional government to accept central government policies and asked Pemda to exert maximum efforts to remain neutral and not take the side of any one group.

- That in the acceptance of the referendum result the Accused was never consulted regarding his willingness, and the decision was purely that of Central Government and the UN.

- That Central Government requested the Accused as Governor to fully support the tasks of the international community in East Timor, including providing offices for them. The Accused offered the use of the Police Mess Hall which had been newly built, but this was rejected. The Accused had also built a PEMDA workshop for all its vehicles and heavy equipment but this was also rejected, and they proceeded to find their own quarters. They came with an authoritarian attitude.

- That under the May 5, 1991 agreement, or the Tripartite agreement, all registration, election

activities were the responsibility of the UN or UNAMET. Pemda assisted in announcements, helped by Civilian Police, whose task it was to help our police to safeguard the tasks of UNAMET in the region.

- That prior to the appearance of UNAMET government was still running well, but as soon as UNAMET arrived in Dili and officially opened its office in Makadolo Village Dili, civil servants stopped coming to work. On the way home from the official opening of the UNAMET office, the Accused's vehicle was attacked by an anti Integration mob so that it was destroyed, but UNAMET did nothing. When police set out to arrest the perpetrators they were hindered from doing so by UNAMET, who hid them in their office.

- That there never was any document stating that Eurico Guterres was the subordinate of the Accused, or was organizationally connected with the Accused. PAM SWAKARSA had no direct line to the Accused, at most there was a line with the bupati. Whereas BMD Laksaur, Mahidi were Tk.II organizations.

- That evacuation began during the Ainaro riots in early 1999, in which bloodshed took place and the Accused attempted to get the two warring sides together, among others by holding a traditional ceremony known as an eye for an eye and a nose for a nose.

- That since the arrival of UNAMET, many people from Maubara and several towns in East Timor fled in droves to Batugade. That indeed on September 4, 1999 there were fires in Dili Town. The Accused did not know which side was causing the fires, according to reports received by the Accused, the fires were not unintentional but as a result of looting. 30% of Dili Town was on fire.

- That the referendum was highly controversial, when the Accused visited the ballots to inspect the ballot sheets, the Accused observed that police could remain only 200 M from the ballots, and the ballots were manned only by UNAMET and its local staff.

- That the Accused made all effort to prevent riots but was unsuccessful as the conflict areas constantly shifted. That government's authority was no longer existing, but as a human the Accused exerted real attempts to prevent the conflicts.

- That administratively and under prevailing rules the Accused was head of Muspida. But every Muspida Tk I meeting did not always have to be initiated by the Governor, the Danrem could do so as well.

- That each member of Muspida wished to prevent and control the riots, not just the Muspida head.

- That the Accused received reports that roll-calls were held in every kabupaten but only to secure the situation and moreover in an unofficial capacity.

- That each organization about to be set up had to be based on a request to the social political directorate and police. In the case of organizations such as Mahidi, BMP, Laksaur, BRTT, following the onset of the reform era the functions of the social political directorate had disappeared, and thus they were set up and the Accused accepted them, and so no request submitted by them. FPDK developed by itself and was not under the control of sospol, and the Accused attended the inauguration of the organization.

- That East Timor was Indonesian territory but there was no recognition from the international community to this effect. Meanwhile the conflict occurring there could never be entirely quashed, as it appeared repeatedly.

- That regarding the incident in Liquisa according to the Kapolres' report the perpetrators of the crime in Liquisa had all been apprehended and investigation completed, but there was no report about whether they had been arraigned in court. The perpetrators of the Dili incident in the house of Manuel Carascalao were also arrested and examined by police at the request of the Accused.

- That the Accused had asked Pangdam IX Udayana for additional security forces to be brought into East Timor, and he had done so according to situation and need.

- That the Accused recognized the need for additional troops, but at the time East Timor had been intervened by the international community, and the UN had even asked TNI to cut down its forces in East Timor, beginning in April 1999, TNI reduced its troops in East Timor by 2 (two) vessels.
- That East Timor PEMDA, in order to settle the conflict had attempted meetings, through a traditional ceremony involving the two sides, whereas the Accused funded the ceremony. The ceremony involved such rites as drinking blood, which was carried out in all kabupatens.

In considering, that in addition to the testimony of witnesses under oath and the Accused's testimony, the Public Prosecutor submitted the following evidence in court, among others;

- a) 2 (two) pieces of cloth drapery;
- b) 1 (one) pair of brown slippers;

In considering, that based on the testimony under oath of the witnesses in connection with the testimony of the Accused and the evidence submitted, the following facts were obtained:

- That indeed clashes and disputes that occurred from April to September 1999 in Dili East Timor were connected to the announcement by the RI President of the provision of 2 (two) options to the people of East Timor on January 27, 1999;
- That indeed in the long history of violence in East Timor, President BJ Habibie wished an overall settlement for the disputing people of East Timor, and as such RI President BJ Habibie announced the provision of 2 (two) options to the people of East Timor, comprising:
 1. Option I :Granting special autonomy to the people of East Timor; if the East Timor people chose this option I, East Timor would remain part of the Republic of Indonesia.
 2. Option II :Rejection of special autonomy, if this option II was chosen, East Timor would no longer be part of RI.
- That the offer of an overall solution to the East Timor issue through these two options was responded by the UN, and subsequently an agreement was reached between the RI and Portuguese governments under the aegis of UN, which was signed on May 5, 1999;
- That it may be stated that the referendum held in East Timor stemmed from the agreement initiated by the UN with the governments of RI and Portugal on 05 May 1999 and signed in New York, or the "New York Agreement" between Indonesia, Portugal and UN that was known as the Tripartite agreement;
- That indeed the agreement for security arrangements between Indonesia, Portugal and the UN Secretary General, comprised:
 1. A climate of security without violence or other forms of intimidation as a prerequisite for the implementation of a free and just referendum in East Timor. Responsibility for ensuring such a climate and for maintaining law and order was generally charged to feasible Indonesian security authorities. Full neutrality by TNI and Police was crucial in this case;
 2. The Commission for Peace and Stability (KPS) established in Dili on April 21, 1999 had to function immediately. The Commission for Peace and Stability (KPS) in collaboration with UN would prepare the guidelines for behavior in the periods before and after consultations, that had to be complied with by all sides, ensure disarmament, and take necessary measures to achieve disarmament;
 3. Before commencing registration, the Secretary general would determine through objective assessment, that a security situation existed that was necessary for the peaceful implementation of a referendum;
 4. Only police would be responsible for the maintenance of law and order; the Secretary

General after receiving the necessary mandate would provide a number of civilian police who would serve as advisers for the Indonesian police in executing their tasks, and during the referendum, to safeguard the ballot sheets and access to the ballots;

- That indeed there were 2 (two) questions submitted in the ballot sheet for the referendum of the East Timor people, namely:

1. Do you accept special autonomy for East Timor within the Union State of the Republic of Indonesia.

2. Do you reject special autonomy for East Timor that will result in the separation of East Timor from Indonesia.

- That indeed The East Timorese who were eligible to cast their votes were those of age 17 (seventeen) years and over, including:

a) People born in East Timor.

b) People born outside East Timor with at least one parent born in East Timor.

c) People whose spouse comes into one of the above categories.

- That indeed the stages of the referendum process were arranged in the following timeline:

Operations planning / presentation May 10 - June 15

Dissemination program to the public May 10 - August 05

Preparation and registration June 13 - July 17

Announcement of list of voters and submittal of

objections and grievances July 18 - July 23

Political campaigning July 20 - August 05

Quiet period August 06 -07

Ballot casting August 30

- That indeed in the referendum process Indonesia and Portugal were entitled to dispatch representatives to observe the entire stages of the referendum both inside and outside East Timor.

- That indeed International Observers would be allowed to monitor the referendum under the rules drawn up by the UN.

- That indeed Indonesian authorities would guarantee a sage climate for a just and free referendum and would be responsible for security and the safety of UN personnel.

- That indeed a number of UN officers would be deployed to ensure the security and safety of UN personnel and property. A number of international civilian police would be in East Timor as advisers to the Indonesian police throughout the referendum stages, to monitor the escorting of ballot sheets and ballot boxes into and out of the ballot sites;

- That indeed the TNI Commander issued an instruction that in response to the Tripartite agreement of May 5, 1999, the Indonesian government in this case RI police were charged with responsibility to enforce the law throughout the implementation of the referendum;

- That indeed under Tripartite agreement TNI was not allowed to take action in any way, and the TNI Commander would redeploy some TNI troops in East Timor to their respective stations, TNI personnel were obliged to remain in military installations, and were not allowed outside their barracks armed;

- That indeed to implement the Tripartite agreement, the ABRI Commander at the time determined the need to reinforce POLDA in East Timor by deploying 30 SSK from Java, operational vehicles, and assisting personnel comprised of officers who had served in the UN, from the Army, Navy and Police, to POLDA East Timor in order that POLDA East Timor could execute its tasks maximally and the control of the 30 SSK would lie in the hands of Kapolda East Timor;

- That indeed following the announcement of the provision of 2 (two) options by RI President BJ Habibie, pressure, intimidation, assaults on the pro integration people surfaced.

- That indeed nearing the incidents of April 1999, intelligence was collected every day, every

week, every month, on incidents in each Kabupaten in East Timor;

- That indeed on April 2 and 6, 1999, an attack was launched by the pro integration group on the pro independence group which was taking refuge in Liquisa church, and this attack was linked to clashes between the integration group and the pro independence group on April 3 and 4, 1999, when the Pro Independence group set fire to some houses owned by the Pro Integration group;

- That indeed the witness Leoneto Martin as Bupati Tk II of Liquisa had reported the clash, including the number of dead and wounded, to the Accused;

- That indeed the witness Joao Ferreira at approximately 13:00 WITA witnessed members of Kodim 168 Liquisa conduct an attack along with TNI personnel in civilian attire and MILISI, into the Liquisa Church;

- That indeed although there were TNI and Police standing at ease in the vicinity of the Liquisa Church compound, when the attack took place they did nothing;

- That indeed upon hearing gunshots witness Joao Ferreira took fright, and when thousands of attackers entered the Liquisa compound, witness Joao Ferreira sustained hacking wounds all over his body, and other victims wounded were: Da Costa, Augustino, A. Dos Santos, Joninopo, Narsizo, Manuel Liboa, Victor, Anuko, and there were 9 (nine) dead;

- That indeed Jose Ramos and Tome Diogo, members of Liquisa Kodim, carried arms into the church compound and fired shots;

- That indeed the witness Emilio Barito who sought refuge inside Liquisa Church saw and heard Tome Diogo, a TNI member, say the words "attack, attack, kill them, attack them"; among those attacking were soldiers wearing civilian attire;

- That witness saw that 9 (nine) people had died;

- That indeed Danrem Col. TNI TONO SURATMAN, Kapolda TIM-TIM Colonel Pol. Timbul Silaen along with Bishop Belo visited the scene of the incident in Liquisa Church;

- That indeed on April 6, 1999, an attack was launched on the Dili Diocese, resulting in dead and wounded casualties;

- That indeed on April 6, 1999 The Accused was in Jakarta when the refugees inside Liquisa Church were attacked and the Accused received a report from the Vice Governor on the incident including that there were dead and wounded casualties;

- That indeed on April 17, 1999, a grand roll-call was held on the grounds of the East Timorese Governor's office that was attended by over 6,000 (six thousand) people, from kabupatens across East Timor. Officials attending the event included: Muspida Tk.I Tim-Tim the Governor of Tim-Tim (the Accused), speaker of DPRD Tk I Tim-Tim, Bupati of Dili, Mayor of Dili, representatives from Polda and Danrem;

- That indeed Bupati of Dili DOMINGGUS M.D.SOARES had reported to the Accused the incident of April 17, 1999 that occurred in the house of Manuel Carascalao;

- That indeed the Accused only briefly attended the grand roll-call as he had to receive the Foreign Minister of Northern Ireland. That when the Accused was invited to address the grand roll-call the Accused refused, because the grand roll-call was for PPI and not PAM SWAKARSA, whereas the Governor / Accused had to remain neutral;

- That indeed the grand roll-call was officiated by PPI Commander Joao Tavares, who also delivered the opening address, urging the people present to win the integration process and remain part of the territory of the Union State of the Republic of Indonesia;

- That indeed in addition to PPI Commander Joao Tavares, Eurico Guterres addressed the thousands of people assembled;

- That when the grand roll-call on the grounds of the Governor's office was over, during a procession of vehicles by the pro integration mass past the residence of Manuel Carascalao, an altercation and a verbal match broke out between the pro integration group and the pro independence group taking refuge in the residence of Manuel Carascalao, and this altercation

caused the pro integration group to attack the pro independence group, leading to 17 people dead and wounded. That one of the twelve fatal casualties was Manuelito Carascalao, the son of Manuel Carascalao;

- That indeed the participants of the grand roll-call on April 17, 1999 carried firearms, home-made weapons, and sharp weapons when they attacked the house of Manuel Carascalao;

- That indeed the residence of Manuel Carascalao was located on Jalan dokter Antonio De Carvalho No.13, which was at a distance of approximately 200 meters from the East Timor Governor's office where the grand roll-call was held;

- That indeed the witness Joko Sugianto on April 17, 1999 was in Dili, and went directly to see the casualties in Dili hospital, and after a count the number of casualties was 17 (seventeen) dead and 1 (one) wounded;

- That indeed when the witness JOKO SUGIANTO and his Team were at the Hotel Mahkota, witness happened to see a rally that used vehicles and where firearms and ordinary weapons were carried, and witness learned that a grand roll-call had taken place at the Governor's office;

- That indeed in April 1999 violence escalated across all of East Timor and this was a source of concern for the RI Government and East Timor figures, and became the serious focus of the United Nations (UN);

- That indeed on April 21, 1999 a meeting was held between the 2 (two) contending groups at the home of Bishop Belo, attended by figures from the contending sides and government officials, including: from CNRT and Falintil Xanana Gusmao and Laindro Issac were present, from Pemda Tk I Abilio Osorio Soares / the Accused and Armindo Soares Marianno as Speaker of DPRD Tk I Tim-Tim were present, while TNI and Polri were represented by Col.Inf. Tono Suratman (Danrem) and Police Colonel Timbul Silaen and witnessed by TNI General Wiranto (Menhankam / Pangab ABRI), Bishop Belo, Bishop Basilio Dasimento, Governor Abilio Soares / the Accused;

- That indeed as a result of this meeting a peace accord was signed between the two contending sides and in realization of this accord, security forces were to conduct sweepings to disarm the two contending sides;

- That indeed the Commission for Peace and Stability (KPS) was formed in Dili on April 21, 1999;

- That indeed to June 17 and 18, 1999 the Commission for Peace and Stability (KPS) was running inadequately because Xanana Gusmao from the independence group was never able to attend;

- That indeed on May 5 1999, the Administration in East Timor was still functioning and the courts were open;

- That indeed after the Tripartite agreement of May 5, 1999, was signed by the Governments of Indonesia and Portugal and the UN, in implementation of the agreement the Accused as Governor of East Timor called a meeting of the 13 (thirteen) Bupatis from across East Timor to prepare for the referendum. That the Accused's briefing during the meeting directed the Bupatis to disseminate and expedite the results of the agreement;

- That indeed with the escalating violence in East Timor the Accused requested all Bupatis to reactivate and effectuate PAM SWAKARSA, and the Accused also instructed that all PAM SWAKARSA members be paid compensation toward their welfare in accordance with the respective capacity of each Pemda Tk II;

- That indeed PAM SWAKARSA was a community organization aimed at securing each of the regions, but after the situation became heated eventually the Pro Independence people withdrew from PAM SWAKARSA as PAM SWAKARSA leaned more toward the Pro Integration ideology;

- That indeed eventually PAM SWAKARSA became part of Government, striving for Pro

Integration in line with official policy;

- That indeed Aitarak, Besi Merah Putih, Laksaur, were PAM SWAKARSA;
- That indeed in realizing the Accused's request, Pemda Tk II Kabupaten Covalima provided assistance to PAMA SWAKARSA amounting to Rp.150,000.-/ person, the payment was compensation for having to work away from their fields to become Pam Swakarsa members;
- That indeed funding of the assistance to PAM SWAKARSA members was obtained from Pemda budget after seeking approval from the respective DPRD Tk II;
- That indeed Pemda Tk II Kabupaten Alieu provided incentive payments to PAM SWAKARSA members to the sum of Rp.100,000.- / person;
- That in Dili town there were 1000 PAM SWAKARSA members from 26 villages, and with the approval of DPRD Tk II they were paid incentives amounting to Rp.150,000.- (one hundred fifty thousand) funded by APBD.
- That indeed KAMRA was the responsibility of Police, WANRA the responsibility of Kodim, PAM SWAKARSA the responsibility of Government to safeguard the community;
- That indeed the Pro Integration troops were later known as PAM SWAKARSA comprising AITARAK, BMP, BRTT;
- That indeed Bupati Tk II Covalima Colonel Herman Sedyono in undertaking his duties routinely reported to the Accused as his superior, in the channel of Regional Head, and what was reported to the Accused was any notable incident occurring in Kabupaten Covalima;
- That indeed Bupati Tk II Dili Dominggus M.D.Soaes submitted periodical and annual reports to the Accused, but in the event of very important matters, the report was delivered directly or he was summoned by the Accused;
- That indeed on September 5, 1999, at 19:30 wita, Directional Command (Kodal) was transferred from Police to TNI. The transfer of Kodal was made in light of the chaotic situation occurring everywhere, in particular in Dili town where hundreds of thousands of refugees were concentrated, with the situation becoming highly destructive, and the administration ceasing to function normally;
- That indeed following the transfer of KODAL owing to the highly chaotic condition, residents of East Timor who wished to evacuate East Timor were provided the opportunity to do so;
- That indeed the transfer of KODAL by TNI had the following tasks and authority:
 - 1) to safeguard all UNAMET personnel in East Timor who numbered some 2000;
 - 2) to take immediate action against to prevent large-scale clashes;
 - 3) to secure the hundreds of vital assets across all of East Timor;
- That indeed on August 30 1999 the people of East Timor participated in a referendum which result was announced by UNAMET on September 4, 1999 with the following composition:
 - The majority of votes went to the option to reject special autonomy and thus to separate from the Indonesian Republic, at 78.5% (334,580);
 - Votes for the special autonomy option, at 21% (94,338);
 - Votes declared invalid, at 1.6% (7,985);
- That indeed on September 4, 1999, the Indonesian President, B.J. Habibie officially announced that the Indonesian Government accepted the results of the referendum announced by UNAMET (UN);
- That indeed the referendum results were announced by UNAMET on September 4, 1999, at 9:15 Wita, thereafter the pro independence people were overjoyed and clamored and celebrated, inciting the pro integration group to anger and retaliation through violence toward the pro independence group;
- That indeed the entire implementation of the referendum, from registration, ballot casting, collection of ballot boxes to ballot counting was entirely undertaken by UNAMET, whereas the Commission for Peace and Stability (KPS) merely monitored the presence of any human

rights violation;

- That indeed when the ballot count was announced, thousands of pro integration people fled and many cried, asking "we are already free, why do we want to be free again", and after the referendum results were announced widespread violence broke out across all East Timor, and a scorched earth policy was carried out on residents' houses, office buildings, and shops were looted, creating extraordinary fear among the people;
- That indeed the day after the announcement of the referendum results, on September 5, 1999 riots broke out, and the TNI Commander and his staff as well as several relevant officials departed immediately for East Timor to bring together once again pro Integration and pro Independence figures to accept the referendum results announced the day before and to disseminate these results to all supporters of both sides, in order to fully recognize that the referendum result was the choice of the people of East Timor and for the future of East Timor;
- That indeed on September 6, 1999, clashes occurred between pro integration and pro independence masses in Suai that resulted in 27 (twenty seven) deaths, including 17 (seventeen) men, and 10 (ten) women, one of them a small child;
- That indeed Brimob Platoon Commander in SUAI, Lettu Pol. Soni Sanjaya witnessed fires in the SUAI Church compound and at the time of the attack by the Pro Integration group, witness observed that some used Portuguese-made firearms and home-made weapons;
- That indeed witness Lettu Pol. Soni Sanjaya was highly moved when he saw among the dead bodies, a dead woman in distressing condition embracing a small child, also dead;
- That when the victims were about to be buried 3 (three) of them were identified as pastors, namely Pastor Hilario, Pastor Fransisco, and another Pastor who was Javanese;
- That indeed the bodies were transported using the priory's utility vehicle, a panther, and a mikrolet, for burial by Witness Lettu TNI Sugito, the Danramil of Suai, along with witnesses Pranoto and several members of the community, at the Metamao beach which was on NTT territory;
- That indeed the pro independence group which had taken refuge in the Suai church numbered in the thousands, and when attacked by the pro integration group, they were able to be moved to the Bupati's office, the Kodim office, the Polres office and other safe places;
- That indeed on September 6, 1999, the Pro Integration group attacked the residence of Bishop Belo, where a group of Pro Independence people were seeking refuge and shelter. The attack was carried out because Bishop Belo was perceived as not being neutral and pro independence. That the attack by the Pro Integration group resulted in the death of a small child and the rear part of Bishop Belo's house set on fire;
- That indeed in light of the critical, oppressive and horrendous conflict, and the rising number of casualties that drew the condemnation of the international community and the United Nations (UN), President BJ. Habibie then imposed martial law on September 7, 1999, in order to establish firm law enforcement to bring the situation under control and prevent wider conflict, and Major General Kiki Syahnakri was appointed Martial Law Commander to overcome the situation;
- That indeed with the shift from Kodal to Martial Law, the conflict handling in East Timor was effectively taken over by the martial law command. With the imposition of martial law, all military apparatus was employed using the existing legal structure. That another consideration for the imposition of martial law was the condition of chaos and the breakdown of pemda administration;
- That indeed UNAMET had committed fraud, since beginning from recruitment of local staff, selection of witnesses for the ballots during the referendum, to ballot counting, the pro independence group was favored, whereas witnesses from the Pro Integration group were rejected and were never involved by UNAMET in the implementation of the referendum nor in the ballot count, in addition to which during the campaigning period UNAMET supported

the 2nd option;

- That indeed the fraud committed by UNAMET was reported to the Electoral Commission whose members comprised judges from South Korea, South Africa, and Ireland. That in addition to the Electoral Commission, the Pro Integration also submitted a report to the Department of Foreign Affairs, and dispatched a representative, Dominggus M.D. Soares to deliver a protest to the UN representative in Jakarta;

- That indeed the groups existing in East Timor consisted of:

Pro Integration Group:

§ In Kabupaten Covalima the following organizations were present:

- PAM SWAKARSA
- FPDK (United Forum for Democracy and Justice)
- BRTT (East Timor People's Front)
- MAHIDI (Life and Death for Indonesia)
- LAKSAUR

§ In Kabupaten Liquisa:

- PAM SWAKARSA
- FPDK (United Forum for Democracy and Justice)
- BRTT (East Timor People's Front)
- BMP (Red and White Iron)

§ In Kabupaten and Administrative Town of Dili:

- PAM SWAKARSA
- AITARAK
- Pejuang Pro Integrasi
- MILISI
- FPDK, BRTT
- BMP
- Oan Kibur Ba Damai
- Liquisa Besi Merah Putih
- Saka Ermera Darah Merah Putih
- MAHIDI

And the Pro Independence groups CNRT consisted of Clandestin, Vitun, Forsareptil, Falintil;

- That indeed through Presidential Decree SK Presiden RI No.260/M year 1997, the Accused was appointed Governor of East Timor and the last position held by the Accused was Governor, which ended on September 9, 1999, when East Timor was declared seceded from the Union State of the Republic of Indonesia;

- That indeed the task of the Accused as Governor was to undertake the administration of East Timor at the Tk I level, the Accused was Regional Head and also Territorial Head accountable to the President, and as Regional Head / Governor the Accused was accountable to DPRD;

- That indeed the Accused took part in establishing, and facilitated and supported the establishment of PAM SWAKARSA at each Kabupaten, and the Accused even instructed the reactivation of PAM SWAKARSA;

- That the functional relationship between PANGDAM and GOVERNOR was merely limited to coordination. That PANGDAM Major General ADAM R. DAMIRI always received reports from the DANREM on any notable incident in the territory of East Timor, the report was written as a daily situational report;

- That indeed PANGDAM Major General ADAM R. DAMIRI continued to coordinate with the Accused on September 5, 1999 and September 7, 1999, during meetings at the East Timorese Governor's Office;

- That indeed in the acceptance of the referendum the Accused and the people of East Timor

were never consulted and involved by Central government, that the decision was made exclusively by Central Government and the UN;

- That indeed as a result of the attack launched by the Pro Integration Group on the Pro Independence Group, the majority of casualties were civilians, women and children;

- That indeed the UN had approved the entry of Interfet forces into the territory of East Timor;

In considering, that before replying to the Plea from the Accused and his Legal Counsel, the Panel first set forth the legal principles that form the basis for each Court ruling of a criminal case as follows:

Law No. 14 Year 1970 : concerning basic concepts of Judicial Authority;

Article 1 : Judicial Authority is the authority of a free state to conduct judicature in order to uphold the law and justice based on Pancasila, for the implementation of the Republic of Indonesia;

Article 4 (3) : All intervention in judicial matters by other parties outside the Judicial authority is prohibited, except in cases stipulated in the Constitution;

Article 5 (1) : No individual may be convicted unless the Court through valid evidence by Law finds that an individual who is deemed accountable, is guilty of the charges laid against him;

In considering, that henceforth in the trial of this case of serious human rights violations the Panel needs to present several general principles of international law in relation to universal crimes against humanity as follows:

- that no one individual is above the law, that the execution of responsibility is assured and that none can escape the law for crimes committed in the past or in the future;

- that crimes against humanity, war crimes, and genocide are *hostis humanis generis* (the common enemy of man), that are included in international crimes, based on this principle may not be used to free the perpetrator of an international criminal offense from prosecution and punishment;

- that crime against humanity has become part of general legal principles recognized by a community of nations, that violence by commission or omission may be charged retroactively;

In considering, that we should realize that as creatures of God the Greatest Creator, without exception we all have limitations, in our capacity to seek truth and justice, for indeed true and essential truth and justice lie only with the One God, in accordance with the heading of every Court verdict "For Justice Based On Belief in the One God"

In considering, that based on all the considerations above, in the end the Panel will have to issue a ruling that is truly deemed to be just by all parties in upholding the rule of law in the Republic of Indonesia;

In considering, that after examining carefully and thoroughly the accusation document, witnesses' testimony, the Accused's testimony, and other instruments of evidence submitted by the Ad Hoc Public Prosecutor and the Accused and his Legal Counsel, to the charging document, plea, replication, and rejoinder submitted by the respective parties, therefore now Panel shall consider all this with care;

In considering, that the Accused and his Legal Counsel comprising OC.Kaligis SH, et al, have submitted their respective defense that essentially contains the following:

A. Defense By Legal Counsel:

In considering, that Legal Counsel is of the opinion that UNAMET in executing its duties was proved not to be neutral through indications of its obvious partiality to the Pro Independence group, and the fraud committed were many and outstanding.

In considering, that on the fraudulency of UNAMET as submitted by Legal Counsel Panel has considered as follows: that UNAMET fraud in the preparation and implementation of the Referendum does not form grounds to eliminate violation of law. The various fraudulent acts by UNAMET cannot be used as grounds to commit various acts against the law in the form of murder and cruelty to innocent civilians.

In considering, that the issue of Primary Offences in the Principle of Legality and Criminal Accountability submitted by Legal Counsel as stipulated in Article 43 verses (1) and (2) Law No.26 year 2000 concerning Human Rights Court, the Panel of Justices is of the opinion that: the matter was considered in the Preliminary Ruling by the Panel of Justices No. 01/Pid.HAM/Ad.Hoc/2002/PN.Jkt.Pst dated April 4, 2002, and will be clarified further in formulating the legal consideration.

In considering, that Legal Counsel in its defense stated that the trial against the Accused was in violation to Article 24 Rome Statute of International Criminal Court that clearly prohibits the application of the retroactive principle. The Panel of Justices is of the opinion that this principle applies to crimes committed after ICC took effect and not to crimes before ICC took effect. Referring to prior trials, from Nurenberg to ICTR and ICTY, deviation of the non-retroactive principle was taken for the sake of achieving justice for various crimes that were committed in the past.

Analysis of facts and evidence was basically as follows:

- that the Accused had never ordered violence to be committed, indeed he had attempted to prevent bloodshed and to implement the referendum to the best of his ability;
- that the Accused had attempted to socialize the referendum to ensure it would proceed well;
- that the Accused always took measures to build East Timor and forget the past;
- that the Accused's life was threatened when he was invited to the official opening of the UNAMET office;
- that the Accused had ordered to expedite the referendum for the nation's sake, but since before the referendum there were fraudulent acts in which all of Governor's opinions were rejected;
- that the Accused did not establish PAM SWAKARSA, as PAM SWAKARSA was appointed based on the Bupati's Decree;
- that the Accused had taken preventive and persuasive measures in the Liquisa incident maximally and in an institutional manner;
- that there was no rule that the Governor had to visit a crime scene, as this was the duty of Police to investigate, and there was no obligation for investigators to report every criminal act to the Governor;
- that nearing the referendum the Accused directed refugees not to leave their homes because there was police to maintain security;
- that the Accused had held meetings with Muspida including Bupatis, Kapolda, Dandim, Kapolres, Danrem, to ask that reconciliation be attempted between the contending sides to avoid conflict;
- that since the announcement of the referendum results, the situation had turned into chaos, and all prevailing rules were no longer valid;

- that since it was announced that a referendum was to be held, Government in East Timor was no longer functioning.

On Analysis of Evidence:

- that the witnesses heard in court were not confronted with the evidence;
- that the evidence was never shown to the Accused;

In considering, that the procedure for obtaining and storing evidence was indeed not in accordance with Article 130 verse (1) KUHAP, but the Panel believes that the actions by the Examining Team were adequate given the circumstances that did not allow the proper procedures to be followed.

Concerning examination of victim witness violating due process

- that under the terms of Article 60 160 verse (1) KUHAP, the first witnesses to be heard are victims, but in this trial victim witnesses were heard only after all witnesses a charge were examined;

In considering, that Legal Counsel in its defense contended whether dead and wounded victims were the victims of the killings and assault committed by Bupati KDH TkII Liquisa and Bupati KDH TkII Covalima or by Eurico Gutteres. No witness had seen them (Bupatis and Eurico Gutteres) commit killing and or assault therefore the Accused as East Timor Governor KDH TkI could not be held accountable, The Panel of Justices believes that the Bupatis need not have been the parties that directly committed the killings and or assaults but are the parties that may be held accountable for the events that occurred at the time, as superiors responsible for the actions of their subordinates.

In considering, that concerning the objection of Legal Counsel that states that the Ad Hoc Public Prosecutor in formulating the elements of accusations under Article 42 verse 2 letters a and b only generally studied the elements of criminal acts thus rendering the accusations inappropriate and inaccurate for application to serious human rights violations as charged, also Public Prosecutor did not describe clearly and carefully what was meant by widespread and systematic attack, much less prove the widespread and systematic attack. The Panel of Justices believes that what the Accused's Legal Counsel has set forth is true. Nevertheless, the Panel of Justices will consider the matter in the consideration of the elements of the offence charged to the Accused.

In considering, that the Legal Counsel Team has stated that examination of victim witnesses violated due process, the Panel believes that the matter is not a violation of principles of proceedings and does not result in invalidation, in light of the trial's time constraints and the difficulty of presenting the victim witnesses who are residing outside Indonesia.

B. Plea by the Accused

- that the Accused's defense memorandum headed: "The most difficult days of becoming an Indonesian have passed and my loyalty to my choice has never abated....";
- that the violence that took place in East Timor continuously and at length, had caused the people of East Timor to face difficulties creating a civilized structure of peace and harmony;
- that the conflict that took place was influenced by a hegemony on an immeasurable and

unfathomable level of dominance;

- that this situation has caused the East Timorese individual to constantly strive to establish his existence by various means, and frequently to achieve political ends the parties directly involved in the dispute have opted to employ violence;

- that the contentions and conflicts were difficult to reconcile, namely:

1. conflict and rivalry between the old parties, namely: UDT, FRETELIN, APODETI, KOTA, and TRABALHISTA.

2. rivalry and conflict between the pro Indonesia group and the anti Integration group.

3. rivalry and conflict between the pro Indonesia group and the pro Portuguese group.

4. between the Meztico (mixed-breed) community and the indigenous community;

5. rivalry and recrimination between the Kaladi people (who reside in the western part of East Timor) and the Viraku people (who reside in the eastern part).

6. rivalry between the rich and the poor, the educated and the uneducated.

7. rivalry between the pro autonomy community and the pro independence community (this dichotomy appeared following the May 5 agreement in New York on the referendum).

- that this political conflict and rivalry have been the force behind horizontal conflicts in several decades;

- that in the period of civil war, from August 1975 to February 1976, over 60,000 civilians have fallen victim to the viciousness of Fretilin, with the majority of victims composed of women and children, while influential executives, followers and sympathizers of non fretilin parties were executed en masse without regard to humanity; which was never widely exposed either nationally, regionally or internationally;

- that efforts were made to create peace in East Timor, among others through: attempting to establish followers and executives of the Apodeti party as neutral to involve them in humane tasks; ending latent hostilities; employing Fretilin followers in civil service structures and assigning capable people to political positions, attempting reconciliation, establishing a "Union of Three" government, restoring Dati I and II leadership to East Timorese civilians; striving for special autonomy for East Timor, seeking support from Ambassadors of friendly countries, etc.;

- that the plan to implement referendum would only serve to bring back former differences, whereas those differences had nearly disappeared with time;

- that the Tripartite agreement of May 5, 1999, had trapped the people in a mire of different political ideologies, and created open conflict;

- that following the Tripartite agreement the political nuance began to be uneven, owing to the euphoria of the pro independence group, and through CNRT demonstrative acts were committed such as abuse, expulsion and even terror, abduction and murder (specifically toward teachers and doctors, traders, transmigrants, everyone else that seemed Indonesian);

- that to restore the balance, PAM SWAKARSA needed to be reactivated with funding through the respective APBD in the regions;

- that the Accused took the initiative to form Klibur Oan Timor Ba Damai that means Association of Peace Loving Children of East Timor;

- that based on the Public Prosecutor's charges, the Accused is of the opinion that this trial is not independent, filled with intervention from extra judiciary elements and is apparently enforced, and has overturned justice among the people of Indonesia;

- that as an Indonesian citizen who strove to gain citizenship through sacrifice, tears, worldly goods, and self-respect, is not deserving of such a trial based on a legal system still premature and apparently enforced as it dismisses the principle of retroactivity, which runs counter to the Indonesian constitution;

- that de facto, since the appearance of UNAMET, the Accused is likened to a powerless ruler, as all affairs were taken over by UNAMET;

- that UNAMET in conducting its tasks as executor and director of the referendum had committed discrimination and fraud;
- that UNAMET should have anticipated the consequences of accelerating announcement of referendum results among the victors and the defeated;
- that the referendum has brought East Timor back to a former situation of division;
- that the Accused pins his hopes on the Panel of Justices as the last bastion of justice, truth and endeavor to maintain the nation's self-respect and dignity, to side with the oppressed and persecuted that were never perceived as such by the advocates of human rights, owing to being absorbed in a democracy that is biased, narrow, and tendentious.

In considering, that to the Accused's defense the Panel believes that the matter shall be deliberated in the legal consideration of the elements charged.

C. Concerning the Public Prosecutor's Replicate:

In considering, that the Public Prosecutor has submitted a replicate to the defense memorandum by the Accused's Legal Counsel and the Accused himself;

In considering, that the Public Prosecutor's replicate is merely a repetition of what was contained in his charges;

In considering, that as such the deliberation of the Panel remains the same as the previous deliberation to the charging document;

D. Concerning the Rejoinder of the Accused's Legal Counsel:

In considering, that the Accused's Legal Counsel has submitted a rejoinder that essentially is as follows:

- that the principle of legality is the cornerstone of the primacy of criminal law, that is laden with recognition of legal certainty;
- that the implication of the principle of legality is protection against arbitrary charges and arrest to an individual by the authorities;
- that the principle of legality is universal, and in the science of law, doctrines and jurisprudence contains:
 - i. no crime is established without prior legislation;
 - ii. prohibition of analogies;
 - iii. prohibition of retroactivity of a Law or known as prohibition against the retroactivity principle;
- that the Accused's Legal Counsel set forth concerning the principle of retroactivity: a historical approach and comparisons;
- that in its response and juridical analysis were proposed Article 28 letter I (Amendment) 1945 Constitution, Article 24 (1) & (2) Rome Statute, and therefore the question arises as to why Article 42 verse 2 a and b Law No. 26 year 2000 was forced into this case;
- that the Accused's Legal Counsel objects to the application of the principle of retroactivity if its is applied;
- that there are deficiencies in the charges:
 - a) as the Ad Hoc Public Prosecutor has adopted the retroactivity principle, that should be linked to Article 43 verse 1 Law No.26 year 2000;
 - b) the charges were not linked to Article 55 Criminal Code;

c) as charges were linked to Article 9 letter a, therefore the public Prosecutor should set forth Article 340 Criminal Code

- that further, the Accused's Legal Counsel Team had described or focused on the facts set forth in the defense memorandum;

- that the Accused's Legal Counsel Team read out and appended a letter from Kay Rala Xanana Gusmao, President of the Democratic Republic of East Timor, 26 July 2002;

In considering, that on the Rejoinder by the Accused's Legal Counsel the Panel will deliberate in the legal consideration of the elements charged;

D. Concerning the Accused's Rejoinder, that in essence states:

- that the conflict that took place was a horizontal conflict stemming from different political ideologies, and not crimes against humanity resulting from armed conflict;

- that the casualties resulted from mass conflicts triggered by the same different political ideologies;

- that the Ad Hoc Public Prosecutor in constructing the crimes to maintain his charges had reversed the facts disclosed in court, and indeed blatantly reversed facts or erroneously sequenced the elements of crime;

- that the Accused rejects the charge stating that PPI and all its men were the subordinates, or an organ formed at the suggestion or appeal, of the Accused as Governor, for when the group of the Governor's extended family was about to leave their home-town, it was blocked in a vicious manner accompanied with profanity by BMP members, and was only allowed to go on its way after producing a travel pass signed by PPI Deputy Commander, Eurico Guterres.

In considering, that on the Accused's rejoinder the Panel of Justices will deliberate in the discussion of the elements of the Article the Accused is charged with;

In considering, that in order to establish that a person was proved to have committed a crime, all elements of the crime charged to the Accused must be proved, therefore the next consideration of the Ad Hoc Human Rights Tribunal is whether with the facts above proved, all elements of the crimes charged to the Accused have been proved as well;

In considering, that before setting forth the elements of the crimes as set forth in the Public Prosecutor's charges, the Panel of Justices believes that 2 basic issues should first be set forth, namely:

1. concerning the application of the retroactive principle;

2. concerning the relevancy of international law principles in the case of serious violation of human rights in East Timor;

In considering, that in order to answer the above problems, the Panel shall set forth several views from renown scholars in their most recent studies, in relation to human rights tribunals;

Concerning the application of the retroactive principle:

In considering, that the prohibition of retroactive law (ex facto) is a basic right that is a non derogable right, as stipulated in Article 28 (i) 2nd Amendment 1945 Constitution and Article 4 Law No.39 year 1999 concerning Human Rights, is universal and is derived from Article 11 of the Universal Declaration of Human Rights. In trails that discussed the draft of this Article 11, which reads:

It states that the prohibition shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to general principles of law recognized by the community of nations.

The above provision was later expressed in Article 15 verse (2) of the International Covenant on Civil and Political Rights / ICCPR. The same is also found in Article 7 verse (2) of the European Convention on Human Rights / EHCR. The inclusion of the provision in the two instruments above was intended to remove any doubt as to the legality of the rulings of the Nuremberg and Tokyo Tribunals, which some consider as the application of law ex post facto.

In considering, that in later developments the practice in the International Criminal Tribunal for the Former Yugoslavia / ICTY and the International Tribunal for Rwanda / ICTR indicates that the two applied legal provisions formed after the act is committed, and in a certain place. ICTY, which was established through UN Security Council Resolution No. 827 on May 25, 1993, through its Statute has the power to try crimes committed since 1991.

Article 1 the ICTY Statute, the International Criminal Tribunal for the Former Yugoslavia: "shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute".

Similarly in Rwanda, the ICTR Statute states that the Tribunal can prosecute acts of genocide and violation of humanitarian laws taking place in Rwanda from January 1, 1994 to December 31, 1994, as provided in UN Security Council Resolution No.955 dated November 8, 1994. The International Tribunal for Rwanda shall have the power to prosecute persons for having committed serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the protection of victims of war and to Additional Protocol II hereto of 8 June 1977...."Article 4 of the Statute of Rwanda Tribunal".

In considering, that in Mactel Boot's thesis headed *Nullum Crimen Sine Lege* and the Subject Matter Jurisdiction of the International Criminal Court; Genocide, Crimes Against Humanity, War Crimes", dated 15 February 2002, on page 39, states:

that the drafters of the Rome Statute were also still inspired by international conventions, international custom as evidence of general practice accepted as law, and general principles of law recognized by civilized nations;

Therefore it may be concluded that the legality principle is not absolutely valid and there may be exceptions to this principle by stating that the retroactive principle applies in certain cases.

In considering, that an Ad Hoc Tribunal was also conducted for criminals in the former Yugoslavia and Rwanda under special clauses, that determine jurisdiction over crimes in certain locus and tempus, namely;

In considering, that the Ad Hoc Human Rights Tribunal in Central Jakarta is also based on Article 43 of Law No.26 Year 2000, that was later endorsed by the Indonesian House of Representatives through Keputusan DPR-RI Nomor 55/DPR-RI/III/2001 dated March 12 2001, Concerning Approval by the People's Representative Council of the Republic of Indonesia of the Proposal to Form an Ad Hoc Human Rights Tribunal for Suspected Serious Human Rights Violations in East Timor and Serious Human Rights Violations in the 1984 Tanjung Priok Case, in conjunction with Presidential Instruction (Keppres) No. 96 Year 2001 concerning Amendments to Keppres. No.53 year 2001 Concerning Formation of an Ad Hoc Human Rights Tribunal in Central Jakarta, that reads:

Article 2 : The Ad Hoc Human Rights Tribunal as referred to in Article 1 is authorized to examine and rule on serious Human Rights violations occurring in East Timor in the legislated regions of Liquisa, Dili, and Suai in April 1999 and September 1999, and occurring in Tanjung Priok in September 1984;

Therefore the retroactive principle may also be valid to examine and try serious human rights violations cases in the prescribed periods, in particular as in the Penjelasan Undang-undang is clearly stated that : "in other words the retroactive principle may be applied to protect human rights itself under Article 28 jo verse (2) Undang-undang Dasar 1945".;

Concerning the relevancy of principles of international law in cases of serious human rights violation in East Timor;

In considering, that the crimes under Law No.26 Year 2000, which are the jurisdiction of the Ad Hoc human rights tribunal, categorized as serious human rights violations covering genocide and crimes toward humanity (that according to the Rome Statute are classified as the most serious crimes,) are the common enemy of all mankind (*hostis humanis generis*), therefore under international law the state is called upon to try the perpetrators and punish the perpetrators in a commensurate manner. Punishment of the perpetrators of these crimes is recognized as an obligation to the entire international community (*erga omnes obligation*).

In considering, that the crimes against humanity charged in this case are included as international crimes that come within universal jurisdiction in which each perpetrator may be tried anywhere, without regard to *locus tempus delicti*, and regardless of the nationality of the perpetrator or the victim.

In considering, that the crimes against humanity charged in this case, as with war crimes and genocide, come under international customs that are legally binding to all nations, regardless of whether the nation in question has or has not ratified or accessed the relevant legal instruments.

In considering, that in international practices in trying war criminals, crimes against humanity and genocide, international legal instruments are applied, whether they are humanitarian and human rights legal conventions, ad hoc criminal tribunal statutes and rulings, general legal principles and doctrines, all of which have been accepted by the entire international community.

In considering, that the situation in East Timor, both before and after the referendum, contained armed conflict of considerable intensity with the organizations of the conflicting sides meeting the conditions specified in the 1949 Geneva Convention, it may thus be said that internal armed conflict occurred in East Timor and therefore the provisions on war crimes as specified under article 3 of the Geneva Convention may be applied. In particular as Indonesia has ratified the Geneva Convention through Law No. 59 Year 1958.

In considering, that the Public Prosecutor has charged the Accused of committing crimes as written in Law No.26 Year 2000, as follows:

FIRST: Article 42 verse (2) a and b jis Article 7 letter b, Article 9 letter 1, Article 37 Law No.26 Year 2000 concerning Human Rights Tribunals;

SECOND: Article 42 verse 2 a and b jis Article 7 letter h, Article 9 letter 1, Article 40 Law No.26 Year 2000 concerning Human Rights Tribunals;

In considering, that Law No.26 Year 2000 in its clarification has adopted the Rome Statute;

In considering, that the Panel of Justices' point of reference is the Ad Hoc Public Prosecutor's Charging Document;

In considering, that the Public Prosecutor has charged crimes against humanity in the following places and times:

1. Kabupaten Liquisa, on April 3, 4, 5, and 6, 1999;
2. Kabupaten Dilli and Kota Administratif Dilli on April 17, 1999; and on September 5 and 6, 1999;
3. Kabupaten Covalima, on September 6 and 5, 1999;

Therefore the Panel of Justices will focus legal deliberation on these specific places and times.

In considering, that as the charges made against the Accused were compiled cumulatively, the Panel will deliberate on the two charges;

In considering, that will first deliberate on the First Charge, with the following considerations:

In considering, that Article 42, verse (2) a and b reads as follows:

"A superior, whether police or other civilian, is criminally responsible for the serious human rights violations perpetrated by the subordinates under his effective authority and control, as the superior does not exert appropriate and proper control over his subordinate, namely:

- a) The superior is aware of, or consciously disregards, information that clearly indicates that his subordinates is or has just perpetrated a serious human rights violation, and;
- b) The superior does not take the necessary appropriate measures within his scope of authority to prevent or halt the act or to surrender the perpetrator to the relevant authorities for examination, investigation and prosecution;

In considering, that the Ad Hoc Public Prosecutor has also conjoined the First Charge with Article 7 letter b and Article 9 letter a, Article 37 Law No.26 Year 2000.

In considering, that according to the Panel the elements of the First Charge are as follows:

1. a civilian superior, who is criminally accountable;
2. having subordinates, having authority to exert effective control, did not exert appropriate and proper control;
3. was aware of, or consciously disregarded information;
4. did not take appropriate and necessary measures within his scope of authority to prevent, halt acts, surrender to the relevant authorities for examination, investigation and prosecution;
5. the subordinate was committing, or had just perpetrated, a serious human rights violation;
6. crimes against humanity, in the form of widespread or systematic attacks that were known to be directed at the civilian population through killings

In considering, that these elements will be set forth singly by the Panel;

Ad. 1 Concerning the Element of A Civilian Superior who is criminally accountable

In considering, that the first element, that is a civilian superior who is criminally accountable, with the following considerations:

In considering, that under the principle of individual criminal responsibility for a serious human rights violation, every person, regardless of status and position, who commits a crime against humanity and a violation against the laws and customs of war is criminally accountable and may therefore be prosecuted in court.

In considering, that individual criminal responsibility, reinforced by international statutes and practices in the Nuremberg and Tokyo tribunals, eliminates several general legal principles:

- that an official is not punishable as an individual for the policies he executes;
- that an official cannot be prosecuted as an individual for acts executed in his capacity as a state official; and
- that an individual cannot be prosecuted for crimes that were determined as crimes after the act was perpetrated;

In considering, that in accordance with a doctrine from the above international law practices it is stated that an individual may not rely solely on the laws of his nation, as law and justice are for individual interests beyond the existence of his nation. Therefore it is also stated that each individual must comply with international obligations beyond the laws of his nation.

In considering, that from the above Statutes and tribunal judgments, and in development of legal principles that state that:

- a perpetrator of a crime against humanity and a war crime cannot argue that his act was in the interest of the state or resulted from a state order;
- the official position of a perpetrator whether as Head of State or as the responsible official in a government institution, cannot exempt an individual from responsibility;
- orders from a superior are not grounds to exonerate a perpetrator from prosecution and punishment.

In considering, that ad hoc international criminal tribunal practices (ICTY and ICTR) and various international instruments have developed the above principles; through the description of individual responsibility parameters as follows:

- individual responsibility may be charged to a person who has planned, instigated, ordered, executed, or aided or conspired in the planning, preparation, or execution of a war crime and a crime against humanity;
- the official position of the accused, whether as head of state or government, or as responsible government official, does not exonerate the person from responsibility for the crime or reduce the punishment;
- a crime against humanity perpetrated by a subordinate will not exonerate the leader or superior from criminal responsibility, if he was aware, or by the reasonable use of his faculties was aware, that the subordinate was about to perpetrate a crime and the leader or superior failed to take appropriate and reasonable measures to prevent him or failed to punish the perpetrator; and
- the excuse of superior's orders shall not exonerate a person from criminal responsibility, but may be considered as a mitigating factor.

In considering, that the doctrine of a superior's responsibility that was later inserted in Article 42 verse (2) as a part of individual criminal responsibility according to international law, was developed by the international community in trying war criminals and crimes against

humanity after World War II, that was eventually crystallized in the Rome Statute. This was intended as a means to demand accountability from military and non-military superiors, for crimes perpetrated by their subordinates or men because they failed to prevent or control their subordinates;

In considering, that the limits set forth by Hugo Grotius concerning a superior's responsibility should meet three conditions as follows;

- 1) the person had the authority to control the actions of his subordinates, a simple example being: the attention of a father to his children, or of an employer to his employees;
- 2) there was knowledge, in which the person knows of the crime perpetrated by his subordinate, but he does not prevent the act;
- 3) there was ability to prevent a crime. This means that if a person is proved unable to take preventive measures, he is not liable for superior's responsibility.

In considering, that the limits of the superior's responsibility mentioned above underlie provisions for the superior's responsibility in the Statute of International Criminal Tribunal for Former Yugoslavia (ICTY Statute), the Statute of International Criminal Tribunal for Rwanda (ICTR Statute) and the Rome Statute, that were later adopted in Law No.26 Year 2000 concerning Human Rights Tribunal (Article 42 verse 2 (a) and (b)).

In considering, that application of the doctrine, in addition to being used in demanding accountability from a military superior for failure to act, as in the cases of Yamashita, High Command, Hostages and Meyer, in further developments in the Tokyo Tribunal it was later agreed that the responsibility of a superior could also include non-military superiors. This indicates that in certain cases analogies may be made between the responsibility of a military command and the responsibility of a non military superior or a civilian official. As additional legal basis, Article 86 Additional Protocol I to the 1949 Geneva Convention in 1977, stipulates that in certain cases all superiors shall be responsible for failure to act. Then Article 7 paragraph 3 of the ICTY Statutes also points not only to military superiors but also includes non-military superiors. This provision was applied in the Celebici case.

In considering, that according to the testimony of witnesses under oath or the testimony of the Accused in court, the Accused is proved to be the Governor of Provinsi Tk.I TIM-TIM from 1997 to 9 September 1999, until the separation of TIM-TIM Province from the Indonesian nation through a referendum conducted on August 30, 1999. The installment of the Accused as Governor of TIM-TIM for the period stated above, was based on Kepres no.260/M/Thn.1997.

In considering, that according to the testimony of witnesses and the Accused, in Tim-Tim Province there were 13 kabupaten headed by Bupati. From this fact it may be stated that the Accused headed Government in Provinsi Tk.I Timi-Tim and controlled the Bupati and therefore the Accused may be established as a civilian superior;

In considering, that according to Law No.5 Year 1974 the duty of a Governor is to lead the administration and to be fully responsible for the course of regional government. That according to the authority vested under law Number 5 Year 1974 the Governor is the direct superior of the Bupati KDH Tk.II or the Walikota KDH Tk.II. Furthermore, the Regional Head at the kabupaten level is the Bupati who in executing his duties as Regional Head is responsible to the Governor who is Regional Head at Tk.I. As such it may be stated that that the Bupati or Walikota are the Governor's subordinates and therefore they are under the control of the Governor as their direct superior;

In considering, that in accordance with Article 78 Law No.5 Year 1974 a Regional Head is hierarchically responsible to the superior Regional Head, therefore the Bupatis and Walikotas are responsible to the Governor, and according to Article 80 Law No.5 Year 1974 the Governor as the single person in authority in the government of his region, in terms of administration of government, coordination of development and fostering the lives of the people in every field;

In considering, that the Accused Abilio Osorio Soares as a Governor installed under KepPres RI No.260/M/1997, according to Law No.5 year 1974 carried the task of leading the administration and was fully responsible for the entire course of government;

In considering, that the Accused as Governor under Article 77 Law No.5 year 1974 as regional Head of the Province of East Timor and in executing his duties was responsible to the President by way of the Mendagri;

In considering, that according to Article 78 Law No.5 year 1974 a Regional Head is hierarchically responsible to his superior Regional Head, the Accused as Governor of east Timor was the superior of 13 bupatis in the region of East Timor. Therefore it is established that the Accused was the superior of the bupati of Liquisa Leonito Martin and the bupati of Covalima Drs. Herman Sedyono;

Ad.2 Concerning the Element of Having Subordinates, Having Authority To Exert Effective Control, Did Not Exert Appropriate And Proper Control Over His Subordinates;

In considering, concerning the second element, namely the superior subordinate relationship, had the authority to exert effective control but did not exert appropriate and proper control over subordinates, the Panel will deliberate the following;

In considering, that essentially a superior subordinate relationship is a superior having the authority to exert proper control over his subordinates, by de jure or de facto. The superior must have the authority to control his subordinates and be able to command or direct his subordinates.

In considering, that the category of superior may include political leader, company leader, and senior civilian official (Celebici case). As in military organizations, superiors have a chain of responsibility from one superior to a lower superior. In the Rwanda case, for instance, Akayesu, a mayor (bourgmestre) who carried out executive functions and conducted public administration among the people, including wielding power over politicians, was found criminally responsible for the acts of his subordinates; although he was not a member of the military with the responsibility of a commander, he held legal mandate and was considered an official, agent or person with public authority, or by de facto represented Government in endorsing the violence perpetrated by the Hutu over the Tutsi. This was accompanied by the condition that he had proper knowledge that his subordinates was carrying out such acts, or was about to carry out such acts whereas the superior failed to act in a significant and reasonable manner to prevent these acts;

In considering, that the perception of a subordinate is each person with a direct superior who directs his actions or related activities. In a large organization a person may hold a position both as superior as well as subordinate.

In considering, that the denotation of effective authority and control is when a superior by de jure or de facto wields the power to issue directives to his subordinates to execute a certain task or a related activity.

In considering, that as contained in Article 86 1st Additional Protocol of the Convention of 1977, that states that a superior shall create an effective reporting system to ensure that in executing his duties a subordinate complies with humanitarian laws, and if he should be aware of a potential violation or an actual violation then he should take measures to prevent or handle the violation. Therefore, a superior shall be responsible for serious human rights violations carried out by his subordinate, if:

- if the superior knew that a subordinate had or was about to perpetrate a serious human rights violation; or
- or the superior had received information enabling him to conclude that his subordinate had or was about to perpetrate a serious human rights violation; and
- the superior did not take measures within the scope of his authority to prevent the serious human rights violation.

In considering, that in relation to the above denotation, the Panel will deliberate the position of the Accused with regard to the discussion of this Ad. 2.

In considering, that according to the testimony of witnesses under oath namely Joao Ferreira, Emilio Barito, both of whom are victim witnesses and other witnesses, namely Mayjen Adam Damiri, Brigjen Tono Suratman, Brigjen Nur Muis, Brigjen Pol Timbul Silaen, Kol TNI Herman Sedyono, Kol TNI Mujiono, Dominggus MD Soares, Mateus Maia, Lettu Pol Sony Sanjaya, Eurico Guterres, Pranoto, Joko Sugianto, and the testimony of the Accused himself in court and in connection with the facts in court, that indeed there occurred violence, killings, assault, destruction, the burning of houses and churches in Kab. Liquisa, Dili, Covalima;

In considering, that the attack on the Liquisa church on April 5 and 6, 1999 resulted in the deaths and wounding of victims. According to the testimony of victim witnesses Joao Ferreira and Emilio Barito both witnesses sustained hacking wounds by sharp weapons all over their bodies. That according to witness Emilio Barito the dead victims he saw numbered 9 people, while witness Joao Ferreira heard that the number of dead victims numbered 9 people, and in addition, there were those people who sustained injuries among others A. Dos Santos, Da Costa, Agustino, Jonico, Narsizo, Manuel Lisboa, Victor, Anuko;

In considering, that the attack by the Pro Integration group on the Pro Independence group who were sheltering in the house of Manuel Carrascalao on April 17, 1999, following the Grand roll-call at the grounds of the Governor of Timor's office, resulted in the deaths of 17 victims, including Manelito Carrascalao the son of Manuel Carrascalao and other victims sustaining injuries. That witness Djoko Sugianto when in Dili directly saw the victims at Dili hospital and was able to count the dead victims as 17 people, as well as there being wounded victims. Similarly the attack by the pro integration group on the pro independence group sheltering in the Dili Diocese resulted in deaths and injuries to the victims.

In considering, that as a result of the attack of September 6, 1999 by a pro integration group on a pro independence group who were sheltering in the Suai church there were 27 dead victims, comprising 17 male victims and 10 female victims including one small child;

In considering, that according to witnesses at the scene of the incident, namely Lettu Pol. Soni Sanjaya Danton Brimob in Suai testified that witness shouted at the people in the church to help collect the dead bodies sprawled in the church and in the vicinity of the church. According to the witness the witness was moved when he saw among the dead human bodies a dead woman in a very deplorable state holding a small child who was also dead;

In considering, that according to the Panel before the attack occurred there was a concentrated mass of thousands of people carrying firearms, home-made weapons and sharp weapons around the Suai church, who came and then attacked as a result of the pro integration defeat in the referendum, that the mass attacked who were taking refuge and sheltering in Suai church numbered over 2000 people;

In considering, that according to the Panel of Justices, when the Grand roll-call was held on the grounds of the Governor's office which was attended by a gathering of Pro Integration masses having similar political views and among the participants some carried firearms, home-made weapons and sharp weapons, in the view of the Panel this potential situation was used to attack their political opponents in this case the Pro Independence group. Meanwhile the Grand Roll-call was held using public facilities under the management of the Accused's authority, and according to facts in court the Accused was present at the time, but the Accused failed to take the opportunity to disband the roll-call, in which at the time some participants carried sharp weapons, firearms and home-made weapons;

In considering, that a mass gathering with a desire to win the referendum was very easily provoked and according to the testimony of witnesses in court that when the Accused attended the Grand Roll-call according to the Accused it was not held by Pam Swakarsa, and did not concur with the information of witness Dominggus M.D.Souares who said the Grand Roll-call was a Pam Swakarsa roll-call and according to the Accused the Grand Roll-call was in fact a PPI roll-call. That according to the Panel although the Accused knew that the roll-call was held by PPI carrying firearms, sharp weapons, the Accused in fact did nothing under the excuse that the Accused had to remain neutral and left the Grand Roll-call with the excuse of receiving the Foreign Minister of Northern Ireland, without making any effort to disband the Grand roll-call;

In considering, that the Panel needs to deliberate the position of witness Eurico Guterres, as deputy Commander of PPI, who was not formally the direct subordinate of the Accused. That according to the Panel, PPI through various existing channels had received assistance directly and indirectly from the Accused as Governor, from APBD or other sources;

In considering, that according to the Panel, emotionally there was a connection and relationship between the Governor as a Representative of Central Government in Tim-Tim and who was also a Pro Integration figure, and witness Eurico Guterres who was the leader of the military wing of FPKD which desired Integration with Indonesia;

In considering, that in the situation and conditions at the time the Accused, the Governor, as Head of the Region and as Territorial Head had the power to exert control over the political and community organizations through Dit.Sos.Pol. apparatus, but the Accused did not use his authority effectively;

In considering, that according to the Panel with regard to the Bupati of Liquisa and the Bupati of Covalima and the attacks that resulted in violence, killings, assault, destruction, burning of

houses and churches in Liquisa and Covalima, it is proved that control by the superior, in this case the Accused, over subordinates was not effective.

Ad 3 The Element of Knowing or Consciously Disregarding Information

In considering, that the third element, namely knowing or consciously disregarding information will be deliberated as follows:

In considering, that the denotation of "knowing" or "consciously disregarding information", contains the elements: that there was actual knowledge to be found from direct evidence or should have been known because of the situation. Standards on "need to know" differ between military superiors and non-military superiors. For non-military (civilian) superiors, it must be proved that:

- the information clearly indicated significant risk that his subordinates were committing or were about to commit serious human rights violations, in the active and passive senses;
- the information was indeed available to the superior; and
- the superior knew the information existed, but failed to determine the category of the information

In considering, that the superior was required to receive reports, thus reports were delivered to him or to his office but he failed to obtain knowledge of the contents of the information, and therefore he may be said to have consciously disregarded the information;

In considering, that the Accused as Governor who was the sole power in the region of East Timor Province, should have known and been aware, that in fact in East Timor at the time various conflicts were taking place, that he knew occurred between the two contending major factions as a result of struggling for two different political ideologies;

In considering, that the Accused admitted in court that the conflict that occurred was the continuation of the history of East Timor long before the Accused became Governor, and that he realized that the conflict had claimed many lives;

In considering, that the conflict that occurred, specifically in Covalima, Dili and Suai, was also a continuation of the hostilities between two factions with different political aspirations that was triggered by the announcement of options by Central Government, that resulted in euphoria on the Pro Independence side, and the Pro Integration group felt aggrieved;

In considering, that according to the testimony of witness Leonito Martin as Bupati KDH Tk.II of Liquisa, he had reported to the Accused the incident of the attack by the pro integration group on the pro independence group in the Suai church on April 5 and 6, 1999. Similarly, the violence in the house of Manuel Varrascalao on April 17, 1999 and the attack at the Suai church had been reported by the Bupatis to the Governor/Accused as the highest authority in Tim-Tim;

In considering, that the Accused had received numerous reports on the escalating violence from day to day and yet the Accused failed to categorize the information so that he could not anticipate events;

In considering, that the Accused had received the presence of the two opposing groups in the Governor's office, at the time the Accused received reports of the attacks in Liquisa on April 5 and 6, 1999. That the Accused indeed asked the two disputing groups, namely the pro independence group and the pro integration group to return to Liquisa and attempt to bring about peace and not to repeat the violence. After the meeting, the accused departed for Jakarta. On April 5 and 6, 1999, an attack was launched by the pro integration group on the pro independence group who were taking refuge in the Liquisa church, leading to the deaths of nine people and others sustaining injuries;

In considering, that at the time of the attack the Accused was in Jakarta and the Accused received a report from the Vice Governor concerning the incident in Liquisa. That according to the testimony of witnesses and facts in court the attacks on April 5 and 6 1999 in the Suai church was associated with the conflict between the pro independence group and the pro integration group on April 3 and 4, 1999, and at the time the pro independence group had set fire to houses owned by the pro integration group;

In considering, that in the Panel's judgment the Accused should have been aware that the situation was not conducive, as the Accused had just received the two conflicting groups in the office of the Governor of Tim-Tim, and yet the Accused still departed for Jakarta. In light of the conflict on April 3 and 4 the Accused should have prioritized resolving the conflict between the disputing groups over departing for Jakarta;

In considering, that according to the Panel the attack at the Liquisa church occurred in the same form and pattern as in Covalima and Dili, without maximum efforts at prevention from the security apparatus, and the security apparatus as well as the Pemda apparatus had taken sides and were not neutral in handling the conflict that occurred;

In considering, that the attack occurring at the Liquisa church followed the same pattern that had occurred in various places in Tim-Tim but the most prominent were the attacks at the house of Manuel Carascalao, the Dili Diocese and the Suai Covalima church. The incidents in these locations were outstanding as the attack methods and pattern were massive and excessive and resulted in large numbers of deaths and injuries, and residents' houses and churches were damaged and set on fire;

In considering, that under the security arrangements agreement between Indonesia and Portugal and the UN Secretary General, point one stated that a safe climate without violence of any other form of intimidation was a pre requirement for the implementation of a free and just referendum in Tim-Tim. Responsibility for ensuring such a climate and for the maintenance of law and order was generally laid at the door of an adequate Indonesian security authority. The full neutrality of TNI and Polri were very crucial in this case;

In considering, that under that point of the agreement, the Accused along with the security apparatus in Tim-Tim were responsible, as the referendum was occurring in the region of Tim-Tim where the Accused held the office of Governor, and as a leader the Accused had to be responsive and to monitor conditions on the ground;

In considering, that the Panel believes that the failure of the Accused to halt all forms of violence in the Tim-Tim area had encouraged the emergence of violence that engulfed the Tim-Tim area, in particular in Kabupaten Liquisa, Dili and Covalima;

In considering, that the Governor as the sole power of the region of East Timor Province had received reports from his subordinates that the situation was continuing to heat up, but the response to these reports was the reactivation of Pamswakarsa which was funded by the APBD from each region;

In considering, that according to the facts in court Pam Swakarsa consisted of various factions such as Laksaur, Aitarak, BRTT which were part of PPI as the Pro Integration military wing that was widely involved in acts of violence against civilians in Tim-Tim;

In considering, that in the violence that occurred in and engulfed East Timor province, in particular Kabupaten Liquisa, Dili, Covalima and according to the facts in court, the Bupati from the three Kabupaten had reported to the Accused the incidents of violence an attacks occurring at Liquisa Church, Suai Church and the house of Manuel Carascalao in Dili. For example, the attack on Liquisa Church on April 5 and 6, 1999, continued on into the incident in Dili on April 17 1999 at the house of Manuel Carascalao, and even into the incident at the Suai Church on September 6, 1999, in which the whole sequence of attacks led claimed so many lives, that as Regional Head and as Government Head, the number of victims among the people should have been of great concern to the Accused;

In considering, that the Panel believes the Accused did consciously disregard information relayed by his subordinates, namely the Bupatis, who had reported the incidences of violence to the Accused;

Ad.4 The element concerning not taking appropriate and necessary measures within the scope of his authority to prevent, halt acts, surrender to the relevant authorities for examination, investigation and prosecution

In considering, that with regard to this fourth element, namely not taking appropriate and necessary measures within the scope of his authority to prevent, halt acts, surrender to the relevant authorities for examination, investigation and prosecution, the Panel deliberated as follows;

In considering, that all superiors are obliged to take practical measures to ensure that his subordinates comply with rules in executing their duties;

In considering, that the Accused as Governor did not take appropriate and proper measures against the Bupati of Dili, Domingus Soares, as inviter of the PPI Grand Roll-Call on April 17, 1999, whereas he was aware that the roll-call involved the assembly of a vast number of people, furthermore that some of the participants of the roll-call carried home-made weapons, firearms and sharp weapons, in an unconducive atmosphere that could trigger a large conflict, and indeed after the roll-call an attack was made on the house of Manuel Viegas Carrascalao, where were civilian refugees, comprising the adult, men, women, and children;

In considering, that the attack against civilians (refugees) who were inside the house of Manuel Viegas Carrascalao resulted in many casualties, both dead and wounded, proves that the Accused as Governor had failed to take appropriate and necessary measures. With the authority vested in him as Governor and sole power of the East Timor region, the Accused should have disbanded the grand roll-call, but did not do so, and instead left the grand roll-call without taking any action;

In considering, that against Bupati Dominggus M.D. Soares as inviter of the Grand Roll-Call event the Accused as his superior should have demanded accountability, as the incident at the residence of Manuel Carascalao was a continuation of the Grand Roll-call held on the grounds of the Governor's Office;

In considering, that according to the Panel the attack on the residence of Manuel Carascalao was in fact perpetrated by PPI, which was the military wing of FPKD whose leader was Dominggus M.D. Soares. That according to the Panel, the Accused should have surrendered the Inspektur Upacara of the Grand Roll-Call along with the Bupati of Dili Dominggus M.D. Soares to the relevant authorities for prosecution. Similarly, to the people who addressed the Grand Roll-Call resulting in the incitement of the mass of participants of the Grand Roll-Call to attack the house of Manuel Carascalao.

Ad.5 The Element concerning the subordinate perpetrating, or having just perpetrated a serious human rights violation

Ad.6 The Element concerning Crimes against humanity, in the form of widespread or systematic attacks that were known to be directed at the civilian population through killings.

In considering, that with regard to Ad.5 and Ad.6, the Panel will deliberate the two together, as the two elements are very closely linked;

In considering, that the element of crime against humanity charged in this case as an act perpetrated as part of an attack, should fulfill the elements of "widespread", "systematic", and "directed at the civilian population", the panel shall deliberate as follows;

In considering, that a serious violation of human rights, including a crime against humanity - is when widespread or systematic factors are present. The incidents in East Timor may come under the category of crimes against humanity, as they fulfill the elements of "widespread", "systematic" and directed at the civilian population with the following description;

- an attack denotes an attack that is not necessarily a military assault, as denoted in International Humanitarian law in that the attack need not be accompanied by military forces or by the use of weapons, in other words if a killing occurs as a result of the mobilization of force or an operation launched against the civilian population. Such conflict may be termed as an attack;
- that an attack on the civilian population does not necessarily imply an attack on the entire population, but suffices if applied to a group within the civilian population with certain political beliefs;
- that it was "widespread", as in the incidents charged it was proved that there was massive, frequent, large-scale killings perpetrated collectively with very serious consequences in the form of large number of casualties.
- Systematic denotes the formation of an idea or principle based on planned research or observation using a general procedure. In relation to serious human rights violation, systematic may be defined as based on a consistent and similar pattern. The pattern here denotes an interlinked structure or design. Consistency here denotes an idea marked for its unchanging position or mutually related, or a previously formed characteristic that is repeatedly demonstrated.

In considering, that the denotation of systematic contains 4 (four) elements as follows:

- the presence of a political aim, a plan to launch an attack, an ideology, in a broad sense of destroying or weakening a community;
- perpetrating large-scale criminal acts on a civilian population, or the consistent and constant perpetration of inter-related inhumane acts;
- prior preparation and the significant use of public or individual property or facilities;
- the presence of high level political implications or military authority in defining or realizing a methodical plan.

In considering, that based on the consideration of ICTR in the Kayishema and Ruzindana cases, a widespread or systematic attack is as follows:

- an attack in which the attack launched results in numerous victims, whereas an attack become systematic if it was preconceived.

In considering, that in this case, according to the facts disclosed in court in nearly the entire region of East Timor comprising 13 Kabupaten, there occurred violence, killings, assault on the population, and destruction on a similar and consistent pattern;

In considering, that according to the testimony of witnesses Emilio Barito, Joao Pereira, and other witnesses, and to the facts in court, the victims killed during the attacks were from the civilian population, comprising adult men and women, children, and clergy who died in deplorable conditions;

In considering, that in fact, according to the Panel, the victims who died or were wounded were mostly refugees who intended to seek safety by sheltering in Churches and in the residence of Manuel Carascalao;

In considering, that the violence, killings, assault perpetrated by the pro integration people was part of a planned strategy to cause the Pro Integration group to win the referendum, this being the policy of Regional Government, in which the Governor as the highest authority held to the same political ideology as the Pro Integration group;

In considering, that in order to pass a sentence on the Accused for serious violation of human rights it must be proved that the Accused had knowledge of, and sympathized with, the policy to carry out crimes, and this is an essential element that distinguishes him from an ordinary criminal, so that in this case the Accused may be sentenced for the acts perpetrated by others;

In considering, that according to the testimony of witnesses under oath, namely Joao Ferreira, Emilio Barito, both of whom are victim witnesses, and other witnesses namely Mayjen Adam Damiri, Brigjen Tono Suratman, Brigjen Nur Muis, Brigjen Pol Timbul Silaen, Kol TNI Herman Sedyono, Kol TNI Mujiono, Dominggus M.D. Soares, Mateus Maia, Lettu Pol Sony Sanjaya, Eurico Guterres, Pranoto, Joko Sugianto, and the testimony of the Accused himself in court and in connection with the fact in court, that indeed there had occurred violence, killings, assault, destruction, setting fire to houses and churches, in Kab. Liquisa, Dili, Covalima;

In considering, that the attack on the Liquisa church on April 5 and 6, 1999, resulted in dead and wounded victims. According to victim witnesses Joao Ferreira and Emilio Barito, both sustained hacking wounds from sharp weapons all over their bodies. That according to witness Emilio Barito he witnessed at least 9 dead victims, whereas witness Joao Ferreira heard that the number of dead victims was 9 people, and in addition there were the wounded,

including A. Dos Santos, Da Costa, Agustinho, Joninopo, Nurzizo, Manuel Lisboa, Victor, Anuko;

In considering, that according to the testimony of witnesses under oath and the testimony of the Accused, and in connection with the facts in court;

That on April 17, 1999, a grand roll-call was held on the grounds of the Governor's office attended by over 6000 people, which participants came from the Kabupatens in Tim-Tim. The officials who were present during the event included: Muspida Tk.I Tim-Tim the Governor/Accused, Speaker of DPRD Tk.I, the Bupati of Dili, the Mayor of Dili, representing Polda Tim-Tim and Danrem Wiradharma;

That the inspektur upacara for the event was PPI Commander Joao Tavares, who also opened the grand roll-call, by asking the masses present to win the Integration process and remain united within the Union State of the Republic of Indonesia;

That in addition to PPI Commander Joao Tavares, PPI Deputy Commander Eurico Guterres also addressed the thousands present, and in his address PPI Deputy Commander Eurico Guterres impassioned the mass by saying that the family of manuel Carrascalao was a family of traitors;

That after the Grand roll-call on the grounds of the Governor's office was over, during a procession of vehicles the Pro Inetgration mass passed by the residence of Manuel Carascalao and a scuffle and shouting match broke out between the Integration group and the Pro Independence group who were taking refuge in the residence of Manuel Carascalao. That the scuffle caused the Pro Integration group to attack the Pro Independence group who were sheltering and taking refuge in the house of Manuel Carascalao, and led to 17 (seventeen) deaths and wounded victims;

That witnesses Joko Sugianto and his Team while at the Hotel Mahkota in Dili saw a rally in vehicles in which firearms and ordinary weapons were carried. That subsequently after the procession had died down, the witness immediately visited the victims in the Dili hospital, and that indeed the number of dead upon the witness' count reached a total of 17 (seven teen) people and there was I (one) wounded victim.

That according to the testimony of witness Raja Karina Brahmana during the grand roll-call some participants were carrying sharp weapons and home-made weapons;

In considering, that according to a witness at the crime scene, namely Lettu Pol Soni Sanjaya the Danton Brimob in Suai, the witness shouted at people in the vicinity of the church to help in collecting the dead bodies sprawled inside the church and in the vicinity of the church.

According to the witness, the witness was moved by the sight that among the dead bodies a dead woman in a pitiful condition was still holding a small child that was also dead;

In considering, that according to the Panel, the town of Suai is a small town, and therefore any mass movement on a large scale was easily detected. According to rational thinking it was impossible for Bupati of Covalima Kol.TNI Herman Sedyono not to be aware of a mass concentration of thousands of people that were about to attack the independence group sheltering and taking refuge in Suai Church. Similarly, the Dan Dim of Suai, the Kappolres of Suai and other security apparatus, were certain to be aware of the situation taking place;

In considering, that according to the Panel the Bupati of Suai Kol TNI Herman Sedyono, the Dan Dim, the Kapolres and the security apparatus could surmise what would happen if the mob was not averted or halted. That from the testimony of witnesses and the Accused it was not found that efforts were made by the security apparatus to halt the mob heading to attack Suai church. Meanwhile many of the TNI and Polri security apparatus were still in Suai

Covalima, but their strength was not maximally utilized to prevent the attack. Bupati of Covalima Kol. TNI Herman Sedyono never asked the security apparatus to take firm action against all rioters regardless of whether they were from the pro independence group or from the pro integration group;

In considering, that the panel concludes that the Bupati of Covalima Herman Sedyono laong with the DanDim and the Kapolres and the security apparatus had deliberately allowed and provided the opportunity for an attack by the pro integration group on the pro independence group which was taking refuge and sheltering in Suai church, and which according to victim witnesses numbered over 2000 people who had been in the Suai church for two days without food and water and were in a weak state;

In considering, that according to the Panel from the beginning the security apparatus had not diverted the people who had come to attack the Suai church compound, the security apparatus had not made efforts to provide protection to the people taking refuge who were in fear and hunger;

In considering, that in the judgment of the Panel of Justices, Bupati Covalima Kol TNI Herman Sedyono by law, in relation to the serious violation of human rights, although he did not participate directly in the attack, by omission he can be said to have relinquished responsibility for the occurrence of violence in Suai Church;

In considering, that in the case of the attack on the Suai church the security apparatus, TNI and POLRI, Dan Dim, Kapolres and the bupati arrived at the scene of the incident only after the attack was over and victims had fallen. Further Bupati Covalima Kol TNI Herman Sedyono made no effort to order the dead bodies to have a proper burial, instead the bodies were allowed to lie sprawled and were only collected and buried the next day by Lettu Sugito the Dan Ramil of Suai and Witness Pranoto at the Metamao beach in the NTT region.

In considering, that based on the above deliberations, viewed from their conformity and interconnection, and in relation to theories currently under development, principles, treaties and customary international norms, and international court practices for crimes against humanity, the Panel concludes that the crimes charged under (actus reus) under the First Charge have been legally and undoubtedly proved, namely the Accused clearly participated, which participation supports the acts resulting in the consequences as charged by the Ad Hoc Public Prosecutor;

In considering, that the Accused was charged with the Second Charge as regulated under: Article 42 verse (2) and b jis Article 7 letter b, Article 9 letter h Article 40 Law Number 26 year 2000 concerning Human Rights Tribunal.

In considering, that according to the Panel the elements of the second charge is as follows:

1. a civilian superior, who is criminally accountable;
2. having subordinates, having authority to exert effective control, did not exert appropriate and proper control;
3. was aware of, or consciously disregarded information;
4. did not take appropriate and necessary measures within his scope of authority to prevent, halt acts, surrender to the relevant authorities for examination, investigation and prosecution;
5. the subordinate was perpetrating, or had just perpetrated, a serious human rights violation;

6. crimes against humanity, in the form of widespread or systematic attacks that were known to be directed at the civilian population through assault;

In considering, that the Panel will then deliberate elements Ad.1 to Ad.6;

In considering, that the elements Ad.1 to Ad.5 were deliberated by the Panel in the deliberation of the elements of the first charge, the Panel will transfer these legal deliberations of the first charge into legal deliberations of the second charge;

Ad.6 Crimes against humanity, in the form of widespread or systematic attacks that were known to be directed at the civilian population through assault;

In considering, that the Panel will subsequently refer to the deliberation of Ad.6 in the first charge and transfer those deliberations into the legal deliberation of the second charge;

In considering, that according to the testimony of witnesses and facts in court the attack carried out by the Pro Integration group on the civilian population of Pro Independence refugees comprising adult men and women and children had resulted in injuries;

In considering, that according to the testimony of victim witnesses Joao Fereira and Emilio Barito it was indeed true that they sustained hacking injuries all over their bodies and were treated in a hospital for several days;

In considering, that based on all the above considerations, according to the Panel the crimes charged to the Accused in the First Charge and the Second Charge, have been lawfully and undoubtedly proved;

In considering, that based on the above considerations, the Panel concludes that the Accused failed to take action against his subordinates whether in preventing them, or in issuing warnings and demanding reporting, or in bringing them to prosecution;

In considering, that with regard to expert witness testimony the panel considers it not binding, and as such the panel does not concur with the expert's testimony;

In considering, that to the Prosecution Closing Brief by the Ad Hoc Public Prosecutor which presents that the elements of the articles charged refer to General Crimes, the Panel of Justices does not concur as this case is one of serious violations of Human Rights, and therefore the elements to be proved are elements of the articles charged;

In considering, that to the entire Defense Closing Brief by the Legal Counsel of the Accused, the Panel has deliberated as in the legal deliberations above;

In considering, that the Panel of Justices will deliberate whether the crimes that were lawfully and undoubtedly proved are the full responsibility of the Accused;

In considering, that although the Accused as Governor of East Timor was Regional Head and sole power in the region, in fact the following applied:

1. specifically following the signing of the Tripartite Agreement of May 5, 1999, the power of the Accused was very limited or was at least reduced, as in document two of the Tripartite

Agreement it was clearly stipulated that : "concerning the Commission for Peace and Stability formed in Dili on April 21, 1999", and "Only the Police are responsible for maintaining public order....";

2. that since that time a large part of the Pro Independence people no longer complied with legislation, whether issued by Central or Regional Government;
3. that as the day of the referendum approached the situation/condition in Tim-Tim began to flare up and was no longer conducive to the normal implementation of Government activities;
4. that in fact the clashes that took place were initiated by both the pro Integration people and the Pro Independence people, and as such the blame was shared (verdeelde schuld) between Pro Integration leaders and Pro Independence leaders;
5. that escalation of violence in the form of attacks on the civilian population and a series of incidents in which houses, office buildings and shops were set on fire were not fully the responsibility of the Accused, as factually other authorities were more responsible;
6. that the fraud, discriminative attitude against the Pro Integration group displayed by the UN team (in this case UNAMET) throughout the referendum process generated discontent or feelings of defraudation, and arrogance among the Pro Independence group, leading to rising anger among the Pro Integration people;
7. that in relation to the above situation, communication and control by the Governor as the Bupati's superior was no longer effective, and therefore it is difficult to state that the Governor still retained effective control.
8. that since September 5, 1999, 19: 30 WITA, Command was transferred from Polri to TNI.
9. that since September 7, 1999, Martial Law took effect in East Timor, and therefore the Civilian Government was no longer functional.
10. that therefore since May 5, 1999, other parties should be held accountable for the turmoil taking place in East Timor apart from the Regional Government led by the Accused as Governor;
11. that therefore blame cannot be laid entirely at the Accused's door, and in other words the responsibility of the Accused was limited to incidents occurring before May 5, 1999, although by de jure the Accused's authority was valid to September 7, 1999.
12. that the failure of the Accused was the failure of omission as the Accused failed to anticipate the occurrence of serious human rights violations in East Timor;
13. that indeed the Accused did not perpetrate attacks, killings, or assault, in other words the Accused was not an active perpetrator of the crimes charged against him, but by failing to act instead caused the consequences as set forth in the Prosecutor's Charging Document;

In considering, that the Accused has been found to have perpetrated the offenses set out in the First Charge under Article 42 (2) and b jis Article 7 letter b, Article 9 letter a, Article 37 Law Number 26 and in the Second Charge under Article 42 (2) a and b Jis Article 7 letter b, Article 9 letter h, Article 40 Law Number 26 concerning Human Rights Tribunal, and thus liable for a minimum sentence of at least 10 (ten) years;

In considering, that to this minimum sentence the Panel believes that :

1. The Justices are not a mouthpiece of the Law;
2. Sentencing is not merely to serve in establishing certainty or vengeance but instead to fulfill a sense of justice;
3. The presence of a letter from the President of Timor Leste Xanana Gusmao indicates a spirit of reconciliation that shall not be buried under a severe Sentence for the Accused;
4. The Panel endorses the reconciliation efforts currently underway without leaving a loophole for impunity;

In considering, that regarding the evidence as set out in the evidence list by the Public Prosecutor shall be handed over to the Ad Hoc Public Prosecutor to be used as evidence in other cases;

In considering, that before the Panel reaches a verdict in this case, it will first deliberate on mitigating factors and aggravating factors;

Mitigating factors

1. The Accused was very cooperative in court;
2. The Accused is a prominent figure who was devoted to furthering the East Timor people in Education, Economy, and Social and Cultural Affairs;
3. The Accused is a prominent figure who continued reconciliation efforts despite the difficult circumstances;
4. The Accused is already under Sentence as he is exiled from his homeland and suffered losses of loved ones and property;
5. The Accused's term of office as Governor coincided with a situation in which East Timor was at the peak of strife between the Pro Integration group and the Pro Independence group.

Aggravating factors

1. The incidents charged by the Ad Hoc Public Prosecutor proved to have claimed numerous lives and incurred much loss of property occurred during the Accused's term of office as Governor of East Timor;
2. Despite the efforts made by the Accused, these efforts were not optimally effective in reducing the violence occurring in East Timor;
3. As Governor the Accused failed to prevent his subordinates from perpetrating crimes against humanity;
4. The violence that occurred in East Timor during the Accused's term of office as Governor served to malign Indonesia in the eyes of the international community, specifically in relation to upholding human rights;

In considering, that as the Accused has been found guilty, he is also sentenced to pay court costs to the sum of Rp.5,000.- (five thousand rupiah).

In light of Law Number 8 Year 1981, Law Number 39 Year 1999, Law Number 26 year 2000, and the Universal Declaration of Human Rights and other legislation associated with this case;

PRONOUNCES

- States that the Accused ABILIO JOSE OSORIO SOARES was lawfully and undoubtedly found guilty of perpetrating Crimes under the First Charge and the Second Charge, of; "SERIOUS HUMAN RIGHTS VIOLATIONS IN THE FORM OF CRIMES AGAINST HUMANITY"

- That therefore the Accused is sentenced to 3 (three) years in prison;
- That the evidence as set forth in the evidence list is handed over to the Ad Hoc Public Prosecutor to be made evidence in other cases;
- That the Accused is sentenced to pay court costs to the sum of Rp.5,000, - (five thousand rupiah).

Thus was the verdict reached on Wednesday, August 7, 2002 in a deliberative meeting between the Ad Hoc Panel of Justices in Central Jakarta with NY.HJ. MARNI EMMY MUSTAFA, SH. MH as Chief Justice of the Panel, DR.KOMARIAH EMONG SAPARDJAJA, SH, ROKI PANJAITAN SH, WINARNO YUDHO, SH. MA., RUDI M. RIZKI, SH, LLM, respectively as Member Justices, which VERDICT was stated on : WEDNESDAY, August 14, 2002, in a tribunal declared open to the public by the Chief Justice of the Panel, accompanied by Member Justices, and assisted by M.A. MUJAHID, SH, and SITI AGUSTIATI DJAMILAH, SH, Substitute Court Clerk Ad Hoc Human Rights Tribunal and attended by I KETUT MURTIKA, SH, Ad Hoc Public Prosecutor from the Office of the Attorney General of the republic of Indonesia, the Accused, and the Legal Counsel Team of the Accused,

Member Justices Chief Justice

Signed signed

DR.KOMARIAH EMONG S. SH NY.HJ. MARNI EMMY MUSTAFA, SH. MH

Signed

ROKI PANJAITAN SH

Signed

WINARNO YUDHO, SH. MA

Signed

RUDI M. RIZKI, SH, LLM

Substitute Court Clerk

Signed

M.A. MUJAHID, SH

Signed

SITI AGUSTIATI DJAMILAH, SH