

Judgment

Defendant Tono Suratman

**Human Rights Ad. Hoc. Court at
Central Jakarta District Court
Jalan Gadjah Mada No. 17 Jakarta**

J U D G M E N T
No: 10/Pid. HAM/Ad. Hoc/ 2002/PN. Jkt. Pst

in

Human Rights Criminal Case of Defendant

BRIG. GEN. TNI. TONO SURATMAN

P A N E L O F J U D G E S:

H. ANDI SAMSAN NGANRO, SH.,Head of the Panel of Judges

BINSAR GULTOM, SH., SE.Member of the Panel of Judges

H.M. KABUL SUPRIYADHIE, SH., M. Hum.,Member of the Panel of Judges

HERU SUSANTO, SH., M. Hum.,Member of the Panel of Judges

AMIRUDDIN ABURAERA, S.H.,Member of the Panel of Judges

MATIUS B. SITURU, S.H.,Acting Clerk of Court

Jakarta, May 13, 2003

J U D G M E N T
No: 10/Pid.HAM/Ad.Hoc/2002/PN.Jkt.Pst

FOR JUSTICE BASED ON THE ONE AND ONLY GOD

The Panel of Judges of the Human Rights Ad Hoc Court at the Central Jakarta District Court presided and ruled over the Human Rights Criminal Case at the first instance according to the Regular Procedure, has pronounced the Judgment as stated under the case of the Defendant:

Full Name : Brig. Gen. TONO SURATMAN

Place of Birth : Makassar

Age/ Date of Birth : 49 years/ September 16, 1952

Sex : Male

Nationality : Indonesian

Religion : Catholics

Address : Jalan Dahlia G. 19, Cijantung II, East Jakarta

Occupation : Member of TNI Army (Former Military Post

Commander of Korem 164/ Wira Dharma,

East Timor)

Education : AKABRI, 1975

SESKOAD, 1991

The Defendant has never been detained;

The Defendant has been represented by the team of Attorneys, consist of: RM. RAHYONO ABIKUSNO, SH., LL.M., M. RUDJITO, SH., LL.M., AMIR KARYATIN, SH., M. KAPITRA AMPERA, SH., I.A. SRI UTAMI WIJAYANTI, SH., DR. NIRMALA CHANDRA DEWI MOTIK, SH., JOAO MECO, SH., HARI MURTI DJOKO PRATOMO, SH., and HARTANTO, SH., based on the Special Letter of Power of Attorney (Surat Kuasa Khusus) dated on July 16, 2002, and the team of Attorneys of the TNI Personnel, consist of: AB. SETIAWAN, SH., MBA., NURHAJIZAH M. SH., ADNAN MADJID, SH., MH., SUBAGYA SANTOSA, SH., WIDARSONO, SH., Z. EFFENDI, SH., BAMBANG WIDARTO, SH., MH., SUBAGJO, SH., based on Surat Kuasa Khusus dated on July 8, 2002, whose all from the attorney office on Jalan Denpasar Raya Blok C 17 No. 41-42, South Jakarta.

The Human Rights Ad. Hoc Court:

After Reading:

1. The Letter of official turning over of Dossier of the Grave Human Rights violation case with the attachments under the name of Defendant TONO SURATMAN
2. The Decision (Penetapan) of the Head of the Central Jakarta Human Rights Ad. Hoc Court No. 10/Pid/HAM.Ad.Hoc/PN.Jkt.Pst. dated on July 2, 2002, on the Appointment of the Panel of Judges who presided and ruled over the case.
3. The Decision of the Head of the Panel of Judges No. 10/Pid/HAM Ad.Hoc/2002/PN.Jkt.Pst dated July 9, 2002 on the settlement of the days of court sessions.

After Hearing:

1. The Reading of the Indictment Letter by the Ad. Hoc Public Prosecutor, Case Reg. Number: 10/HAM/TIM-TIM/07/2002 dated July 6, 2002;

2. The Reading of the Intermediate Decision of the Panel of Judges dated July 30, 2002, No. 10/Pid.HAM/Ad.Hoc/2002/PN.Jkt.Pst, mainly stated that the objection of the team of attorneys of Defendant TONO SURATMAN was not approved and therefore stated that the Central Jakarta Human Rights Ad. Hoc Court was authorized to rule over the case of the Defendant.

3. The Reading of the Charge (Requisitor) of the Ad. Hoc Public Prosecutor read on April 14, 2003, which mainly charged the Panel of Judges of the Human Rights Ad. Hoc Court to make judgment;

3.1. Declare Defendant TONO SURATMAN had legally and convincingly guilty of committing the crime acts: "as a military commander did not make any control or prevention for the crime against humanity committed by troops under his command." As regulated under criminal charges in first charge which violates article 42 paragraph (1) letter a and b jis article 7b, article 9 letter a, article 42 paragraph (3), article 37 and the second charge of article 42 paragraph 9 letter a and b jis article 7b article 9 letter h, article 42 paragraph (3), article 40 of Law No. 20/ 2000, on Human Rights Court.

3.2. Sentence Defendant TONO SURATMAN with 10 (ten) years imprisonment.

3.3. Declare the material evidence in the form of copies of Letters to be presented as material evidence in other cases.

3.4. Sentence Defendant TONO SURATMAN to pay the court financial charges of Rp. 5,000,- (five thousand rupiahs)

4. The Reading of the Self-Plea (Pembelaan Pribadi/ Self Pledoi) of Defendant TONO SURATMAN read on April 23, 2003, which mainly stated that within the condition of civilian order (tertib sipil), in case of internal conflicts in the society, the responsibilities should be in the hands of the Police, while TNI should only help when requested. Therefore Defendant TONO SURATMAN requested the Panel of Judges to observe the problem more clearly to be able to make judgments based on considerations the inner self of the members of the Panel of Judges.

5. The Reading of the Plea of the team of Attorneys of Defendant TONO SURATMAN read on April 23, 2003 which mainly considered that Defendant TONO SURATMAN was legally and convincingly proven not guilty of committing the crimes as charged by the Ad. Hoc Public Prosecutor. Therefore the Team of Attorneys of the Defendant requested the Panel of Judges to:

5.1. Declare Defendant Brigadier General TONO SURATMAN was legally and convincingly proven not guilty of committing the Grave Human Rights Violations as stated in the first indictment and the second indictment cumulatively.

5.2. Declare Defendant TONO SURATMAN free of all indictments.

5.3. Restore the rights of Defendant TONO SURATMAN of his capability, position, status and dignity.

5.4. Impose the court financial charges to the state.

6. The Replik of the Ad. Hoc Public Prosecutor read on May 1, 2003, which mainly stated to be persistent of the charges.

7. The Duplik of the Team Of Attorneys of Defendant TONO SURATMAN read on May 8, 2003, which mainly stated to be persistent of the plea.

Considering that based on the Charges of the Ad. Hoc Public Prosecutor dated July 16, 2002, No. 10/Pid.HAM/TIM-TIM/07/2002, the Defendant has been charged as committing grave Human Rights Violations as follows:

ONE

----- He, the defendant TONO SURATMAN as Military Post Commander Wira Dharma in East Timor who was on duty since June 10, 1998 until August 13, 1999, on April 5, 1999, April 6, 1999 and on April 17, 1999 or at least in April 1999, in Batublete or on the border of Liquisa and Maubara, at Pastor Rafael Dos Santos' residence in Liquisa Church compound and at Manuel Viegas Carascalao's residence in Jalan Antonio De Cavalho No. 13, Dilli - all of the places were located in East Timor under Article 2 PRESIDENTIAL DECREE No.96/2001 concerning the Changes of PRESIDENTIAL DECREE No. 53/2001 on the Establishment of Human Rights Ad Hoc Court at the Central Jakarta District Court which has the authority to preside and rule over grave Human Rights violations, the defendant TONO SURATMAN as Military Commander in accordance to the guidance of general Territorial Staff of the Army Headquarters has the duty and authority to carry out the territorial guidance consisting of geographical, demography, and social condition guidance as well as has the responsibility to command and control the security and defense operations including controlling and inspecting the commands/units under his command ranks-and-file in order to guarantee the achievement of effective and successful targets, he, the defendant TONO SURATMAN who was effectively acted as military commander knew or under the circumstances, should have known that his troops under his command or control had committed or had just committed grave Human Rights violation, namely, a crime against humanity by committing a widespread or systematic attack towards civilians as on April 5, 1999, April 6, 1999 and April 17, 1999 in the form of murder, but the defendant did not take any proper and required action within his authority resulting that his subordinates together with pro integration group had committed an attack towards pro independence group or civilians in Batublete and resulted in two civilians were dead, the attack on civilians or pro independence group who were taking shelter in Liquisa Church compound resulted more or less than 20 people were dead and on civilians who were taking shelter at Manuel Viegas Carascalao's residence resulted more or less than 12 people were dead and the defendant TONO SURATMAN did not prevent and quell the attack or surrender the perpetrators to the appropriate authorities for investigation, question, and prosecution:

The deeds were done by the defendant TONO SURATMAN in the form of :

Asep Kuswani as Liquisa District Military Commander had reported the clash between pro-integration group and pro-independence group that happened on April 4, 5, 6, 1999 in Liquisa to the defendant as his superordinate.

On April 4, 1999 a house belonged to the pro independence group in Pukelara had been burned, which was committed by pro-integration group, then the pro independence took a revenge by burning down a house owned by a TNI (Indonesian Army) officer.

On April 5, 1999 Pro-Integration group masses gathered in Maubara to leave for Liquisa with an intention to attack pro independence group. The arrival of the pro integration group was seen by pro independence group. And under leadership of Jacinto Da Costa Pereira pro independence group intended to stop the integration group to Liquisa and Maubara border. It turned out pro-integration group was supported by TNI troops/ Indonesian Police among others known as Josse Matheus, Tome Diego of District Military Command 1638/ Liquisa equipped with pistols and firearms. More or less than two people from pro independence were dead in the attack and then pro independence ran away and took shelter at Pastor Rafael Dos Santos' residence in Liquisa Church compound. And pro integration masses surrounded the Church compound bringing firearms, home made firearms, arrow, machetes, samurai, knives and other kinds of stick.

Based on the report, the defendant TONO SURATMAN on April 6, 1999 has ordered witness Mujiono as Military Post Deputy Commander together with Yayat Sudrajat, Commander of Tribuana Task Force to go to Liquisa to check the situation along with two units of TNI troops and three personnel of S.G.I Tribuana VIII, when they arrived at Liquisa District Military Command Headquarters at 1.00 p.m. Eastern Indonesian Time, they met with District Military Commander, District Police Commander, the Regent and Jhon Rea. During the meeting, District Military Commander reported that the negotiation with Pastor Rafael Dos Santos to surrender Jacinto Da Costa and Gregorio Dos Santos or the leaders of pro independence has failed, because Pastor Rafael Dos Santos was only wiling to surrender as long as Jacinto Da Costa Pereira was questioned and brought to the Provincial Police Headquarters on the grounds that if he was brought to District Police Headquarters, he would be killed. And based on the report, it was decided that Regent Leonita Martins was the one who should negotiate and pick up Jacinto da Costa Pereira, but the Regent did want to do it because he was afraid that he would be shot or killed by Jacinto Da Costa Pereira. To replace him, Police Lieutenant 1st Jhon Rea was appointed but before he left to negotiate and pick up Jacinto Da Costa Pereira, a fire was heard from the church compound and Pro-integration masses who were supported by around 100 personnel from TNI and Polri (Indonesian Police) among others named:

1. Zakarias (TNI),
2. Manuel Martin (TNI),
3. Tomi Diego (TNI),
4. Alfonso (TNI),
5. Jacob (Polri),
6. Chico (Polri),

Had attacked and opened shots towards refugees from pro-independence group who were taking shelter inside Pastor Rafael Dos Santos' residence Liquisa church compound.

As a result of the attack, a number of people from pro independence group were dead, among others:

1. Jacinto Da Costa Pereira
2. Meriki Dos Santos
3. Agustinho
4. Manuel Lisbra
5. Jisanico
6. Victor Da Costa

7. Abrao Dos Santos
8. Alberto Oliveira
9. Augusto Mouzinho
10. Amandio C. Dos Santos
11. Ameko Dos Santos
12. Cesar Dos Santos
13. Narzasio
14. Jhony Mau Saka
15. Hermina Dos Santos
16. Laurinao Das Santos
17. Fernando Dos Santos
18. Agustino Dos Santos
19. Laurindo Dos Pereira
20. Santiago

On April 17, 1999, starting at 9.00 a.m. Eastern Indonesian Time, in the courtyard of East Timor Governor, Pam Swakarsa rally was held and attended by around six hundred participants consisted of Pro-integration group: Besi Merah Putih (BMP), Aitarak, Mahidi, Darah Merah and Halilintar which was attended by Governor, District Police Commander and Joao Tavares the commander of Pro Integration Forces (PPI) acting as the leader of the rally. In the big rally Eurico Guterres as Deputy Commander of the Pro Integration Forces as the 2nd speaker and whose speech was broadcast live by Dilli Radio, gave a "command" that was:

- All CNRT leaders should be exterminated/killed
- People who were pro to independence should be killed
- Kill Manuel Viegas Carrascalao
- Carrascalao family should be killed

And at around 11. p.m Eastern Indonesian Time after the big rally was over pro integration masses equipped with home-made firearms, and arrows moved towards Leandro Isaac's house and destructed Leandro Isaac's house until it was destroyed and then they headed towards Manuel Viegas Carrascalao's house which was occupied by around 136 refugees from Maubara, Ainaro, Turiscai, Alas, Liquisa. When Manuel Viegas Carrascalao and his daughter Maria Christiana Carrascalao came back from Comoro airport and headed towards their house had received a phone call from his son Mario Viegas Carrascalao alias Manelito not allowing his father to return home because the house was already surrounded by pro integration masses. Based on the report Manuel Viegas Carrascalao and his daughter went directly to the defendant TONO SURATMAN's home to report what was happening and also to seek help from the defendant, but the defendant answered that "TNI is neutral". And then Manuel Viegas Carrascalao asked for firearms to protect the refugees and the defendant replied "ask for it from other place".

In the attack pro integration masses which was supported by a number of TNI troops from Maubara Subdistrict Military Command among others:

1. Jisse Mateus
2. Carlos Amarae
3. Antonio Besikan
4. Baltizar

5. Duarte
6. Theofil

Resulted in more or less than 12 people including Mario Viegas Carrascalao (Manuel Viegas Carrascalao's son) from pro independence group were dead, among others:

1. Raul Das Cansela.
2. Crissanto Dos Santos
3. Alberto Dos Santos
4. Alfonso Riberio
5. Pukulario Pereira
6. Eduardo De Jesus
7. Rafael Da Silva
8. Antonio Soares
9. Caesar Dos Santos
10. Joao Dos Santos
11. Agusleno B.X. Lay
12. Mario V. Carascalao

The defendant TONO SURATMAN's deeds was a grave Human Rights criminal violation ruled and criminally charged under Article 42 paragraph (1) a and b jis Article 7 b, Article 9 a, Article 42 paragraph (3), Article 37 Law No. 26/2000.

TWO

----- He, the defendant TONO SURATMAN as Military Post Commander Wira Dharma in East Timor who was on duty since June 10, 1998 until August 13, 1999, on April 5, 1999, April 6, 1999 and on April 17, 1999 or at least in April 1999, in Batublete or on the border of Liquisa and Maubara, at Pastor Rafael Dos Santos' residence in Liquisa Church compound and at Manuel Viegas Carascalao's residence in Jalan Antonio De Cavalho No. 13, Dilli - all of the places were located in East Timor under Article 2 PRESIDENTIAL DECREE No.96/2001 concerning the Changes of PRESIDENTIAL DECREE No. 53/2001 on the Establishment of Human Rights Ad Hoc Court at the Central Jakarta District Court which has the authority to preside and rule over grave Human Rights violations, the defendant TONO SURATMAN as Military Commander in accordance to the guidance of general Territorial Staff of the Army Headquarters has the duty and authority to carry out the territorial guidance consisting of geographical, demography, and social condition guidance as well as has the responsibility to command and control the security and defense operations including controlling and inspecting the commands/units under his command ranks-and-file in order to guarantee the achievement of effective and successful targets, he, the defendant TONO SURATMAN who was effectively acted as military commander knew or under the circumstances, should have known that his troops under his command or control had committed or had just committed grave Human Rights violation, namely, a crime against humanity by committing a widespread or systematic attack towards civilians as on April 5, 1999, April 6, 1999 and April 17, 1999 in the form of abuse, but the defendant TONO SURATMAN did not take any proper and required action within his authority resulting that his subordinates together with pro integration group had committed an attack towards pro independence group or civilians in Batublete and resulted in 7 civilians were injured, the attack on civilians or pro independence group who were taking shelter in Liquisa Church compound resulted more or less than 21 people were dead and on civilians who were taking

shelter at Manuel Viegas Carascalao's residence resulted more or less than 5 people were dead and the defendant TONO SURATMAN did not prevent and quell the attack or surrender the perpetrators to the appropriate authorities for investigation, question, and prosecution:

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-Based on the report, the defendant TONO SURATMAN on April 6, 1999 has ordered witness Mujiono as Military Post Deputy Commander together with Yayat Sudrajat, Commander of Tribuana Task Force to go to Liquisa to check the situation along with two units of TNI troops and three personnel of S.G.I Tribuana VIII, when they arrived at Liquisa District Military Command Headquarters at 1.00 p.m. Eastern Indonesian Time, they met with District Military Commander, District Police Commander, the Regent and Jhon Rea. During the meeting, District Military Commander reported that the negotiation with Pastor Rafael Dos Santos to surrender Jacinto Da Costa and Gregorio Dos Santos or the leaders of pro independence has failed, because Pastor Rafael Dos Santos was only willing to surrender as long as Jacinto Da Costa Pereira was questioned and brought to the Provincial Police Headquarters on the grounds that if he was brought to District Police Headquarters, he would be killed. And based on the report, it was decided that Regent Leonita Martins was the one who should negotiate and pick up Jacinto da Costa Pereira, but the Regent did want to do it because he was afraid that he would be shot or killed by Jacinto Da Costa Pereira. To replace him, Police Lieutenant 1st Jhon Rea was appointed but before he left to negotiate and pick up Jacinto Da Costa Pereira, a fire was heard from the church compound and Pro-integration masses who were supported by around 100 personnel from TNI and Polri (Indonesian Police) among others named:

1. Zakarias (TNI),
2. Manuel Martin (TNI),
3. Tomi Diego (TNI),

4. Alfonso (TNI),
5. Jacob (Polri),
6. Chico (Polri),

Had attacked and opened shots towards refugees from pro-independence group who were taking shelter inside Pastor Rafael Dos Santos' residence Liquisa church compound.

As a result of the attack, as many as 21 people from pro independence group were injured:

1. Fransisco Das Santos.
2. Jisao Dos Santos.
3. Jisao Pereira.
4. Jisao Kuda.
5. Jisamico.
6. Armando.
7. Jisse Ramos.
8. Antonio.
9. Jisse Nunes Serrao.
10. Luis.
11. Lucas Soares.
12. Emilo.
13. Matheus Paniero.
14. Sebastian.
15. Lucas Dos Santos.
16. Ramirio.
17. Ricardo Rodriques Pereira.
18. Mathius Alves Coreira.
19. Lakumao.
20. Felis.
21. Januari.

One person from TNI troops was injured, named 2nd Sergeant Sofyan SGI Tribuana VIII.

On April 17, 1999, starting at 9.00 a.m. Eastern Indonesian Time, in the courtyard of East Timor Governor, Pam Swakarsa rally was held and attended by around six hundred participants consisted of Pro-integration group: Besi Merah Putih (BMP), Aitarak, Mahidi, Darah Merah and Halilintar which was attended by Governor, District Police Commander and Joao Tavares the commander of Pro Integration Forces (PPI) acting as the leader of the rally. In the big rally Eurico Guterres as Deputy Commander of the Pro Integration Forces as the 2nd speaker and whose speech was broadcast live by Dilli Radio, gave a "command" that was:

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Maria Christiana Carrascalao came back from Komoro airport and headed towards their house had received a phone call from his son Mario Viegas Carrascalao alias Manelito not allowing his father to return home because the house was already surrounded by pro integration masses. Based on the report Manuel Viegas Carrascalao and his daughter went directly to the defendant's home to report what was happening and also to seek help from the defendant, but the defendant TONO SURATMAN answered that "TNI is neutral". And then Manuel Viegas Carrascalao asked for firearms to protect the refugees and the defendant replied "ask for it from other place".

In the attack pro integration masses which was supported by a number of TNI troops from Maubara Subdistrict Military Command among others:

1. Jisse Mateus
2. Carlos Amarae
3. Antonio Besikan
4. Baltizar
5. Duarte
6. Theofil

Resulted in more or less than 5 people were injured:

1. Florindo Da Jesus.
2. Victor Dos Santos (Apin).
3. Niki.
4. Jisao Junior.
5. Betinho Mbuguegue.

The defendant TONO SURATMAN's deeds was a grave Human Rights criminal violation ruled and criminally charged under Article 42 paragraph (1) a and b jis Article 7 b, Article 9 h, Article 42 paragraph (3), Article 40 Law No. 26/2000.

Considering making a concise explanation on the Judgment, the Panel of Judges did not include all the testimonies of the witnesses contained in the Court's Deposition Document (Berita Acara Persidangan), the Panel of Judges would only presented the main parts of the testimonies related to the charges of the Ad. Hoc Public Prosecutor, as follows:

The facts revealed in court based on the testimonies of the witnesses who gave their testimonies under oath:

1. Witness Col. Inf. MUDJIONO

In the examination in court, the witness gave his testimonies under oath, and mainly explained as follows:

· It is true that the witness has known Defendant TONO SURATMAN and had occupied the post of WADANREM (Deputy Commander of the Military Post) 162/Wira Dharma, East Timor started on June 5, 1998, up to May 13, 1999;

- It is true that Liquisa case was the last part of a chain of previous incidents, which peaked on April 6, 1999, at the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church Compound.
- It is true that the witness was ordered by Defendant TONO SURATMAN to check the incident on the afternoon of April 5, 1999 but departed on April 6, 1999 instead;
- That the incident happened sporadically, a few seconds after JOHN REA left for renegotiation, after hearing the sound of gunshots;
- That Liquisa case was a conflict between the Pro-Independence and the Pro-Integration;
- That the witness did not give orders to disarm or disperse the Pro-Integration people who surrounded the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church Compound.
- That the witness did not know whether there were TNI soldiers involved as TNI had been assigned to only back-up POLRI;
- That Defendant TONO SURATMAN, after the incidents, gave instructions to DANDIM (Military District Commander) of Liquisa and the witness to take care of the wounded victims, safe Pastor RAFAEL DOS SANTOS, and secure the refugees.
- That during the riot in Liquisa mentioned by the Police and BRIMOB (Mobile Brigade), Defendant TONO SURATMAN's orders to the witness was to aid the police.
- That the distance between the Liquisa MAKODIM (Military District Headquarters) and the residence of Pastor RAFAEL DOS SANTOS was more or less than 50 meters;
- The witness knew because he received reports from DANDIM of Liquisa, that in the incident, there were the wounded and five people were dead.
- That Liquisa KODIM provided aids of logistics to the Pro-Independence who were rescued and provided medications for the wounded at MAKODIM.
- That the incident on April 17, 1999 at the residence of MANUEL VIEGAS CARASCALAO, the witness heard the report of DANDIM of Dilli, and at the time the witness was at Liquisa;
- That during the incident in Liquisa or at the residence of MANUEL VIEGAS CARASCALAO, Defendant TONO SURATMAN was in Dilli and there were no involvement of TNI members in both incidents;
- That during the incident at the residence of MANUEL VIEGAS CARASCALAO based on the report of the DANDIM of Dilli, Lieut. Col. ENDAR PRIYANTO, the number of the dead victims were twelve people after their arrival at the hospital.
- The background of the incident was due to the two conflicting powers of the Pro-Integration and the Pro-Independence groups;

- That TNI, in the framework of territorial accommodation of the people did not take side with any of the groups.
- That TNI had several times facilitated activities of reconciliation among the conflicting parties such as the DARI I and DARE II meetings;
- That Defendant TONO SURATMAN had distributed pocket books on Guidelines of Exercising Human Rights (Petunjuk Penyelenggaraan HAM) to all members of TNI on assignments in East Timor;
- That KOREM had no authorities to issue permits on festivities.
- That on the testimony of the witness, Defendant TONO SURATMAN had no objection;

2. Witness AKBP ADIOS SALOVA

In the court examination, the witness gave his testimony under oath, and mainly explained as follows:

- The witness knows Defendant TONO SURATMAN, has no family relationship, and had been assigned as KAPOLRES (District Police Commander) of Liquisa since the end of June, 1998 until the early July 1999;
- That on April 4, 1999 there was an incident in Pukelara Village (clashes of people), but was settled/ reconciled by the KAPOLRES and DANRAMIL (Sub-district Military Commander);
- That on April 5, 1999, the Pro-Independence group led by JACINTO DA COSTA threatened members of the police at the scene of the crime (TKP), and then ran away to seek protection in the residence of Pastor RAFAEL DOS SANTOS;
- That on April 6, 1999, the witness received a phone call from Pastor RAFAEL DOS SANTOS who reported that there were many people surrounding the pastoral who made attacks into the residence of Pastor RAFAEL DOS SANTOS, then the witness ordered KASAT SABHARA to go to the pastoral to negotiate instructions to the perpetrators of the riot to give in to the authorities;
- That the witness ordered JOHN REA to make negotiations with Pastor RAFAEL DOS SANTOS to hand over JACINTO DA COSTA but Pastor RAFAEL refused because he was afraid of being killed;
- That the witness heard gunshots coming from the pastoral house;
- That the witness never issue a warrant for the arrest of JACINTO DA COSTA, because the process was long and complicated and required a preliminary report from the police;
- That the isolation surrounding the pastoral compound of more or less than 100 personnel consisted of one platoon of BRIMOB and more or less than 40 members of POLRES and TNI officers.

- That the witness was summoned by DANDIM at KODIM and on his arrival at KODIM there were already present; WADANREM, DANREM, the Regent and the Pro-Integration represented by EURICO GUTERRES;
- That the ability of the witness to secure the TKP was limited, therefore required aids of TNI officers;
- That the incidents on April 4, 5 and 6, 1999, were due to the problems on maintaining the security and order under the authority of POLRI;
- That there were no preliminary information on the occurring clashes on April 6, 1999;
- That Defendant TONO SURATMAN said no objection on the testimonies of the witness;

3. Witness Lieut. Col. Infantry ASEP KUSWANI

In the court examination, the witness gave his testimonies under oath, and mainly explained as follows:

- It is true that the witness had been assigned in East Timor as DANDIM of Liquisa started on September 1997 through September 1999;
- It is true that the witness, during the incident of attacks to the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church Compound on April 6, 1999, was assigned as DANDIM 1638 of Liquisa with duties to maintain the stability of security and territorial establishment;
- It is true that the incident on April 6, 1999 according to the witness, is the conflicts between the two groups of Pro-Integration and Pro-Independence resulting in five people were dead and more or less than twenty-five people wounded, due to the attacks using guns.
- That on April 5, 1999 there were the destructions and burnings in the villages of Pukelara and kidnappings, and kidnappings committed by the Pro-Independence (CNRT) which were then overcome by the security officials;
- That the witness clarified that there were no members of KODIM who were involved in the clashes at the residence of Pastor RAFAEL DOS SANTOS, they were, instead, made preventive measures and accommodated the clash victims.
- That the witness refused the opinion that TNI had let the incident to happen, because the witness knew that TNI made preventive measures;
- It is true that in the witness opinion, there were no TNI members involved in the clashes, TNI personnel in MAKODIM were always ready to help the police when asked;
- That the incidents on April 4,5 and 6, 1999 in the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church compound had been reported to DANREM through verbal report (telephone), prior to the written report;

- It is true that SGI TRIBUANA VIII personnel replacements after the month of May 1999 included as many as four people and they were done under the authority of the commander;
- That the visit of the Inspector General of the Indonesian armed forces ABRI to Liquisa was to prove whether or not there were soldiers involved, the fact was that there were no soldiers involved;
- That the ones who saved Pastor RAFAEL DOS SANTOS were members of KODIM;
- That KAPOLRES visited MAKODIM to request security back-ups;
- That FALINTIL and CNRT were the Pro-Independence groups;
- It is true that Defendant TONO SURATMAN had no objection on the testimonies of the witness

4. Witness MANUEL VIEGAS CARASCALAO

In the court examination, the witness gave the testimonies under oath, and mainly explained as follows:

- That the witness knows Defendant TONO SURATMAN as DANREM;
- That the witness was a former member of the Provincial Legislative Council DPRD of East Timor province and then joined the Pro-Independence organization;
- That the witness' residence prior to the incident of April 17, 1999 had been used to shelter as many as one hundred and thirty-six people of the Pro-Independence groups;
- The witness said that the reason of attacks to his home was because his residence was used as a place to protect people who ran away from threats by the Pro-Integration groups from their areas;
- The witness knew that his house was under attacks by the Pro-Integration groups and reported straight to Defendant TONO SURATMAN to ask for assistance and asked for guns to defend the refugees;
- That due to the attacks on April 17, 1999, to the witness' residence, the number of refugees formerly one hundred and thirty-six people, were only sixty people left, according to the witness, the rest were probably dead, wounded or missing, and the result of the attacks was that the house and its contents were completely destroyed and lost;
- It is true that one of the dead victims resulting from the attacks was the witness' son named MARIO MANUEL VIEGAS CARASCALAO alias MANUELITO;
- That the witness did not know whether the attacks on his house were ceased by TNI/ Police personnel;

- That Defendant TONO SURATMAN had no objection over the testimonies of the witness, except on the part related to the request of guns;

5. Witness Police First Lieut. JOHN REA

In the court examination, the witness gave his testimonies under oath and mainly explained as follows:

- It is true that the witness knows Defendant TONO SURATMAN, but has no family relationship.

- It is true that at the time of the attacks on Liquisa Church Compound, the witness had been assigned as KAPUSKODAL OPS in POLRES Liquisa who was responsible on the control of police operations in POLRES Liquisa jurisdiction;

- It is true that the witness in carrying out his duties was in coordination with TNI officials;

- That it is true that the reasons of the attacks were because prior to that incidents on April 4 and 5, 1999 there were destructions, burnings and abuses by the Pro-Independence groups on the Pro-Integration people. The Pro-Independence groups was led by JACINTO DA COSTA (Dato village chief);

- It is true that after the incident JACINTO DA COSTA and his friends ran and seek protection at the residence of Pastor RAFAEL DOS SANTOS and the Pro-Integration party had asked Pastor RAFAEL to let JACINTO DA COSTA surrender;

- That the witness saw both groups carried homemade firearms, bows and arrows, and lances;

- That the witness had been assigned by KAPOLRES of Liquisa to negotiate with Pastor RAFAEL to hand over JACINTO DA COSTA for investigation;

- That POLRI, prior to the incident had secured the area surrounding the residence of Pastor RAFAEL DOS SANTOS by adding thirty personnel (one platoon) led by FRANS SALAMALI;

- It is true that for the surrender of JACINTO DA COSTA, Pastor RAFAEL proposed prerequisites:

1. Approved the surrender of JACINTO DA COSTA to POLDA instead, and had guarantee of his safety;

2. Requested the Red and White Iron (BMP) masses to be immediately withdrawn/dispersed;

- The prerequisites were finally approved and when the witness got instructions from WADANREM to extend the information to Pastor RAFAEL, suddenly there were shots from automatic guns, coming from unclear directions, which then followed by spontaneous attacks of BMP people onto the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church Compound;

- That the result of the attacks were that five unidentified people died, and after visum et repertum examinations were buried in Maubara burials;
- That the isolation measure separating the two groups had been done by BRIMOB and POLRI, while TNI members were standing by at KODIM office for closed security measures;
- That the witness was telling the truth on the numbers of Police and TNI personnel were far below that of the power of the masses;
- That the situation changed rapidly so that it was impossible to request more back-up troops;
- After the incident on April 6, 1999 the witness helped investigating the scene of the crime (TKP SERSE) on April 7, 1999, and the witness knew that KAPOLDA (Provincial Police Commander), DANREM, and Bishop BELO were present for a visit to the TKP;
- It is true that Defendant TONO SURATMAN had no objection on the testimonies of the witness;

6. Witness Second Lieut. DAMIANUS DAPA

In the court examination, the witness gave his testimonies under oath, and mainly explained as follows:

- It is true that the witness knows Defendant TONO SURATMAN, but has no family relationship;
- That the witness, during the attacks on the residence of Pastor RAFAEL DOS SANTOS at Liquisa Church Compound on April 6, 1999, was on duty as KASAT SABHARA of POLRES Liquisa;
- It is true that the witness had orders from KAPOLRES of Liquisa to apply security measures surrounding the residence of Pastor RAFAEL DOS SANTOS to prevent attacks by BMP groups on the masses of the Pro-Independence groups sheltering inside the residence of Pastor RAFAEL DOS SANTOS;
- That in relation to the task, the witness had received orders from KAPOLRES to make negotiations to overcome problems among the two groups;
- That the Pro-Integration group threatened to attack Liquisa Church Compound, if JACINTO DA COSTA from the Pro-Independence group refused to go out, and therefore the witness called out the Pro-Integration not to make the attacks;
- That the witness said there were around three hundred people surrounding the pastoral compound, but the witness did not know from which group they came from;
- That Pastor RAFAEL, though had been ensured by the witness on the safety of JACINTO DA COSTA, but Pastor RAFAEL still refused to hand over JACINTO;

- That on April 6, 1999 the witness heard of occurring fights among the groups of people in the pastoral residence of Pastor RAFAEL DOS SANTOS, and the witness heard of the five dead victims;
- That Defendant TONO SURATMAN had no objections on the testimonies of the witness;

7. Witness FRANS SALAMALI

In the court examination, the witness gave his testimonies under oath and mainly explained as follows:

- The witness knows Defendant TONO SURATMAN, but has no family relationship;
- That on April 5, 1999 the witness as the DANTON (Platoon Commander) had orders to depart for Liquisa due to the occurring turmoil;
- That the witness went on duty with one platoon (thirty people), equipped with standard armaments (SKS) and tear gas, and then on April 6, 1999 was ordered to secure and stand by at the residence of Pastor RAFAEL DOS SANTOS, and at around 7 a.m. WITA (Central Indonesia Time) they were already standing on guard in the premises of Liquisa Church Compound to secure the residence of Pastor RAFAEL DOS SANTOS;
- That the witness, together with JOHN REA, reported the results of the negotiation with Pastor RAFAEL to KAPOLRES, and KAPOLRES went straight to KODIM and there were no further instructions until the time of the attacks;
- That the officials on guard at the residence of Pastor RAFAEL DOS SANTOS, according to the witness were members of BRIMOB and POLRES while other officials were not present, and their numbers were inadequate;
- That the incident at the residence of Pastor RAFAEL DOS SANTOS in Liquisa Church Compound caused five people dead, based on the information received by the witness, and KAPUSKODAL OPS, JOHN REA;
- That the witness saw no TNI officers that joined in the attacks into the Liquisa Church Compound.
- That the witness ordered to shoot the tear gas upwards, and causing the masses inside the residence of Pastor RAFAEL DOS SANTOS rushing out, and some of them crying;
- That Defendant TONO SURATMAN had no objection on the testimonies of the witness;

8. Witness ALFREDO SANCHES

In the court examination, the witness gave his testimonies under oath and mainly explained as follows:

- It is true that on April 17, 1999 the witness was present at the residence of MANUEL VIEGAS CARASCALAO to seek refuge because he was chased by the Pro-Integration groups;
- It is true that TNI and the Pro-Integration group attacked the residence of MANUEL VIEGAS CARASCALAO;
- That all members of TNI who attacked the residence of MANUEL VIEGAS CARASCALAO were from KORAMIL (Sub-district Military Command) of Maubara;
- That after the rally at the Governor's office was over, they (TNI and the Pro-Integration group) went into the house of MANUEL VIEGAS CARASCALAO, trashed the entrance door of the house then entered the house, the witness ran to the back of the house, and hid onto bamboos, but he was spotted by two men from the Pro- Integration, the witness was then gashed with a dagger by MATHEUS (Militia);
- That the witness knew of the big rally through the radio in the residence of MANUEL VIEGAS CARASCALAO;
- It is true that the witness showed the wounds on his body consisted of two scars of shot wounds, one scar of arrow wound, and a scar from a cut of a dagger;
- That the witness saw no security officials were present around the residence of MANUEL VIEGAS CARASCALAO;
- That the witness estimated that the numbers of people who attacked more or less than two hundred people;
- That based on the information received by the witness and the other refugees, the number of refugees who died in the incident were twelve people, and the witness did not know where they were buried;
- That Defendant TONO SURATMAN said that the witness testimonies were not true;

9. Witness FLORINDA DE JESUS

In the court examination, the witness gave testimonies under oath, and mainly explained as follows;

- That the witness had stayed in the residence of MANUEL VIEGAS CARASCALAO since January 1999;
- That the witness on April 17, 1999 was present at the house of MANUEL VIEGAS CARASCALAO, and saw the attacks on the house of MANUEL VIEGAS CARASCALAO committed by more or less than 200 people consisted of Militia (BMP and AITARAK), assisted by TNI;

- It is true that the witness recognized TNI members; they were ANTONIO BESIKAU, CARLOS AMARAL, THEOFILO, JOSE MATHEUS BALITZAR, ANTONIO GOMES, and MEQUEL;

- It is true that they trashed the door with a blue Kijang car but the door was not opened then they came back with a yellow truck and the door was opened.

- It is true that when the gate was hit by a truck, the witness was present in front of the house inside the front yard;

- That the witness suffered cut wounds caused by slashed of machetes, and showed the wound marks which left long stitched scars along the right side of the back through the left side of the ribs; the right hand that was paralyzed because of the peeled-off meat in the area, and its fingers that could not be used normally;

- That the witness said that the dead victims in the incident on April 17, 1999 were twelve people, while the wounded were four people;

- That the witness, during the attacks, was lying down in a nap when the car broke in, the witness ran to the back, climbed the wall, and stood there on the fenced wall for around 2 to 3 hours;

- That according to the witness, the one who got shot was EDUARDO DE JESUS and ALFREDO SANCHES;

- That the witness, when wounded and unconscious was helped by BRIMOB and the Red Cross, and was brought to Wira Dharma hospital, which was the army hospital and was treated there for three days.

- The witness admitted as a member of CNRT and the witness' friends from Maubara did not aware that such action (?) was against the law of the legitimate RI government;

- That Defendant TONO SURATMAN declared he could not accept the testimonies of the witness;

10. Witness JOAO DA SILVA TAVARES

In the court examination, the witness gave the testimonies under oath and mainly explained as follows:

- It is true that the witness was the former Commander of the Pro-Integration of East Timor, and the witness knows Defendant TONO SURATMAN as a friend;

- That the witness was present at the big rally on April 17, 1999 was invited by EURICO GUTERRES to become the inspector of the ceremony, but did not know the purpose;

- That among the people present at the big rally, some carried homemade firearms, and the number of people who were there more or less than five thousands;

- That the witness did not see Defendant TONO SURATMAN present in the rally, and neither his deputy or other TNI members;
- That the witness did not know about the attacks on the residence of MANUEL VIEGAS CARASCALAO, because when the rally was over, the witness went straight home to Maubara;
- That during the big rally, the witness, as the inspector made the speech which mainly emphasized the need to have the spirit of love for the country, and the witness did not listen to the speech of EURICO GUTERRES about the threatening to kill CARASCALAO family which was broadcasted through state radio station RRI in Dilli;
- The witness has had a good relationship with MANUEL VIEGAS CARASCALAO, and the witness said that the man had been a member of the Legislative Council DPR for twenty years after the integration of East Timor with RI;
- That the witness, who has been also a member of KPS chaired by DJOKO SUGIANTO;
- That Defendant TONO SURATMAN had no objection over the testimonies of the witness;

11. Witness Lieut. Col. Infantry ENDAR PRIYANTO

In the court examination, the witness gave the testimonies under oath, and mainly explained as follows:

- That according to the witness, in performing its duties, TNI organized territorial operations, and such operations in East Timor were called TATOLI Operations. Besides that, there were other operations of maintaining security and order, performed by POLRI;
- That the ones who were responsible in TATOLI operations was DANREM, and in the TATOLI operational organization, DANDIM was the Commander of the Sub-sector of the operation, and KAPOLRES was the Deputy Commander of the Sub-sector of the operation;
- That in the case of attacks on the house of MANUEL VIEGAS CARASCALAO, according to the witness, was included in the operations in maintaining security and order, and not territorial operations;
- That at the time of the big rally of PAM SWAKARSA, the witness was not present, but the officials of the closed-security operations were assigned at the location, and later reported to the witness, then the witness reported further to Defendant TONO SURATMAN, through verbal reports, as well as written ones;
- That according to the witness, since the announcement of the option by the Minister of Foreign Affairs ALI ALATAS, the clashes between the opposing groups spread out, and become more critical;
- That Defendant TONO SURATMAN had no objections over the testimonies of the witness;

12. Witness EURICO GUTERRES

In the court examination, the witness gave the testimonies under oath and mainly explained as follows:

- That the witness on April 6, 1999, was in Liquisa on the request of Bishop BELLO to become the mediator in negotiations with Pastor RAFAEL DOS SANTOS, to settle the conflicts between the Pro-Independence and the Pro-Integration groups, in which JACINTO DA COSTA and his friends from the Pro-Independence group seeking protection inside the residence of Pastor RAFAEL in Liquisa Church Compound;
- That the witness carried out the task, on April 6, 1999 by having a meeting with Pastor RAFAEL and he was received in the churchyard. When the witness came, around the church, gathering masses yelled that JACINTO was inside carrying guns;
- That when the witness came to meet Pastor RAFAEL, he saw the police and TNI troops were present around the church premises performing security measures;
- That the witness, as the negotiator, failed because Pastor RAFAEL refused to hand over JACINTO and his friends, and he planned to report it to Bishop BELLO, but canceled his plan after he met WADANREM and other officers on the way;
- That the witness knew that WADANREM 164/Wira Dharma, at the time of the clashes between the Pro-Integration and the Pro-Independence groups, was in Liquisa, but the witness did not aware that there were orders of preventive measures, and also did not aware/know whether there were TNI members being investigated;
- That according to the witness, the organizing committee of the big rally of PAM SWAKARSA on April 17, 1999 was the Local Government, and the witness, in the occasion, was only an invitee, and denied contacting JOAO DA SILVA TAVARESA to attend the big rally to become the ceremonial inspector in the rally;
- That according to the witness, the big rally was attended by around four thousand people, and it was attended by only the Pro-Integration groups, and the rally was guarded by security officials, and preventive measures were also applied during the convoys of processions after the rally;
- That Defendant TONO SURATMAN had no objections on the testimonies of the witness;

13. Witness Inspector Gen. Police Drs. G.M. TIMBUL SILAEN

In the court examination, the witness gave testimonies under oath and mainly explained as follows;

- That the relation of the two activities was coordinative. KAMTIBMAS (the security and order maintenance) task force with the implementation of orderly community and law enforcement within critical regions that could not be maintained by the police, were performed by TNI with territorial operations (TATOLI Operations);

- That to make effective coordination, KAPOLRES, within the structural organization of TATOLI operations, occupied the post of Deputy Commander of the Sub-sector of TATOLI Operations, and DANDIM was the Commander of the Sub-sector of TATOLI Operations;
- That according to the witness, there were specific characteristics of East Timor as a Military Operation Area (DOM), among others, in the structural organization of KOREM, in addition to KOREM having a WADANREM, there were special divisions of East Timor regions such as Sector A and Sector B, each of which, led by a Colonel. Due to the specific characteristics, TNI in East Timor had extensive authority to implement security measures;
- That for the big rally of PAM SWAKARSA on April 17, 1999 in Dilli, there were no special security measures;
- That according to the witness, the clashes of the two groups had been going since 1976, but had not been crystallized in forming organizations with specific names. Before April 1999, the condition of East Timor started to become critical with many forced evictions of non-native residents including the civilian officials. Due to the lack of staff, many of TNI members, besides having main duties, also carrying out non-military tasks;
- That Defendant TONO SURATMAN had no objections over the testimonies of the witness;

14. Witness Maj. Gen. ADAM DAMIRI

In the court examination, the witness gave testimonies under oath, and mainly explained as follows:

- It is true that the witness knows Defendant TONO SURATMAN, but had no family relationship;
- It is true that the witness explained about two KOREM commanders under his command, who were Defendant TONO SURATMAN, then replaced by Col. NUR MUIS;
- It is true that after the first option and the second option, further policy was the signing of Tri-partite Agreement on May 5, 1999;
- It is true that the implementation of the Tri-partite Agreement was the responsibility of the police;
- It is true that on April 6, 1999, there were reports saying there were mass turmoil at the residence of Pastor RAFAEL DOS SANTOS resulting in five people dead, twenty people wounded, and the problem was settled by DANREM as DANREM had assigned WADANREM to go to the location, and Pastor RAFAEL could be evacuated to safety;
- It is true that the witness knew of the Liquisa incident through telephone reports from DANREM and before the incident, there were reports related to later incidents;
- It is true that on April 17, 1999 the witness was in Denpasar, while on April 18, 1999 the witness went to Dilli to check the incident;

- It is true that on April 18, 1999 the witness was ordered by ABRI Commander to go to East Timor to gather leaders of the Pro-Integration and the Pro-Independence groups to seek agreements to reach reconciliation for the conflicting parties on April 19, 1999;
- It is true that the security operations in the area had been the responsibilities of the witness, but not included the clashes at the residence of MANUEL VIEGAS CARASCALAO, because they were committed by civilians, who were the responsibilities of the police;
- It is true that in the Liquisa case, TNI had made checks on the incident, if the preventions were not executed, there would be many more casualties;
- That the handing over of firearms before the popular consultation/ ballot were implemented by many of the Pro-Integration groups, while the Pro-Independence refused to hand over their guns;
- It is true that on April 17, 1999, the incident at the residence of MANUEL VIEGAS CARASCALAO caused twelve people dead, and Liquisa case on April 6, 1999, caused five dead people;
- It is true that every time the witness made checks to DANREM on the incidents, was always answered as under control;
- It is true that the witness explained about several-time changes of KODAL commands, started in prior to the Tri-partite Agreement (May 5, 1999) to the Army Commander/ PANGADAM (sic), after May 5, 1999, to the police (KAPOLDA), and returned back after the popular consultation/ ballot on September 6, 1999, at 24.00 midnight WITA, under PANGDAM;
- It is true that STR signed by the witness' assistant Col. BUDI, explained that the witness reported to PANGDAM, then formed an investigation team from TNI Headquarters (MABES), to check on Liquisa incident, and the result was that there were no TNI members involved;
- That Defendant TONO SURATMAN said no objections over the testimonies of the witness;

15. Witness Gen. (Purn.) WIRANTO

In the court examination, the witness gave testimonies under oath, and mainly explained as follows:

- It is true that the witness knows Defendant TONO SURATMAN and has no family relationship;
- It is true that before retirement, the witness occupied the post as Minister of Defense and Security (MENHANKAM), and after retirement occupied the post of Coordinating Minister for Political, Social and Security Affairs (MENKO POLSOSKAM);
- It is true that there had been a rising escalation after the announcement of the options, within the Pro-Independence, as well as the Pro-Independence (sic!) groups;

- It is true that the noticeable cases included the clashes happened on April 4, 5, and 6, 1999, in Liquisa, and on April 17, 1999 in the house MANUEL VIEGAS CARASCALAO;
- It is true that the Liquisa problem was quite important because there were dead casualties. MABES TNI sent an investigation team led by an Inspector General from MABES TNI, Vice Admiral Tamtama (Laksdya) ADI to conduct the investigation;
- It is true that the Liquisa case was handled under KODIM/POLRES levels, and MABES TNI would not intervene over matters in the lower levels;
- It is true that the witness explained the chronology of the incidents of April 4, 5 and 6, 1999, in Liquisa in which there were conflicts between the Pro-Integration and the Pro-Independence groups;
- It is true that there was a TNI member, ranked Sergeant, among the victims, who got shot from shots coming from the direction of the residence of MANUEL VIEGAS CARASCALAO, there were also civilian victims;
- It is true that the incident in MANUEL VIEGAS CARASCALAO house caused twelve people died, which was reported to the witness, due to conflicts between the Pro-Integration and the Pro-Independence groups;
- It is true that after the second option to choose independence forwarded, there was rising escalation, conflicts occurred, TNI specifically made prevention by sending battalions (seven battalions) or approximately seven thousand personnel;
- It is true that the responsibilities of the respective POLRI and TNI were clear, POLRI maintain the security and order (KAMTIBMAS), while TNI was in the defense sector;
- It is true that prior to the incidents in Liquisa and MANUEL VIEGAS CARASCALAO house, there were orders from the witness to make precautions to prevent such incidents from spreading, in written orders, and the witness had tried to find them;
- It is true that before the options on the principal change of policies, it was ABRI to act neutral to capture as many GPK (Separatist Movements), and after the options, ABRI maintained its neutrality by standing in between the conflicting parties to promote reconciliation;
- It is true that the existing cases, according to the witness, should be followed up with measures to prevent them from spreading, and the actors were legally processed;
- It is true that the witness was persistent in his testimonies in BAP, on question over who was more dominant in TATOLI operations, whether it was TNI or POLRI, the witness suggested that they should not be entrapped on who was the commander, they should be consistent with the job description that the state security operations (KAMDAGRI) were under POLRI, while the security and defense operations were under TNI;
- It is true that the incidents in Liquisa and in MANUEL VIEGAS CARASCALAO house were about attacks on each other;

- It is true that there were no policies or orders to attack civilians during the POLSOSKAM meeting; the witness, at the time, was only a member, as MENHANKAM PANGAB;
- It is true that the Contingency Plan meant anticipation to the worst situation (it applies to all military forces throughout the world). The witness could not remember the orders toward the functions of each institution;
- That Defendant TONO SURATMAN had no objections over the testimonies of the witness;

16. Witness ALI ALATAS S.H.

In the examination of the court, the witness gave testimonies under oath and mainly explained as follows:

- It is true that according to the witness, in the month of June 1998, the president and his cabinet approved the proposal over East Timor to be given special status with extensive autonomy. The proposal was well received by the United Nations (UN), but Portugal approved with conditional requirements, they would become the temporary settlement, and gave the freedom of choice to the people of East Timor;
- That the consideration behind the birth of the Option II policy was the high financial cost of East Timor related to the ongoing monetary crisis, and an estimation in the Plenary Cabinet Meeting, that the Pro-Integration group would have won;
- That the Option II policy was meant to settle the East Timor issue, to be legally accepted in the national, as well as international levels;
- That the East Timor problem had been in the spotlight and had become the target of criticism from inside, as well as outside the country, the accusations toward Indonesia was, at first, an act of what was called as an annexation (invasion) to a small country, but it was then changed to Human Right violations;
- That according to the witness, the attacks on Liquisa Church and the house on April 6, 1999 and the attacks on MANUEL VIEGAS CARASCALAO house in Dilli on April 17, 1999 led to reactions from Portugal government and UN. The problems had been widespread through the press and NGOs. The incidents had become the agenda in the state's Politics and Security Meeting;
- That according to the witness, the proposal of settlement on East Timor with the policy of granting the special status of having extensive autonomy, led to the opinion that the Pro-Independence party felt they had won, and all that led to riots and terror;
- That in April, POLRI was still a part of ABRI;
- That Defendant TONO SURATMAN had no objections over the testimonies of the witness;

17. Witness DJOKO SUGIANTO, S.H.

In the court examination, the witness gave testimonies under oath, and mainly explained as follows;

- It is true that the witness, as the chief of KOMNAS HAM (the National Commission on Human Rights), on April 17, 1999, visited East Timor to establish the Independent Commission of Human Rights of Timor Lorosae (KIHAMTIL), related to the heating up situation after the Option II;
- That upon the arrival in Dilli, and just arrived at the hotel, saw a parade passing the street, followed by masses, some of whom, carried guns with unclear specifications, and some of them were in uniforms. Then the witness was informed that people were parading after attending a big rally of PAM SWAKARSA, in front of the Governor's office, then they made the attacks and destructions on the residence of MANUEL VIEGAS CARASCALAO and the office of the local newspaper SUARA TIMOR TIMUR (Voice of East Timor);
- That in the attacks on MANUEL VIEGAS CARASCALAO house, there were twelve people died, they were all the Pro-Independence members, including MARIO MANUEL VIEGAS CARASCALAO, alias MANILETO (sic) (the son of MANUEL VIEGAS CARASCALAO);
- It is true that Defendant TONO SURATMAN had no objections over the testimonies of the witness;

18. The testimonies of the witnesses who were not present were read in court.

(Contained in the Interrogation Deposition Documents (Berita Acara Penyidikan/ BAP)

1. RAFAEL DOS SANTOS;
2. ANTONIO DA CONCEICAO SANTOS;
3. JACINTO DA COSTA;

All the testimonies of the witnesses read in court were mainly denied by the Defendant;

19. Witness Professor DR. Ing. B.J. HABIBIE

In the court examination, the witness gave the testimonies under oath, and mainly explained as follows:

- It is true that the witness knows Defendant TONO SURATMAN, but has no family relationship;
- It is true that the witness was the President of the Republic of Indonesia since May 21, 1998 until October 19, 1999;
- It is true that the witness explained that East Timor problem had been brought to the international situation, the UN Plenary Session (Security Council) still denied it though it had become part of the Indonesian territory, as there was a decree of the People's Consultative

Council (MPR), in 1978 that ratify the integration of East Timor into RI, with the consequences that TNI could be present there to secure RI territory.

- It is true that at the time, RI state is in difficult situation due to the economical and monetary crisis, and if continued to take care of East Timor for five to ten years, then granted it independence, it would be a heavy burden;

- It is true that the witness received a phone call from English Prime Minister TONY BLAIR, UN Secretary General KOFFI ANNAM (sic), Australian Prime Minister JOHN HOWARD, and besides that, JOHN HOWARD requested to meet in Bali, whereas at the time, each of them was accompanied by the Minister of Foreign Affairs and the Minister of Defense and Security;

- It is true that the witness then received a letter from JOHN HOWARD requesting East Timor to be treated like New Caledonia as the French colony;

- It is true that the witness declared East Timor issue had been in the state of prolonged uncertainty, and had become a burden to the country and state of the Republic of Indonesia;

- It is true that around January 1999, the Minister of Foreign Affairs ALI ALATAS received a letter from JOHN HOWARD with an attached disposition from the witness as the president of RI, written in red ink, and was completed on 01.30 a.m. WITA;

- It is true that the Indonesian fights were not the invasion of East Timor, because the witness believed that with the constitution of BALEBO declaration, the people of East Timor wanted to join to/ integrate with Indonesia;

SUMMARY OF TONO SURATMAN'S VERDICT, P.43-P.92

FACTS OF TRIAL

No Name Identity Incident Facts

17. Djoko Sugianto SH Former Chairman of Komnas HAM, visited East Timor on April 17, 1999 to activate Independent Human Right Commission in Timor Lorosae (KIHAMTIL) Dili Incident · Upon arrival saw a movement of mass in parade, some bearing firearms, but witness did not know the type. Upon inquiry witness found out that the mass just came back from a PAM SWAKARSA ceremony at the office of East Timor Governor· The witness was aware of the fact that the attack of Manuel Carascalo's house had caused 12 fatalities from pro-independence side

18. -Rafael Dos Santos-Antonio Da Concecao Santos-Jacinto Da Costa Victim Witnesses, did not attend the trial, the pre-trial statement was read out Dili Incident · All content of the statements was rejected by the defendant· No trial fact was derived from these statements

19. Prof. DR. Ing. B.J. Habibie Former President of Indonesia Dili Incident · That East Timor has been a conflict area and was always considered as an international situation by UN Security Council· That the witness received calls from Tony Blair, Kofi Annan, John Howard· That the witness received a letter from John Howard asking East Timor to be treated as New Caledonia as a colony of France· That in January 1999 the Minister of Foreign Affairs received the letter from the Australian Prime Minister with the disposition from the president on top in red ink. · At the time Indonesia was in economic crisis, thus it would be too much burden for the country's economy if it should continue developing East Timor for the next 10-15 years and afterwards letting the province to be independent.

20. Major Salman Manafe Former Kasdim 1627/Dili 1997-1999 Dili Incident · That the ceremony of PAM SWAKARSA was reported to have been initiated at 09.00 and ended at 10.00 on April 17, 1999. That the witness went to Manuel Viegas Carascalao's house at 14.45 and reported to Dandim via radio, and when he arrived there was already a police line and police personnel. That TNI only provided back up for the follow up actions after the incident. That the witness was informed that there was going to be PAM SWAKARSA ceremony and the visit of The Ambassador of Ireland on April 17, 1999 in the morning briefing held by Dandim in the morning of the same day, and the troops were ordered to be on stand by due to the two incidents. · That the witness did not know there were personnel from other units in the mass ceremony, nor he knew anyone by the name of Jisee Matheus, Antonio Besikan, Duarte, Carlos Amaral, Baltazar and Theofil. · That throughout the period he was the Kasdim, he never heard that the six of them were brought upon the military court due to their involvement in the attack of Manuel Carascalao's house.

21. Mayor General TNI Zacky Anwar Makarim General · That in the inquiry executed at Liquisa church, where the witness questioned the sisters there, one of them named Sister Flora, on the twenty-five victims of the incident, it was concluded that there were five fatalities, that the victims were from both sides, and there was no involvement of TNI members in the incident. · That Pam Swakarsa was guided by the Regional Government but had never received fund, guidance nor weapon from TNI. · That at the time of Manuel Carascalao's house's attack the witness was at Liquisa, but found out from Danrem what happened. · That at the time it was not military emergency, this it was still civilian-order situation, thus the security was to be regulated by the Police

22. Djoko Waluyo · That on April 6, 1999 at 09.00 there was a morning briefing/ceremony at the yard of Kodim Head Quarters with the Dandim, Lieutenant Colonel Inf. Asep Kuswani, as the inspector, and it was attended by around 40 members of Liquisa Kodim. That in the ceremony the red alert was issued, and it was forbidden to go out of the Headquarters since there was a mass-gathering around the Diocese. That by the order of the defendant Tono Suratman the Wadanrem (Vice Commander of Military Resort) arrived at 10.00 in the Kodim Headquarters in Liquisa, preceded with the arrival of Kapolres and Regent. That the witness rescued Pastor Rafael Dos Santos and brought him to Kodim Headquarters during the attack accordingly to Dandim's order. The others were not rescued because the Dandim did not order to.

23. Carlos Amaral 1997-1999 was the Danramil (Commander of Military Area) of Maubara Dili · At the time of the incident on April 17, 1999 he was on his annual leave, from March 28, 1999-April 29, 1999, in Kendal, Middle Java, with his family. He left on a Hercules plane. · He could not show his leave authorization papers. · That during his absence he was represented by Serka (Chief Sergeant) Suparno. That according to Suparno no member of Koramil Maubara had left the headquarters on April 17, 1999. Koramil Maubara had 15 members, he did not remember all the names, only Suparno, Awasy, Mathos da Silva, Luis Yana and Yoseph. That aside his own name, he did not recognize the other names of TNI members suspected of being involved in the April 17, 1999 incident.

24. Prof. Dr. Muladi, SH Expert Witness · The international standard of command responsibility: has to be of military, has the ability to prevent and authority to prosecute, and those authorities are part of a commander's authority. That a crime committed by a commander in relation of a human right violation by his subordinate(s) is included in the omission principle. · That for a crime in form of command responsibility as stipulated in Law no. 26, it has an extreme condition that there has to be a troop under his command involved in the crime against humanity. · Command responsibility can be implicated to the highest authority of a state or a non-state organization, but the policy should be known and understood by the involved field executors. That field executors can be civilians or military

personnel, with the conditions as set in Article 9, Law no. 26. That the hesitation of TNI in taking actions, bearing in mind TNI was not wholly responsible of East Timor at the time, was a moral responsibility. That if there is a written document on the transfer of command of militia to TNI, the militia can be considered as an indirect subordinate of TNI. That gross violation of human rights is an extra ordinary crime, the characteristic being it is especially cruel and the state is involved in it.

25. P.L.T. Tobing Expert Witness · In TNI there is Unity of Command, meaning there is only one policy authority and there is no transfer of the authority, there can only be delegation of task. Responsibility cannot be delegated, it remains to be the responsibility of the authority holder. Thus in command responsibility everything should run well at operational and tactical level, it should be one chain of command and cannot be isolated. · That the crime of a subordinate is not necessarily related with the commander. The relation should be determined by general opinion and the execution of duty. · That human right violation is at the level of execution of task.

26. Prof. H. A. S. Natabaya SH Expert Witness · "under command and control" is a relation between subordinate-superior, and not only a de-facto relation but also de-jure, meaning there has to be the authority to issue order and there are similar characters between troops and commander. · Widespread means there are a lot of victims and systematic means there is planning based on a sound policy of a state or organization. That though command responsibility is individual in nature it is hard to separate it from the institution because it related with the troop under his/her command.

27. Brigadier General Tono Suratman Defendant, Danrem General · That communication between Kodims is on for 20 hours by Ra Call Radio, guarded by an official, and there should be a working telephone. On April 6, 1999 he sent his vice to Liquisa based on the report from the Dandim of Liquisa. That on April 6, 1999 there was mass gathering around Pastor Rafael Dos Santos' house, and the place was guarded by the police. That the defendant ordered his vice, who was aided by Lieutenant Colonel Inf. Yayat Sudrajat, to keep coordinating with Police Force. · There were 20 people wounded and five people died in the incident in Liquisa, which was confirmed by the defendant's vice to the vice regional police chief (wakapolda). · That the defendant always reported to the Pangdam (High Commander of Military Region) verbally or by writing. That the defendant did not know that on April 17, 1999 there was a mass ceremony at the East Timor Governor's office nor did he attended it. He only knew about the mass at 13.30 of that day from his attendant after Manuel Carascalao left his house. · That Manuel Carascalao went to him not to seek refuge but to ask for weapon to kill the people in his house. That at the time TNI was only assisting the police, because it was still civilian-order. That there was no reference of "militia" at the time, there was only pro-integration mass, wanra (with Kodim as patron) and Pam Swakarsa (with Regional Government as patron). That Tim Alfa in Los Palos was only a reference to the wanra group that was already dispersed.

LEGAL FACTS

1. That Tono Suratman was the Commander of Military Resort (DANREM) 164/Wira Dharma East Timor during June 10, 1998-August 13, 1999
2. That Korem 164/Wira Dharma East Timor consisted of 13 Kodims (Military Division Command), consisting of 3000 personnel dispersed in the 13 Kodims and the Korem Headquarters
3. That there were conflicting community groups in East Timor, the pro-integration and pro-independence group
4. That before the violent incident at Pastor Rafael Dos Santos' house on April 6, 1999, on April 4 and 5, 1999 there was burning and persecution by pro-independence group, led by

Jacinto Da Costa, against the pro-integration group. Afterwards he and his followers ran and seek protection at Pastor Dos Santos' house.

5. That before the incident on April 6, 1999 the pro-integration had asked for Da Costa to be surrendered to the Police, but the request continued to be unheeded by the Pastor Dos Santos

6. That the violent incident on April 17, 1999 at Manuel Viegas Carascalao's house occurred after the mass ceremony at the Governor's office, which was led by Joao Da Silva Tavares as the High Commander of PPI and before the ceremony was closed the vice high commander, Eurico Guterres made a speech in front of those who attended the ceremony

7. After the ceremony the participants went on rally around Dili, intending to go home afterwards. Those who were Maubara residents when going pass Manuel Carrascalao's house heard a scream for help. They went there and the clash occurred.

8. That the defendant was aware of the violent incidents from the report from his subordinates, and gave instructions to his subordinates and reported to his superiors

9. That the political situation became heated after the announcement of the second option

10. That at the time of the incidents it was civilian-order situation. Simultaneously there was the policy of Tatoli, in which every Dandim (Military Division Commander) was a Sub-Sector Commander and every Kapolres (Chief of Resort Police) was a Vice Sub-Sector Commander. The Hanoin Lorosae operation policy was also implemented for the Police.

11. That after Liquica Incident in the Liquisa Kodim Headquarters there was a meeting between the Dandim (Asep Kuswani), Wadanrem 164/WD East Timor, Yayat Sudrajat, Kapolres Liquica Adios Solva and the Regent of Liquica to discuss about the solvency for the incident.

12. That the Wadanrem was ordered by the defendant to go to Liquisa after hearing the report that at Pastor Rafael Dos Santos' house there were people who ran from Pukelara under the leadership of Jacinto Da Costa, the Head of Dato Village. He came with Yayat Sudrajat and 2 platoons of troops.

13. That in the Liquisa incident the Liquica Police apparatus already took measures of security aided by TNI

14. That in both incidents there were casualties including fatalities.

DELIBERATION

Charges:

1. Article 42 verse 1 letter a and b (on command responsibility) jis article 7 letter b (on gross violation of human rights, crime against humanity), article 9 letter a (on murder), article 37 Law No. 26 year 2000 (minimum sentence 10 years, maximum sentence 15 years for murder) on Human Right Court

2. Article 42 verse 1 letter a and b jis article 7 letter b, article 9 letter h (on persecution), article 40 (minimum sentence 10 years, maximum sentence 20 years for persecution) Law No. 26 year 2000 on Human Right Court

Analysis on Elements

1. A crime against humanity that is a part of a "widespread" and "systematic" attack According to International Law, a widespread attack has to be targeted upon a multiplicity of victims as a part of a policy of a state or organization, whereas a systematic attack is orchestrated, coordinated, organized by a group of people so that the attack is carried out in a systematic manner, i.e. there has to be a pattern methodological plan or evident and a follow up of a preconceived policy or plan. Whereas according to Darril Robinson in his book Definitive Crimes Against Humanity at Rome Conference, widespread requires large scale action involving a substantial number of victims, the concept of widespread may be defined as massive, frequent, large-scale action carried out collectively with considerable seriousness directed against a multiplicity of victims, and systematic means the action is organized

following an orderly pattern based on the same policy, involving major resources and is meticulously engineered and methodologically planned. Based on the above definitions, the panel is of the opinion that an attack does not necessarily have to be a military attack, it can be done by non-military actors when a murder(s) is the result of an exertion of power or operation targeted upon civilian residents.

It should also be considered that the offer of the two options was issued by B.J. Habibie upon external (international) pressure and the fact that Indonesia was in an economic crisis. The offer was issued despite of the Minister of Foreign Affairs and Minister of Security and Defense (Armed Forces High Commander) warnings that such action if constituted prematurely would only create conflict. The offer of options awakened the old conflict, and within the community of East Timor arose various political groups, namely FPKD, BRTT, BMP, Mahidi etc of the pro-integration lead by Joao Da Silva Tavares and Eurico Guterres as his second-in-command, and CNRT, Fretilin, Falintil, etc of the pro-independence/anti-integration lead by Xanana Gusmao. Both groups incessantly commenced actions in patterned and organized ways, such as political speech, mass rally, coercion and terror, in order to achieve their political ends. In such emotionally over-charged condition, the smallest difference may trigger murder, persecution, destruction and arson. Thus the panel is of the opinion that before and after the referendum the situation of East Timor has contained high-intensity armed conflicts between two groups that has the organizational structure fitting the category set in the 1949 Geneva Convention, thus it can be categorized as an internal armed conflict, upon which provisions on war crime as contained in the article 3 of the convention can be implemented, especially since Indonesia has ratified it through law no. 59 year 1958. Thus the element of "systematic" and "widespread" has been legally fulfilled.

2. Element: the attack is known to be directly targeted upon civilian population in form of murder

Bearing in mind that in the explanation for article 9 law no. 26, the attack against civilian residents is a chain of conduct commenced against civilians as an extension of a policy of a power holder or a policy related to an organization, and that the panel is of the opinion that the attack does not have to be directed to the whole population but can also be directed to only one group of civilians of certain political belief.

Bearing in mind that accordingly to the plea of the defense, not all policies resulting in an attack can be regarded as a crime against humanity, those that can should be policies to commit such attack. The panel is of the opinion that the escalation of riots, violence and murder is triggered by the issuing of the options by President B.J. Habibie, just as the testimony of the Former Minister of Security and Defense Wiranto, that it was a risk that may have to be taken in a policy. Thus the panel is of the opinion that the violence is the extended result of the policy to offer the two options, which is accordingly to the stipulation in article 9 Law no. 26.

Upon whether or not the defendant "knew" that the attack was targeted upon civilians in form of murder. The defendant found out about the attack from the report from his subordinate, Lieutenant Colonel Inf. Asep Kuswani, and immediately ordered his vice Col. Inf. Yayat Sudrajat to go to Liquisa to anticipate the situation and aid the rescue of the refugees, and the next day he went to visit the crime scene with the Chief of Regional Police (Kapolda). Upon the attack of Manuel Viegas Carascalao's residence, the defendant found out about the attack from the report from his subordinate, Lieutenant Colonel Inf. Endar Priyanto, whereas at the time he was meeting his guests from the Embassy of Ireland. Upon his return, the defendant found out that the victims were already taken to Wira Husada Hospital, and he along with Colonel Inf. Endar Priyanto went there to visit them. And based on the legal facts revealed from the witnesses' accounts, namely Col. Inf. Mudjiono, Lieu. Col. Asep Kuswani, Colonel Inf. Endar Priyanto, Mayor General Zacky Anwar and Major Inf. Salman Mante, both

incidents of violence were executed by pro-integration group upon the pro-independence by using generic and organic firearms and sharp weapons as well as other weapons, resulting 5 deaths in Liquisa and 12 in Dili. Thus the panel is of the opinion that the element the attack is known to be directly targeted upon civilian population in form of murder is fulfilled.

3. Element: A military commander or someone effectively acting as a military commander can be held accountable for the crimes committed by the troops under his/her effective command and control.

Bearing in mind that that the doctrine of command responsibility as stipulated in article 42 verse letter a and b Law no. 26 is an individual criminal responsibility accordingly to international law, developed by the international community in prosecuting the perpetrators of crime against humanity and war crimes after world war II, which later was crystallized in the Rome Statutes 1998. It is meant to be a mean to hold accountable the non-military and military superiors for crimes of their subordinates due to their failure in preventing or controlling the subordinates. The parameter of the individual responsibility is set by the practices of ICTY and ICTR and various international instruments are as follows: a) individual responsibility can be prosecuted upon a person who planned, coerced, ordered, perpetrated or assisted in the planning, preparation or committing the crime against humanity and war crimes b) Crime against humanity perpetrated by the subordinate does not exempt the leader or superior from criminal responsibility if he knew based on his reasonable consideration that his subordinate is going to commit a crime and the superior or leader failed to take necessary and reasonable actions to prevent it or prosecute the perpetrator c) the excuse that the crime is committed based on a superior's command would not exempt one from being criminally responsible but may be considered as alleviating factors. Bearing also in mind article 86 Additional Protocol I year 1997 in essence stating that "the responsibility of a superior in relation with actions taken by his/her subordinates, it is compulsory for the superior to intervene by taking all possible actions to prevent and prosecute the violation". If this is related to article 42 verse 1 letter a and b of Law no. 26, it means a military commander or superior has to be responsible for the crime that is committed by the troop under his effective command or control. Thus it should be substantiated whether or not the troop under the defendant was involved in the crime against humanity at the residence of Pastor Rafael Dos Santos in Liquisa on April 5 and 6, 1999 and at the residence of Manuel Viegas Carascalao in Dili on April 17, 1999.

Bearing in mind that Tono Suratman was a commander of Korem 164/ Wira Dharma East Timor based on the Letter of Order of The Chief of Staff of Kodam IX/Udayana No. Sprin/770/VI/1998 dated June 8, 1998, during the period of June 10, 1998-August 13, 1999, subordinating 13 Kodim and 52 Koramil in 13 regencies in East Timor, with personnel amounting to 10,000 and Wanra members of 1,200 and The Tribuana VIII Task Force which command is transferred to him.

Upon to the extent of involvement of the troops under his effective command or authority and control in the two locations, Dili and Liquica, the panel would weigh the opinions of the prosecutor and defense"

Opinion of Ad Hoc Prosecutor Opinion of Defense

In the requisition, page 73, the Prosecutor stated that those who perpetrated in the violence at Pastor Rafael Dos Santos' house were the pro-integration group along with TNI/Polri, and at Manuel Viegas Carascalao's house was the pro-integration group together with TNI. Whereas the defendant had the authority and power to order, regulate, control, supervise and exercise the upholding of law upon the TNI members under his command In the pledoi, page 223-224, stated that based on witnesses testifying under oath, namely Col. Inf. Mudjiono, Lieu. Col.

Pol. Adios Silva, Lieu Col. Asep Kiwani, Lieu. Pol. Frans Samali, Major General Zacky Makarim, Major Djoko Waluyo, Mayor General Adam Damiri, Gen (Ret) Wiranto, President BJ Habibie there is no proof that there were TNI troops involved in the incidents and that the Dandim 1638/Liquisa Lieu. Col. Asep Kuswani and Dandim 1627/Dili Lieu. Col. Endar Priyanto have been acquitted from the charges against them for gross violations of human rights in East Timor by the panels of judges of the Ad Hoc Human Right Court.

The panel of the judges would like to analyze the background of each incident in determining the involvement of TNI in them:

Liquisa Dili

· Based on the legal facts, the incident on April 6, 1999 was triggered by the incident on April 4 and 5, when the pro-independence group led by Jacinto Da Costa destroyed and burned the houses and prosecuted the people in Pukelara village, who afterwards went to Pastor Rafael Dos Santos' house to seek protection. · Based on Gen. Wiranto's account, the riot was because The President of CNRT, Xanana Gusmao, who was at the Cipinang Prison, Jakarta, issued "urge to war" against TNI and pro-integration. · That despite of various mediating and negotiating efforts, accordingly to the accounts of John Rea, Damianus Dapa, Frans Samali, Adios Salova, Eurico Guterres, with Pastor Dos Santos at 08.00-10.00 on April 6, 1999, for the surrender of Jacinto Da Costa and his accomplices to the Police to be investigated and legally processed, the Pastor adamantly refused to do so. The 300 pro-integration who gathered around the house issued a warning that Da Costa and his accomplices should be surrendered before 12.00 or else the pro-integration group would attack the house. · After 12, suddenly the BMP led by Manuel de Sausa, which was a Pro-Integration unit, attacked the house despite of the efforts of the Police and TNI to prevent it and their plea to BMP not to take justice into their own hands. · According to Mayor Salman Manafe and other witnesses, on April 17, 1999, at 09.00-10.00 there was a Pam-Swakarsa mass ceremony at the Governor's Office, attended by 5000 people, representatives from all areas of East Timor. The ceremony was guarded heavily by security apparatus. · According to Eurico Guterres, the ceremony was organized by the Regional Government, and it was lead Joao Da Silva Tavares as PPI Commander and Eurico Guterres as the second-in-command made a speech urging the people of East Timor to stay with Indonesia. · According to Joao Da Silva Tavares the participants brought generic weapons and blades, because it is customary for East Timorese to bring blades when traveling. · That according to the testimony of Guterres and Da Silva afterwards the pro-integration group paraded around Dili. · That according to victim witnesses Alfredo Sanches and Florindo de Jesus there were 100-200 refugees at the time in Manuel Carascalao's house. · When they were parading, the pro-integration group saw a woman lying in front of Carascalao's house, they helped her and at the time the clash spontaneously happened between the pro-integration and pro-independence group. · According to Mayor Salman Manafe the clash occurred at 11.00 and was immediately reported to Dandim Dil via Handy Talkie. Due to the clash there were 12 fatalities and some injuries. At the time Manuel Carascalao was not home, he was taking his wife to Comoro Airport. · Carascalao heard about the attack from the call from his child. He went to Tono Suratman for protection and weapon to avenge the attack and kill the pro-integration, but the request was rejected due to the fact that the matter was already taken care of by the Police, assisted by Dili Dandim Lieu. Col. Inf. Endar Priyanto.

The panel would also take into account the situation in East Timor pre-referendum, starting from the issuing of the 2nd option on January 27, 1999 up to April 1999, before the Three-Parted agreement on May 5, 1999, to determine the extent of TNI's role accordingly to its

function in security.

Accordingly to Gen (Ret) Wiranto and expert witness P.L.T Sihombing, at the time when the second option was issued, East Timor was in "ordinary situation" since the President did not announce state of emergency. Thus, according to P.L.T Sihombing and Prof. Muladi, the state governance was on ordinary mode, meaning in the situation of civilian-order, thus prioritizing the Police. The military emergency was only initiated three days after the referendum, meaning on September 7, 1999 at 00.00, after the burning, prosecution and murder at Archbishop Belo's residence on September 6, 1999 as the result of the disappointment over the result of the referendum that was announced on April 4, 1999.

Bearing in mind that according to Gen Wiranto, Police is responsible of People's Security and Order while Military is responsible of matters concerning Defense, thus a clash between civilians under ordinary circumstances is the responsibility of a police not TNI, as stipulated in law no. 28 year 1997 on the Police Force of the Republic Of Indonesia, which at the time was still at work in East Timor.

Thus upon whether or not Tono Suratman as the Commander of Korem 164/WD East Timor can be held criminally accountable for the crimes of the troop under his effective command and control:

Liquica Dili

· The legal facts show that the attack against the pro-independence civilian in Pastor Rafael Dos Santos' house was the pro-integration group who was disappointed with the unwillingness of the Pastor to surrender Jacinto Da Costa. The panel is of the opinion that "there is a lack of proof" that substantiates the involvement of TNI in the attack. What happened was that TNI helped the Police in securing the refugees, separating the two clashing groups and rescuing the Pastor and the sisters of the Diocese to the Liquisa Kodim Headquarters. That before the violence happened at Pastor Dos Santos' house, preventive measures have been taken by TNI. Upon hearing the mass gathering of the pro-independence and pro-integration at Pastor Dos Santos' house from Dandim 1638.Liquisa Lieu. Col. Asep Kuswani, on the same day, April 6, 1999, the defendant ordered his vice, Col. Inf. Mudjiono and the Trikora Task Force, Col. Inf. Yayat Sudrajat, to go to the Liquisa Kodim Headquarters to help the Dandim and Police, enabling negotiation with Pastor Dos Santos to surrender Jacinto Da Costa to be legally processed. The pastor refused. · The panel will refer to the two victim witnesses Alfredo Sanches and Florindo De Jesus who were taking shelter in the house of the CNRT figure, Manuel Viegas Carascalao, who are the two key witnesses on the involvement of TNI in the attack and whose testimonies are negated by the other 26 witnesses, who stated that not only TNI was not involved in the attack, but also assisted in preventing and securing and separating the two clashing parties, preventing more victims. · Carlos Amaral, who allegedly was involved in the attack, strongly denied the account, claiming an alibi that he was on leave on April 17, 1999. · The testimonies of Sanches and De Jesus conflicted each other, Sanches claiming that (some of) the attackers were TNI in uniform and De Jesus claiming that (some of) the attackers were TNI in civilian clothes, whereas both of them were taking shelter nearby each other. The panel also questions that if they were squatting while taking shelter behind a wall near a bamboo tree, it would be impossible for them to see clearly who and from what group committed the attack. · On the presence of TNI uniformed people, the panel is of the opinion that at the time in East Timor, civilians from pro-independence and pro-integration frequently wore TNI attributes, such as found in the photographs of Falintil/CNRT parties in TNI attributes submitted by the defense in the trial. · From the accounts of the two witnesses, the panel is of the opinion that even if there were TNI troops around the walls of the Carascalao's house mingled with the pro-integration, it does not necessarily mean that TNI participated in the attack against the

civilians (of pro-integration group) in the house, it may mean that the TNI troops were there to assist in preventing the rioters from attacking or maintaining the security there. The panel is of the opinion that since the mass was of a large number it would be very difficult to see which party was attacking, whether it was the pro-integration, the pro-independence or TNI/Polri. On the other hand, when Sanches was shot twice by militia organic weapon and De Jesus was chopped several times by militia, it was Brimob and Indonesia's Red Cross that brought them to a Wira Husada Hospital, which belonged to TNI. That if there were TNI members participating in the attack, the casualties would have been more. Police and TNI were in fact the parties that ceased and rescued the refugees from the crime scene. That even if there were members of TNI who were natives of East Timor participating in the attack, the prosecutor could not legally prove from which unit these TNI members were from. On the other hand the non-TNI rioters in Liquisa and Dili were already processed legally by the East Timor Regional Police. The panel is of the opinion that the alibi of Carlos Amaral is legally doubtful due to his inability to produce his paper of leave and the self-registration/report to the local Kodim where he was (Kendal), which he only did lately after his involvement was questioned in the trial. That the defendant's refusal to provide shelter and weapon for Carascalao is not perceived as omission by this panel, since the troops under the defendant's control was already at the crime scene at 11.40-13.30 protecting the refugees and preventing the incident from spreading, whereas Tono Suratman only met Carascalao at 13.30 after his meeting with the guests from the Embassy of Ireland. And after the meeting, the defendant with Dandim Dili Lieu. Col. Endar Priyanto went immediately to Wira Husada Hospital to visit the victims

That Tono Suratman as Danrem 164/WD never issued a policy or order to his subordinate or troops under his effective control to resort to participate in the scenes where the violence occurred. He issued a "Pocket Book" to all TNI soldiers and officials in East Timor and he was also pro-active in negotiations to establish peace in East Timor, such as the pact on April 21, 1999 signed by the conflicting parties, namely 1) Xanana Gusmao and Leandro Isaac from CNRT and Falintil 2) Domingos Soares and Joao da Silva Tavares from pro-independence 3) Acknowledging the pact, the Regional Government of East Timor: a) the Governor of East Timor, Abilio Jose Soares b) Head of DPRD (Regional Representatives Assembly) Armindo Soares Mariano c) Danrem 164/WD Col. Inf. Tono Suratman d) Chief of Regional Police Col. Pol. Drs. Timbul Silaen e) Minister of Security and Defense, The High Commander of TNI Armed Forces, Gen. Wiranto f) Dili Diocese Archbishop Mgr. Filipe Ximenes Belo and Bacau Diocese Archbishop Mgr. Basilio de Nascimento e) Chairman of Komnas HAM H.R. Djoko Sugianto

Thus since there is not enough proof that TNI troops were involved in the violence in Liquisa and Dili, and that the "omission" as indicted and charged by the prosecutor failed to be substantiated in the trial, whereas the Police was the dominant institution for the maintenance of the community's security and order at the time in East Timor, then the element A military commander or someone effectively acting as a military commander can be held accountable for the crimes committed by the troops under his/her effective command and control is not substantiated.

Since one of the main elements of the first indictment cannot be substantiated, the other elements in the in the first indictment, including the issue of the substantiation of the facsimile as arraigned by the prosecutor, is legally unsubstantiated, thus the panel acquit the defendant from the indictment.

Regarding the second indictment, since it also contains the element A military commander or someone effectively acting as a military commander can be held accountable for the crimes committed by the troops under his/her effective command and control, and that this element

has been unsubstantiated, the second indictment has to be declared legally unsubstantiated. Thus the defendant has to also be acquitted from the second indictment.

Panel of Judges:

Chief Judge: H. Andi Samsan Nganro, SH

Member Judges:

- Binsar Gultom. SH., SE., MH
- H.M. Kabul Supriyadhie., M. Hum
- Heru Susanto, SH.
- Amirudin Aburaera, SH