

Judgment

Defendant Eurico Guterres

**Indonesian Ad Hoc Tribunal
Judgment of Eurico Guterres
JUDGMENT
NO. 04/PID.HAM/AD.HOC/2002/PH.JKT.PST.**

"FOR JUSTICE BASED ON THE ONE AND ONLY GOD"

Human Rights Ad Hoc Court at Central Jakarta District Human Rights Court, presided and ruled over the criminal case at the first instance of Grave Human Rights violations in East Timor, according to regular procedure had pronounced the judgment as stated in court order under the case of the Defendant:

N a m e : EURICO GUTERRES

Place of Birth : Vatolari

Age/Date of Birth : 28 years/July 17, 1974

Sex : Male

Nationality : Indonesian

Address : Jln. W.R. Monginsidi III/5 Kupang

Religion : Catholic

Occupation : Former Deputy Commander of Pro-Integration Forces (PPI)

The Defendant has not been detained.

The Defendant, defended by his Lawyer Team: SUHARDI SOMOMOELJONO, S.H. et.al., based on Specific Letter of Power of Attorney (Surat Kuasa Khusus) dated on June 26, 2002:

The Human Rights Ad Hoc Court;

After reading files related to the case;

After reading the Chairman of Human Rights Ad Hoc Court Central Jakarta Decree No.04/PID.HAM/AD.HOC/2002/PH.JKT.PST., dated on June 3, 2002, concerning the appointment of the Judge Panel who presides and rules over the case;

After reading the Chairman of Human Rights Ad Hoc Court Central Jakarta Decree No.04/PID.HAM/AD.HOC/2002/PH.JKT.PST., dated on June 20, 2002, concerning the decision on the trial day;

After hearing the indictment letter read by the Ad Hoc Prosecuting Attorney, No. Reg. Case: 08/HAM/TIM-TIM/05/2002, dated on May 31, 2002;

After reading intermediate decision No.04/PID.HAM/AD.HOC/2002/PH.JKT.PST, read by the Judge Panel on trial dated on July 18, 2002, which court order states as follow:

1. To declare that the objections from the Defendant Lawyer Team could not be accepted;
2. To declare that the indictment letter from Ad Hoc Prosecuting Attorney, which was read on Thursday, June 26, 2002 meets the requirement, therefore, it could be accepted as a basis for investigating this case;
3. To declare that Central Jakarta Human Rights Ad Hoc Court continue the investigation on the Defendant EURICO GUTTERES;

After hearing:

Criminal charge of Ad Hoc prosecuting Attorney dated on October 31, 2002, on Grave Human Rights violations in East Timor; which Court order states as follow:

TO CHARGE

That the Judge Panel of Human Rights Ad Hoc Court on Central Jakarta District Human Rights Court which presides and rules over this case should issue a verdict that:

1. To declare that the defendant EURICO GUTTERES, according to law was legally proven and convincingly guilty of committing a criminal grave human rights violations in the form of Violation Against Humanity, as stated in the first indictment as an infringement against article 42, paragraph (2) a and b jis article 7 b, article 9 a and article 37 Law No 26, 2000 Concerning The Human Rights Court, and the second indictment as an infringement against article 42, paragraph (2) a and b jis. Article 7 b, article 9 h and article 37 Law No 26, 2000 concerning the Human Rights Court;
2. To sentence the defendant EURICO GUTTERES with 10 (ten) years jail;
3. To determine the evidences:
 - 1 (one) Getau firearm/G-3 No. FMP.172322;
 - 1 (one) SKS firearm No. OH.2289;
 - 1 (one) Mauser firearm Los No.;
 - 1 (one) Homemade firearm;
 - 1 (one) Homemade Pistol;

- TNI Directive Commander:

No 02/P/ix/1999 dated on September 6, 1999, concerning the Military Emergency Territorial Command of East Timor (Komando penguasa darurat militer wilayah Timor Timur);

- Decrees (Surat Keputusan):

- i. - Skep/991/P/XII/1998 dated December 31, 1998 concerning the Discharge and Appointment within the Indonesian Army's Office (Pemberhentian dari dan Pengangkatan Dalam Jabatan Di Lingkungan Angkatan Bersenjata RI/Indonesian Army), for Maj. Gen. TNI I Gede Nyoman Asrana along with 99 personnel;
- ii. - Skep/821/P/IX/1999 dated September 20, 1999 concerning the Use of Authority of the Military Emergency Territorial Command of East Timor (Penggunaan Wewenang Penguasa Darurat Militer Daerah Timor Timur);

- Letters of Order (Surat Perintah):

- i. Sprin/757/IV/1999 dated April 15, 1999 concerning the Official Travel to East Timor (Perjalanan Dinas Tim Tim) for Marsda Tamtomo along with three personnel;
- ii. Sprin/889/V/1999 dated May 10, 1999 concerning the Special Assignment to Assist the Independent Commission (Bertugas Khusus Membantu Pelaksanaan Komisi Independen) for Maj. Gen. Zacky Anwar Makarim along with two personnel;
- iii. Sprin/1096/VI/1999 dated June 04, 1999 concerning the Order to Maj.Gen. Zacky Anwar Makarim along with two personnel as members of TP40KTT;
- iv. Sprin/1660/VIII/1999 dated August 13, 1999 concerning Security Advisor (Sebagai Penasehat Keamanan) P3TT in Dilli, East Timor for Maj.Gen. TNI Zacky Anwar Makarim along with two personnel;
- v. Sprin/1798/IX/1999 dated September 07, 1999 concerning the East Timor Territorial Command (Penguasa Daerah Militer Wilayah Tim tim).

- Telegrams:

- i. TR/614/1999 dated June 17, 1999 concerning the Security Guarantee in East Timor;
- ii. STR/675/5/1999 dated July 6, 1999 concerning Popular Consultation for East Timorese;
- iii. STR/551/1999 dated September 5, 1999 concerning the Anticipation of Developing Situation in East Timor Territory.

- Reports of Situation (Laporan Situasi):

- i. STR/560/1999 dated September 22, concerning the Report of Situation of the Fourth Week dated September 14 to 20, 1999;
- ii. STR/17/2000 dated January 20, 1999 concerning the Report on the Indication of Worsening Security Situation in East Timor;
- iii. R/33/1999 Lapsit dated October 11, 1999 concerning the Report of the Development of the Situation in East Timor on October 11, 1999.

- Others (Special Report / Laporan Khusus):

- i. R/184/Lapsus/IV/1999 dated April 7, 1999 concerning the Clashes between Pro Integration and Anti Integration People in Liquica Regency;
- ii. R/02/X/1999/Lapsus dated October 11, 1999 concerning the Chronology of Incident on Gunshoot Contact between Interfet and TNI (Indonesian Army) and POLRI (Indonesian Police) Troops;
- iii. Suggestion from Pangdam IX/Udayana as Pangkoops TNI Nusara dated September 7, 1999;
- iv. STR/551/1999 dated September 5, 1999;
- v. STR/553/1999 dated September 6, 1999;
- vi. Letter of Order (Surat Perintah) from TNI Commander No.: Prin/1798/P/IX/1999 dated September 7, 1999;
- vii. STR/253/1999 dated April 13, 1999;

- viii. STR/550/1999 dated August 31, 1999;
 - ix. STR/558/1999 dated September 3, 1999;
 - x. Letter of Order No.: Prin-/1000/VII/1998 dated July 30, 1998;
 - xi. TR/614/1999 dated June 17, 1999;
 - xii. STR/172/1999 dated May 5, 1999;
 - xiii. STR/223/1999 dated March 1999;
 - xiv. Examination (not visum et repertum) provided by 2nd Lieutenant CKM dr. Maksum Pendelima;
 - xv. Situation Report No.: R/ / Lapsit/IX/1999;
 - xvi. Situation Report No.: R/ /IX/1999/Lapsit;
 - xvii. Special Report No.: R/ /Lapsus/IX/1999 dated September 22, 1999;
 - xviii. TR/909/P/1999 dated September 7, 1999;
- Were attached in case files to use in another case.

4. Sentence the defendant to pay fee of the case of Rp.5.000,- (five thousand rupiahs);

After hearing the Defendant's defence, as detailed in a Pledoi titled "Salahkah aku membela Merah Putih" ("Am I Wrong to Defend the Red and White"), which on the main point concludes:

1. The Defendant's position as AITARAK Commander and Deputy Commander of PPI actually is only a name or a label name, therefore the criminal deeds committed by people have no relation with the Defendant, the Defendant distinctively stated that the incident in Manuel Viegas Carrascalao's residence on April 17, 1999 which resulted in wounded and dead people was not the Defendant's responsibility and the Defendant was innocent;
2. Because Manuel Carrascalao Viegas had a personal conflict with other people in land issues, political rivalry, matters on project quarrel, morality issues, political power, which accumulated in political resentment as well as personal resentment. Therefore, the Defendant did not know who was behind the clash. The Defendant thought that there was a certain party who was playing in the dirty water. Should AITARAK and the Defendant take the responsibility?
3. If a clasification among people who were opponent to Manuel Viegas Carrescalao was done truthfully, then almost all people, as many people had a thousand feeling towards Carrascalao brothers, but the Defendant who had been his neighbor for a long time had never had a problem. If the Defendant ever had a criminal intention towards Manuel Viegas Carrascalao he did not need to wait until April 17, 1999 to do something, therefore the Defendant had no motivation to harm the Manuel Viegas Carrascalao's family and other innocent people who were inside Manuel Viegas Carrascalao residence at that time.
4. The Defendant realized and understood the meaning of Red and White Flag, therefore he never imagined to tarnish the reputation of Red and White that the Defendant loves by committing a criminal or violating other people's lives;

Therefore, the Defendant objects the Ad Hoc Prosecuting Attorney's indictment and charge;

After examining:

The Pledoi from the Defendant's Lawyer Team delivered in trial dated November 7, 2002, stated that based on the legal facts revealed in the trial, the actions committed by the

Defendant EURICO GUTTERES did not meet the items of charged Articles, therefore the Defendant was not proven of committing a Grave Human Rights violation in East Timor as it was charged on him, therefore the Defendant EURICO GUTTERES's Lawyer Team had pleaded to the Panel of Judges to sentence, as follow:

1. Declare that the Defendant EURICO GUTTERES was legally and convincingly not proven of committing a Grave Human Rights violation in East Timor as it was charged on him in the Ad-Hoc Prosecutor's Indictment.
2. Free the Defendant EURICO GUTTERES from the first and second charges.
3. Restore the Defendant EURICO GUTTERES's rights, dignity and capability.
4. Order to return all evidences of the case to the rightful owner, except those which have to be included in the dossier.
5. Order the State to pay all related expenses.

Examined too:

- Ad-Hoc Prosecuting Attorney's Replik delivered at trial on November 11, 2002, which persists on the charges;
- The Defendant EURICO GUTTERES's and the Lawyer Team's Duplik at trial on November 14, 2002, which persists on their pledoi;

Considering that according to the Ad-Hoc Prosecuting Attorney's indictment dated on May 31, 2002, No. Reg.Case: 08/HAM/TIM-TIM/05/2002, the Defendant was charged with charges as follow:

ONE :

The defendant Eurico Gutteres as a Superordinate or Deputy Commander of a group called themselves as the Integration Forces and or Superordinate / Commander of Aitarak Group in which the defendant as a superordinate was criminally responsible for grave human rights violation committed by his subordinates under his authority and effective control, on Saturday, April 17, 1999, or some other times in April 1999, located in front of East Timor Governor office in Dilli and at Manuel Viegas Carrascalao's residence in Jl. Antonio de Calvanho No. 13 Dilli or in other places where Human Rights Ad Hoc Court at the Central Jakarta District Court has the authority to preside and rule over based on Article 2, Presidential Decree No. 96/2001 dated August 1, 2001 concerning the amendment of Presidential Decree No. 53/2001 on the Establishment of Human Rights Ad Hoc Court at the Central Jakarta District Court did not exercise proper and appropriate control on his subordinates, herewith the defendant as a superordinate of Aitarak group and or deputy commander or superordinate of the integration Forces who gathered pro integration masses with regard to popular consultation/ballot and fought for people who demanded autonomy, knew or deliberately ignored information obviously showed that his subordinates were committing or had just committed grave human rights abuses consisting of crimes against humanity in the form of murder committed in part of a widespread or systematic attack, in which he knew that the attack was directed against civilians and the defendant did not take any appropriate and required acts under his authority to prevent or quell the deeds, which then resulted in attack and murder of people who were at Manuel Viegas Carrascalao's residence in Jl. Antonio de Carvalho No. 13 Dilli, East Timor which at that time occupied by 136 refugees from Maubara, Liquisa, Turiscai, Alas, Ainaro and around Dilli or did not surrender the perpetrators who were Aitarak group or forces and

Integration Forces which were under his authority and effective control to the authorities responsible for investigation, question, and prosecution.

The defendant's actions were committed as follows:

- On Saturday, April 17, 1999 around 9.00 a.m. Eastern Indonesian Time, the Pam Swakarsa inauguration Big Rally was held attended by among others Abilio Jose Osorio Soares (East Timor Governor), Mathius Maia (Mayor of Dilli), Joao Da Silva Tavares (Commander of the Integration Forces and Leader of Halilintar group), Jose Ximenes (Member of Aitarak Group), and gathered in front of East Timor Governor office, East Timorese from several regions such as Besi Merah Putih group from Maubara, Liquisa Regency, Hallintar group from AermERAH Regency, Aitarak group from Dilli Regency/Administrative City, equipped with various weapons namely bows and arrows, spears, machetes, knives, spikes, stabbers, firearms, and homemade firearms. At the rally, the defendant who knew that his subordinates (Aitarak forces or group and Integration Forces equipped with weapons and who were showing resentment against Pro-Independence group) delivered his speech before his supporters, and the words used, among others,

- All CNRT leaders should be exterminated
- Kill all CNRT leaders
- People who were pro independence should be killed
- Kill Manuel Viegas Carrascalao
- Carrascalao family should be killed
- Kill Leandro Isaac, David Dias Ximenes, Manuel Viegas Carrascalao,
- Kill Manuel Viegas Carrascalao's family

- In the meantime the defendant and his supporters or the group (Aitarak forces or group and Integration Forces) knew that at Manuel Viegas Carrascalao's residence on Jl. Antonio de Carvalho No. 13, Dilli, East Timor at that time was occupied by 136 refugees from several regions around Dilli such as Maubara-Liquisa, Turisca, Alas and Ainaro.

- The refugees - among others Alfredo Sanches, Florindo De Jesus, Santiago Do Santos, Victor Dos Santos, Saturnino de Oliviera - were at Manuel Viegas Carrascalao's residence because they were afraid of the group who called themselves the Integration Forces dan Aitarak group who was terrorizing, intimidating them since January 1999 in several places such as Maubara-Liquisa, Turisca, Alas and Ainaro. And they (the refugees) took shelter at Manuel Viegas Carrascalao's residence because they heard that Manuel Viegas Carrascalao was a neutral group.

- Then, after hearing the defendant's speech at the rally in front of the Governor office's courtyard, the mass consisted of group of Aitarak forces, Integration Forces, after the Big Rally was over, marched towards and attacked Manuel Viegas Carrascalao's residence which at that time housed 136 refugees and house of witness Leandro Isaac, and the defendant that had delivered provoking speech did not attempt to prevent and quell masses under his command/order or control for marching towards and attacking Manuel Viegas Carrascalao's house and Leandro Isaac's house.

- Then, the masses consisted of Aitarak group among others: Ameo, Agus, Idis, Jose Rineto, Lusiano and Andre, the Integration Forces together with TNI troops who were wearing similar uniform like the Pro-Integration Forces' uniform attacked and destructed Leandro

Isaac's house in the means of shooting with pistol 3 times towards the front door and 3 times towards parking space behind the house and they destroyed everything inside the house.

- After that, the masses attacked and murdered people who were inside Manuel Viegas Carrascalao's house using various weapons, such as automatic weapons which were commonly used by the military, homemade firearms, machetes and spears. The attack resulted in several people who were at the Manuel Viegas Carrascalao's house, namely:

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

all were dead.

- Besides that, as a result of the attack they committed, Manuel Viegas Carrascalao's house was destructed among others the doors and windows as well as a car, computer, photocopy and faximile machines, and household items.

- The defendant as a superordinate of Aitarak group and or deputy commander or superordinate of the integration forces who was capable of controlling his subordinates has known that his subordinates which were Aitarak group and the integration Forces were showing resentment and were about to attack in the form of murdering the masses who were inside Manuel Viegas Carrascalao's house on Jl. Antonio De Carvalho No.13, Dilli but the defendant did not take any appropriate and required acts or prevented his subordinates for not committing or quelling the attack and murder of the masses inside Manuel Viegas Carrascalao's house and he did not surrender the perpetrators namely Aitarak forces or group and the Integration Forces which were under his authority or effective control to responsible authorities for investigation, question, and prosecution.

The defendant's deeds was ruled and criminally charged under Article 7 (b) jis Article 9 (a), Article 42 paragraph 2 (a) and (b), Article 37 Law No. 26/2000 concerning the Human Rights Court.

AND TWO

The defendant Eurico Gutteres as a Superordinate or Deputy Commander of a group called themselves as the Integration Forces and or Superordinate / Commander of Aitarak Group in which the defendant as a superordinate was criminally responsible for grave human rights violation committed by his subordinates under his authority and effective control, on Saturday, April 17, 1999, or some other times in April 1999, located in front of East Timor Governor office in Dilli and at Manuel Viegas Carrascalao's residence in Jl. Antonio de Calvanho No. 13 Dilli or in other places where Human Rights Ad Hoc Court at the Central Jakarta District

Court has the authority to preside and rule over based on Article 2, Presidential Decree No. 96/2001 dated August 1, 2001 concerning the amendment of Presidential Decree No. 53/2001 on the exercise proper and appropriate control on his subordinates, herewith the defendant as a superordinate of Aitarak group and or deputy commander or superordinate of the integration Forces who gathered pro integration masses with regard to popular consultation/ballot and fought for people who demanded autonomy, knew or deliberately ignored information obviously showed that his subordinates were committing or had just committed grave human rights violation consisting of crimes against humanity in the form of abuses against a certain group or collectivity formed by similarities in political views, race, nationality, ethnic, culture, religion, gender, or other reasons universally recognized as the matters prohibited by international law which were committed in part of a widespread or systematic attack, in which he knew that the attack was directed against civilians and the defendant did not take any appropriate and required acts under his authority to prevent or quell the deeds, which then resulted in attack and abuse against people who were at Manuel Viegas Carrascalao's house among others Victor Dos Santos (Apin), Alfredo Sances and Florindo De Jesus who were at that time on Jl. Antonio De Carvalho No. 13 Dilli, East Timor together with 136 refugees from Maubara, Liquisa, Turiscai, Alas, Ainaro and around Dilli or did not surrender the perpetrators who were Aitarak group or forces and Integration Forces which were under his authority and effective control to the authorities responsible for investigation, question, and prosecution.

The defendant's actions were committed as follows:

- On Saturday, April 17, 1999 around 9.00 a.m. Eastern Indonesian Time, the Pam Swakarsa inauguration Big Rally was held attended by among others Abilio Jose Osorio Soares (East Timor Governor), Mathius Maia (Mayor of Dilli), Joao Da Silva Tavares (Commander of the Integration Forces and Leader of Aitarak group), Jose Ximenes (Member of Aitarak Group), and gathered in front of East Timor Governor office, East Timorese from several regions such as Besi Merah Putih group from Maubara, Liquisa Regency, Hallintar group from Aemerah Regency, Aitarak group from Dilli Regency/Administrative City, equipped with various weapons namely bows and arrows, spears, machetes, knives, spikes, stabbers, firearms, and homemade firearms. At the rally, the defendant who knew that his subordinates (Aitarak forces or group and Integration Forces equipped with weapons and who were showing resentment against Pro-Independence group) delivered his speech before his supporters, and the words used, among others,

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- The refugees - among others Alfredo Sanchez, Florindo De Jesus, Santiago Do Santos, Victor Dos Santos, Saturnino de Oliviera - were at Manuel Viegas Carrascalao's residence because they were afraid of the group who called themselves the Integration Forces dan Aitarak group who was terrorizing, intimidating them since January 1999 in several places such as Maubara-Liquisa, Turisca, Alas and Ainaro. And they (the refugees) took shelter at Manuel Viegas Carrascalao's residence because they heard that Manuel Viegas Carrascalao was a neutral group.

- Then, after hearing the defendant's speech at the rally in front of the Governor office's courtyard, the mass consisted of group of Aitarak forces, Integration Forces, after the Big Rally was over, marched towards and attacked Manuel Viegas Carrascalao's residence which at that time housed 136 refugees and house of witness Leandro Isaac, and the defendant that had delivered provoking speech did not attempt to prevent and quell masses under his command/order or control for marching towards and attacking Manuel Viegas Carrascalao's house and Leandro Isaac's house.

- Then, the masses consisted of Aitarak group among others: Ameo, Agus, Idis, Jose Rineto, Lusiano and Andre, the Integration Forces together with TNI troops who were wearing similar uniform like the Pro-Integration Forces' uniform attacked and destructed Leandro Isaac's house in the means of shooting with pistol 3 times towards the front door and 3 times towards parking space behind the house and they destroyed everything inside the house.

After that, the masses attacked and murdered people who were inside Manuel Viegas Carrascalao's house using various weapons, such as automatic weapons which were commonly used by the military, homemade firearms, machetes and spears. The attack resulted in several people who were at the Manuel Viegas Carrascalao's house, namely:

- Victor Dos Santos (Apin), wounded on his middle finger or other parts of his body
- Alfredo Sanchez was stabbed on his left back and left finger's foot or other parts of his body
- Florindo De Jesus was cut on his right and left hands, and his right ear was cut and shot or other parts of his body

- Besides that, as a result of the attack they committed, Manuel Viegas Carrascalao's house was destructed among others the doors and windows as well as a car, computer, photocopy and faximile machines, and household items.

The defendant as a superordinate of Aitarak group and or deputy commander or superordinate of the integration forces who was capable of controlling his subordinates has known that his subordinates which were Aitarak group and the integration Forces were showing resentment and were about to attack in the form of murdering the masses who were inside Manuel Viegas Carrascalao's house on Jl. Antonio De Carvalho No.13, Dilli but the defendant did not take any appropriate and required acts or prevented his subordinates for not committing or quelling the attack and murder of the masses inside Manuel Viegas Carrascalao's house and he did not surrender the perpetrators namely Aitarak forces or group and the Integration Forces which were under his authority or effective control to responsible authorities for investigation, question, and prosecution.

- The defendant's deeds was charged under Article 7 (b) jis Article 9 (h), Article 42 paragraph 2 (a & b), and Article 37, Law No.26/2000 concerning the Human Rights Court;

Considering that on the efforts to prove their indictment, the Ad Hoc Prosecuting Attorney had delivered and presented the evidences in the form of letters as attached in the dossier, as well as letters that were presented in the court, and the evidences in the form of weapons as mentioned in the list of the evidences, in the form of samples of weapons:

- 1 (one) Getau firearm/G-3 No. FMP.172322;
- 1 (one) SKS firearm No. OH.2289;
- 1 (one) Mauser firearm Los No.; (sic!)
- 1 (one) Homemade Firearm;
- 1 (one) Homemade Pistol;

Considering that the Ad Hoc Prosecuting Attorney had also presented 11 (eleven) witnesses in the court, they were:

- Witness 1 ALFREDO SANCHES;
- Witness 2 JULIO SOUSA;
- Witness 3 DOMINGGUS BOAVIDA;
- Witness 4 MANUEL VIEGAS CARRASCALAO;
- Witness 5 Drs. BASILIO DIAZ ARAUJO MA;
- Witness 6 JOSE AFFAT AMP;
- Witness 7 SOEDJARWO;
- Witness 8 ABILIO JOSE OSORIO SOARES;
- Witness 9 JOAO DA SILVA TAVARES;
- Witness 10 AGUSTINUS B. PANCARIBUAN;
- Witness 11 DOMINGOS M. DORES SOARES, S.H., M.H.

The eleven witnesses had testified under oath before the court, their testimonies were primarily as follow:

1. Witness Alfredo Sanches

Having sworn, testified primarily as follow:

The witness had been staying in Manuel Viegas Carrascalao's house as a refugee since February 1999;

Before he became a refugee and before he was staying in Manuel Viegas Carrascalao's house, the witness had stayed in Lebuaee Maubara, and ran to Manuel Viegas Carrascalao's house because he was afraid to be forced to become a militia member;

What the witness meant by militia were Militia groups of Aitarak, Besi Merah Putih, Naga Merah which were Pro Integration;

On the April 17, 1999 when the witness was staying in Manuel Viegas Carrascalao's house as a refugee, the witness heard from a radio news that in the Dili Governor Office courtyard there was a big inauguration rally; and at noon there was an attack on refugees who were staying in Manuel Viegas Carrascalao's house, committed by TNI and the militia, in the form of gunshootings towards the front of Manuel Viegas Carrascalao's house;

During the incident, the witness was behind the house, the witness saw a car loaded with the Militia and TNI bumped into the front door, and then shot the house, but the witness did not know the numbers of Militia and TNI personnel who did the attack;

The witness with witness's friends Florindo de Jesus and Eduardo saw the attackers were running and were climbing the stone walls at the back of the house, then a military officer, named Antonio Besikau and Militia member named Fransisco were coming, then Antonio Besikau shot to death Eduardo, and Fransisco shot the witness with a homemade firearm, resulting in the witness fell from the wall;

After the witness had fallen, he was stabbed twice by Fransisco with knife and arrow, resulting in the witness got wounded (the witness showed before the court the gunshot wound on his back, cut on his back, cuts on his chest, near the armpit and on his hand);

The witness recognized the military officers named Antonio Besikau and Fransisco because they were all Maubara natives;

As the result of the attack, the (11) eleven refugess who were inside Manuel Viegas Carrascalao's house, including his son named Manelito Carascalao were dead, whereas the injured among others were the witness and Florindo de Jesus;

In addition to the military, there were many other militias joined the attack whom the witness did not recognize, but the witness could differentiate between the military and Militia: the military wore camouflage uniforms and carried firearms, whereas Militias wore camouflage uniforms like the uniform wore by the defendant in the court and wore red and white head ties, carrying home made firearms, machetes and arrows, knives;

Before the attack took place, inside Manuel Viegas Carrascalao's house, only refugees were there, no Falintil members were there, and no shooting started from inside the house, but the Militia and military immediately attacked.

During the attack, the witness heard they were yelling that here were hoodlums from Maubara, could not yet make a matchstick, but already wanted an independence;

During the attack, it was not true that there were people crying to ask for help from the Military or Militia, and during the attack, there were no police came to help;

After the attack was over, then, the police and Red Cross came, later on the witness was taken to the Wira Husada Hospital to be hospitalized and underwent an operation and after more than one month in the hospital, the witness started to recover;

The witness did not know who was the leader of the attack, the witness only heard from radio news that there was a big rally, but did not hear the content of the speech and after the rally, there was an attack to Manuel Viegas Carrascalao's house;

The witness recognized and could differentiate the firearms commonly used by the Military and Militia;

2. Witness Julio Sausa

The witness did not know the incident at Manuel Viegas Carrascalao's house on April 17, 1999, because at the time the witness was at Maubara, but before the Militia was leaving from Maubara, they said they would go to Dili to attend a rally, and after they were back from Dili,

the Militia said that after the rally was over, they attacked Manuel Viegas Carrascalao's house and said that all refugees inside the house were all killed;

Two days later, on April 19, 1999 eleven corpses from Maubara arrived who were not listed as members of BMP (Besi Merah Putih Militia);

The leader of BMP was Manuel Souesa, and he was the one who initiated to take the Militia to Dili, while the persons who asked to leave for Dili were the District Head (Camat) and Subdistrict Military Commander (Koramil). The witness knew about the issue, because before they departed, they had been gathering in Maubara and they departed to Dili on 3 (three) trucks;

The one who brought 11 coffins on April 19, 1999 was army wearing official army uniforms and the corpses were brought in a truck, then the corpses were buried in Lebukee, Maubara in 11 graveholes;

The people who were present during the funeral were the District Head (Camat) and Subdistrict Military Commander (Koramil), the Army, the Militia, the victims' families, and among the killed whom the witness recognized was Raul Dos Santos, the witness' relative;

Many people in Maubara were taking refuge to Dili because afraid to be forced to become members of the Militia, and if they rejected, they will be dead;

Every night people in Maubara should participate in guarding the post built by BMP Militia, people were asked to bring firearms, beside, machetes were already available in the post, knives, bullets made of concrete cement (pieces of concrete cement block), matches which were used as homemade amunition material;

3. Witness Dominggus Boavida

On April 17, 1999, the witness was in Maubara, the witness knew that in the morning the Besi Merah Putih group departed from Maubara to Dili City to participate in a rally in East Timor Governor Office courtyard;

At night, when the witness was taking part in guarding the post built by Besi Merah Putih, the Militia who were back from the Dili City, told that after the rally, they attacked Manuel Viegas Carrascalao's house and killed all refugees who were in the house;

There were 12 refugees who were killed, among them 11 refugees were Maubara natives, among the killed the witness recognized were Raul Dos Santos and Alfonso, and Raul Dos Santos who was killed by Militia was the son of witness' brother;

Two days later, on April 19, 1999 there were 3 trucks coming from Dili, one truck brought the corpses, other trucks brought the army. The witness recognized the army because they wore army's official camouflage uniforms, carried firearms, wore stripped insignias on red and yellow colors on their sleeves;

The witness was present in the funeral, the families' victims, the District Head (Camat) and Subdistrict Military Commander (Koramil), Militia members and Besi Merah Putih Commander Manuel Sousa as well as Military who took and escorted the corpses;

The witness happened to get into the truck, the witness counted 11 black coffins, and name of Raul Dos Santos written on one of the coffin and the witness had a chance to see the condition of Raul Dos Santos corpse on the face and on his body blood stain remained to be seen, then the corpses were buried in Lebuae Maubara;

As far as the witness knew the Militia was Pro Integration group similar to Besi Merah Putih, Aitarak, Naga Merah groups;

Something that differentiates the Army from Militia group was that some of the Militia's clothes were preman (civilian), some of them wore camouflage military uniforms, their weapons were machetes and homemade firearms, whereas the army wore camouflage uniforms and carried usual weapons;

The Maubara's BMP group forced the people to participate in guarding the post and the civilians were obliged to bring machetes, knives, arrows from their houses, if the people did not want to join, they were beaten or killed, the prove was the eleven corpses brought from Dili were the people who had refused to list as BMP members and in fact many people from Maubara fled to Dili because they were afraid to be forced to join BMP members;

4. Witness Manuel Viegas Carrascalao

The witness recognized the Defendant and as far as the witness knows the Defendant was Commandant of Aitarak Militia and the aim of the Militia led by the Defendant was a Military movement to defend the Integration with Indonesia;

The Militia was supported by the Military/Indonesian Army (TNI). Many people said about that and the Militia was established by the TNI, most of the Militia members were jobless;

The names of Pro Integration Militias which the witness knew were, among others, Aitarak, Besi Merah Putih, Saka Sera, Ablai groups and many others;

The Militia groups had a special relationship with the TNI, for example in distributing weapons to the Militia, besides, without having support and special links to the Military, they could not move freely, because at that time in Dilli without any support from TNI, the Militia could not do anything, and impossible to commit an attack to the witness' house;

On April 17, 1999, the witness' house had been attacked by Militia, at that time the witness was not at home, because at that time the witness picked his wife up at Dili's airport Comoro;

The witness knew that the house was going to be attacked by the Militia after getting a phone call from Manelito Carrascalao, the witness' own son telling that the Militia was going to attack the witness' house, then the witness came to see the Military Post Commander (Danrem) Tono Suratman at his home to ask for protection and tell that his house was going to be attacked by Militia;

After informing Danrem Tono Suratman, he only mocked the witness, therefore the witness then asked for a weapon to fight the Militia, but he only told the witness to ask for a weapon to CNRT;

Therefore the witness did not believe in the TNI, and nor did he report to the police to seek protection because they were the same, then the witness went to Bishop Bello's house and on the way there, there was someone stopped the witness' car and informing that his house had already been attacked by Militia, the refugees had been killed including the witness' son Manelito;

The witness' son Manelito Carrascalao was murdered, he was slashed and shot, and his neck was almost cut off by the Militia, when the Militia was attacking the witness' house, in addition to the witness' son who was in the house, they were children, mothers, youths who were came from Turiscai, Alas, Ainaro, Liquisa all of them around 136 people, those who escaped from the attack were only 60 people, the rest were missing, there was a corpse in a well having been murdered by Aitarak group, but the witness did not see any graves of the victims;

4 (Four) days after the witness' house was attacked, the witness came to the house, there were many damages caused by gunshots on the walls and the windows were shattered, a lot of bloodspots on the floor and on the wall;

Among the refugees who were inside the witness' house, there were people who had ran away from their hometown to Dili, but had no places to stay and nobody wanted to accommodate them because they were afraid, then the witness took them off the streets and brought them to his house, there were people who came by themselves and there were people who were brought by the witness from their hometown;

The numbers of the refugees that the witness had ever been accomodated were around 560 people, they came and went, and right before the attack happened, the numbers of the refugees were around 136 people;

To give foods to the refugees, they did not get any support from the government nor the UN, besides the witness who gave foods, many Dili people symphatized and give rice and food to the refugees. Usually the refugees came to Dili to take refuge because they were afraid of Pro Integration Militia;

At the beginning the witness was a person who fight for integration, but after the witness saw the TNI's heartless and cruel conducts on the people, such as arresting and shooting people, then the witness did not support Pro Integration anymore because it made people suffered;

When the witness was a member of East Timor DPRD TK I (Provincial Legislative Council), the witness heard complaints from people about TNI's conducts. When the witness was a member of East Timor DPRD TK I the witness was fighting for the Pro Integration, during that time, the witness had been offered a riffle gun and a pistol by Maj.Gen. Dading Kalbuadi, that was the evidence of TNI's support to the Pro Integration Militia group;

When the Militia was attacking the witness' house, the Militia got support from the Military/TNI because in Dili without any support from the Military/TNI it was impossible for Militia to commit the attack, the Military that supported the Militia was the Army's Special Forces (KOPASSUS), but there were no Military officers from East Timor who were members of the KOPASSUS, after the attack, there was no any effort to arrest the perpetrators and Militia Commandant was the perpetrator together with the Military;

It was difficult to differentiate the Militia and Military who committed the attack, and the attack had been planned, because around 10 in the morning, the witness heard radio news in the witness car, that the defendant Eurico Gutteres delivered a speech, and said that the whole Carrascalao's family should be killed;

The attack had been planned because the attack took place after the big inauguration rally in front of East Timor Governor and after the Defendant's speech in which he said he would kill the Manuel Viegas Carrascalao's family;

The Militia was established by the Military/TNI, therefore it was a Military movement which seek to defend the Integration;

The witness knew Pam Swakarsa and maybe there were difference with other Militias, because the Militia was not wearing uniforms, Militia was formed by the Military, whereas the Pam Swakarsa was not formed by the Military, and Militia members have no jobs;

The witness heard that when the big inauguration was held in East Timor Governor Office courtyard, it was attended by Governor Abilio Osario Soares, Commander of the Provincial Police (Kapolda), Danrem, Regent of Dili (Bupati Dili) and also the Army;

On the day of the incident, a lot of people informed the witness, whether it was by phones, from the witness' friends, as well as from friends of the Pro Integration group saying, "Manuel, you will be killed";

Because the witness was afraid to be killed, then the witness fled to Dili Provincial Police Headquarters (Polda Dili), there were already more or less than 200 refugees, the witness was taking refuge at Polda Dili for 9 (nine) days;

Militia had a high comander and the one who became the Deputy Commander was the Defendant who was also the Commandant of Aitarak, and Militia has a special link with TNI;

The Defendant's speech, Eurico Gutteres which was broadcast on the radio saying that the Carrascalao's family should be killed, the speech that the witness heard from the radio was around 10-11 o'clock in the morning, then around twelve o'clock the witness got a call from the witness' son Manelito that the house was going to be attacked by the Militia, and the witness heard that there was a person in Dili who had transcript of the defendant's speech;

The witness truly recognized the voice of the speaker saying to kill the whole family of Manuel Viegas Carrascalao was the Defendant's voice;

Based on the witness's information the defendant responded as follow:

The witness was an important Pro Integration figure who since 1975 had fought for Integration to Indonesian Government;

Those delivered the speech was not only the Defendant himself and the Defendant was never saying to kill the whole family of Manuel Viegas Carrascalao because the Defendant was not that evil, and it was correctly that the Defendant delivered a speech at that time;

Later on, given an opportunity by the Judges, the defendant presented questions to the witness, whereas the witness explained that the witness quitted from Pro Integration since human rights violations had been committed by the Military;

5. Witness Drs. Basilio Dias Araujo MA.

The Defendant was correctly a Deputy Commander of Pro Integration Forces (PPI), an organized organization which had its own Commander and Deputy Commander who were simply selected among the group, they consisted of groups and each group had its own Commandant, but the organizational structure was unclear;

Originally, PPI derived from Partisan, a group fighting for Pro Integration and was founded around 1975, after East Timor had become Indonesian territory, later on they changed their form, from Partisan group to PPI, Manuel Viegas Carrascalao was one of the leaders who were the founding fathers of the PPI group;

At the beginning, this Partisan group was an anti Communist movement and the members were those who waged arms and it developed into a Pro Integration movement;

PPI was a group or an organization acknowledged by the UN, and the Defendant as a Military Wing Leader often represented PPI in meetings held by the UN, for example in DARE I and DARE II meetings attended by the UN, the PPI and the FALINTIL, during the meeting the witness acted as a translator;

The witness knew that on April 1999, Manuel Viegas Carrascalao's house was used as a refugee shelter, those civilians who asked protection from Manuel Viegas Carrascalao and among the refugees there were people who were victims of attack to Maubara Chapel, attacked by those coming from the forest, there were also refugees who came from Ainaro, Maubarak around Dili and those reported missing;

The refugee shelter at Manuel Viegas Carrascalao's house was often cunningly used by Pro Independence group to spread news in order to get support, saying that the refugees were those who asked protection to scapegoat the government;

During the big rally on April 17, 1999 held in East Timor office courtyard, the witness was present on the location of the ceremony because the witness was a translation officer of the Governor, but the witness did not join the ceremony;

The ceremony on April 17, 1999 took place around 9 until 11 o'clock in the morning and there gathered more or less than 1000 participants from PPI, Aitarak, Besi Merah Putih groups, all of them were Pro Integration group, whereas from the Pro Independence group the witness did not know in detail since the event was an activity of Dili Local Government;

The witness did not know whether the ceremony was a PPI activity or Inauguration of Pam Swakarsa and the witness knew that on April 17, 1999 the Defendant was present and delivered a speech, before the attack to Manuel Viegas Carrascalao's house happened;

When the Defendant was giving a speech, there was a response from belows (participants) saying kill, kill, kill, kill right away, whack right away, because the defendant asked Manuel Viegas Carrascalao's responsibility;

The witness did not directly hear the Defendant instructing to kill Carrascalao family, but when the defendant gave a speech, the witness heard participant's voices yelling, kill, kill Carrascalao family;

Two hours later, an attack to the house and refugees inside Manuel Viegas Carrascalao's house happened, but the witness did not see the attack directly because between 11 to 13 the witness was at Korem to be Danrem's translator;

The witness knew that Manuel Viegas Carrascalao saw the Danrem asking for a weapon to protect himself because his house was going to be attacked, and at that time he was accompanied by his daughter Maria Carrascalao;

On the ceremony the witness only saw the participants bringing weapons made of wood, machetes commonly used by Timorese, there were participants wearing uniform, civilian clothes, and the witness heard that 20 perpetrators had been arrested;

6. Witness Jose Afat AMP

The witness had been Head of Maubara District, Liquisa Regency since 1995 until 1999 when the witness was the District Head in 1999, government activities was beginning to break down as disturbed by Pro Independence groups;

Pro Independence group under CNRT created a shadow government, and took over the District legal tasks to topple down the Indonesian Government;

In Maubara District, there were Pro Integration groups, namely, Aitarak, BMP, PPI, MAHIDI groups, and Pro Independence group such as: RMA, LAKSAUR, AIPESAK, CNRT, FALINTIL;

The Defendant was both the Aitarak Commandant and PPI Deputy Commander, while PPI Commander was Joao Tavares; BMP group in Liquisa Regency was led by Battalion Commander, Manuel Sousa and its subordinate Platoon Commander whom the witness forgot his name;

The person who installed and inaugurated BMP group in Liquisa regency, Maubara District was the Defendant Eurico Gutteres, the inauguration was attended by 16.000 people, and TRIPICA Maubara District attended the BMP installment and inauguration, this group spontaneously derived from Pro Integration community to fight against CNRT, FALINTIL of Pro Independence group who carried out terror and brutality, murder, and intimidation against Pro Integration group;

Before the witness became Head of Maubara District, Pam Swakarsa had already been established, under Governor instruction, the names of Pam Swakarsa members were proposed by each of their Village Heads, then submitted to the District Heads, then submitted to the Regent, and the witness himself had proposed 30 names to the Regent;

The way the Pro Integration group such as BMP, Aitarak, MAHIDI in defending and protecting themselves was by equipping themselves with traditional weapons such as machetes, arrows, spurs, home made firearms;

The witness recognized the evidences presented before the court, namely, home made firearms and SKS firearms, G3 automatic weapons (getmi) used by the Pro Independence group;

On April 17, 1999, the witness got an invitation to attend an event held at Dili Governor office courtyard to inaugurate Pam Swakarsa, thousands of Aitarak and BMP masses participated in the rally, the witness came late, only attended the event for 10 minutes;

The witness got information from Pro Integration community from Maubara who were participating at the Big Rally saying that after the April 17, 1999 Big Rally, an attack to Manuel Viegas Carrascalao's house happened, resulting in deaths from Maubara and one more Manelito Carrascalao;

According to informations from people, after the Big Rally was over, the rally participants marched around the city, and when passing Manuel Viegas Carrascalao's house, they heard cries asking for help, and gunshots were heard from Viegas Carrascalao's house, then an attack and clash between Pro Independence and Pro Integration groups took place;

The distance between Manuel Viegas Carrascalao's house and the place where the Big Rally was held was about 200 meters;

On APRIL 17 afternoon the witness participated in burying 2 dead victims from Maubara in Lebukee Maubara, near the beach, was attended by the families' victims, where there were new graves but not of the victims from Manuel Viegas Carrascalao's house, and those who brought the corpses from Dili were Augusto Botak member of BMP Liquisa and a member of Aitarak whose name the witness forgot, the 2 corpses were brought by Colt Diesel vehicle;

The content of the speech that the witness remembered was the speech of Joao Tavares who suggested and emphasized unity while about the speech of the Defendant, the witness did not know exactly, the witness only heard that the witness (sic!) delivered a speech at the ceremony;

The Pro Integration group who were involved in the incident at Manuel Viegas Carrascalao's house were, among others, Aitarak Dili, BMP Liquisa, Darah Ermera, Laksaur Suai/Covalima, Sakunar Okuse, Saka Bakao, Alpa Lapos Mahidi, Dadarus Bobonaro, Halilintar Bobonaro, AHI Aliu, Ablai Same;

7. Witness Lieut.Col. TNI Sujarwo

The witness had been a Dandim 1627/Dili East Timor since August 9, 1999 to September 17, 1999, in the hand-over ceremony from the former Dandim Lieut.Col. TNI Endar Priyatno, in the letter of hand-over, it was mentioned notable incidents in Dili East Timor;

One of the incidents that became center of attention was the incident at Manuel Viegas Carrascalao's house on April 17, 1999, which was a clash between Pro Integration and Pro Independence groups, resulting in Manelito Manuel Carascalao was dead;

The Pro Independence group the witness knew were CNRT, FALINTIL, led by Leandro Isaac and Manuel Viegas Carrascalao, while the Pro Independence group the witness knew, among others: BMP, MAHIDI, Aitarak, PPI, whereas the Defendant was Commandant of Aitarak

group headquartered near Tropikal, He was also PPI Deputy Commander and the Commander was Joao Tavares;

As a Dandim, the witness did not have any close relationship with the Defendant nor the witness knew about the reason of the attack to Manuel Viegas Carrascalao's house;

Heard from the witness' subordinate that clashes between Pro Independence and Pro Integration groups were often occurred, later on the witness ordered to withdraw all weapons and save them at the District Military Command Headquarters (Makodim);

The witness knew that there were missing firearms from the Makodim, and the witness did not know from where the weapons and granats presented as evidences before the court come, but the witness recognized homemade firearms, SKS firearms, a kind of TNI weapons not used anymore, but still used in training and many of them had been missing;

The witness heard about the establishment of Pam Swakarsa, because people were threatened by independence group, particularly after Opsi II given by the government to provide alternatives of independence or integration with Indonesia, this matter escalated disputes resulting in destruction, interference, therefore defenses were created in each village to avoid threat through Pam Swakarsa;

The witness knew that there were District Military Command personnel who were members of Pro Independence group after had been informed by Kodim's Intelligence officer and the witness had gathered them and given them guidances, because his staff were numerous, the witness did not know whether they were involved in the clash or not;

It was correct that there was a TRIBUANA TASK FORCE which has around 28 personnel, among them the 10 personnel were assigned in District Military Commands, the rest were placed in Sub District Military Commands to assist Sub District Military Commanders;

The witness got reports from his Staff and from TRIBUANA TASK FORCE, the reports was compiled and filed, the reports mentioned all kinds of incidents, the reports was gathered from Intelligence officer, TRIBUANA TASK FORCE in order to help territorial security;

Concerning the incident at Dili Diocesan, Bishop Bello's place which was also a refugee shelter, was a sacred place, they respected the place, having their own rules which should be followed by everyone, therefore according to the witness, it was impossible that the incident occurred at that time;

When the incident was taking place, the witness was in Kolmera, more or less than ½ km from the location of the incident, after getting reports and information about the attack, the witness reported it to the Danrem, the witness was ordered by the Danrem to assist the apparatuses, to separate the conflicting parties, to save Bishop Bello, after the clash and disputes there were victims, but the witness did not know who the victims were;

The group attacking Dili Diocesan used sharp weapons, homemade firearms, arrows, spears, they were Pro Integration groups, because the place was used as a hiding place by the Pro Independence group, and it was found ballot boxes hidden there;

It was correct that shopliftings occurred committed by people, exodus of people was taking place too, if the people were not stopped, they will come to Dili and caused extensive damage, the exodus happened before and after popular consultation implementation;

In the circumstances, the security guard was prioritized to protect UNTAET personnel, vital goods and places;

8. Witness Abilio Osorio Soares

The witness was former East Timor Governor and had been knowing the Defendant since 1995 when the witness was still a Governor;

As a Governor, the witness' tasks was to run the government, Development and Socialization in the region and did a vertical coordination with linked institutions and central institutions in the region assigned to the Governor in order to implement the task in the region;

In East Timor there were two conflicting groups, they were Pro Integration and Pro Independence groups, resulting in security disorders, conflicts, disputes, burning down happening everywhere, the situation escalated before and after the popular consultation was implemented;

Pro Independence group like Fretilin, CNRT, often committed security disturbances, while Pro Integration group joined to Aitarak, BMP, MAHIDI, PPI, and many other groups;

Since the beginning, the witness did not agree with the popular consultation, because it would cause disputes, the witness suggested to hold a meeting between the disputed parties by inviting the leaders, and chose the location in Australia, but because the matter had already been decided by the central government, it should be implemented properly, therefore the witness formed an organization called FPKD (Forum Kesatuan Demokrasi Keadilan), BRTT (Barisan Rakyat Timor Timur), as organizations to accommodate groups or people who chose or want integration or Pro Autonomy;

In order to prevent security disturbances, a coordination meeting between Governors and Muspida (Local Community Leaders) and meeting with Regents was held and hear their reports, then each Regencies initiated to establish Pam Swakarsa in order to help public security and public order;

Because the establishment was initiated by the Regents, then the Pam Swakarsa's expenses were provided by each Regent according to the needs of their regions;

Pam Swakarsa in Dili was led by Major of Dili Administrative City, the witness did not know the number of the members, Pro Integration like Aitarak, BMP, MAHIDI, and other Pro Integration groups, not Pam Swakarsa, but all of them were members of PPI which later became members of Pam Swakarsa;

The relationship between PPI and Pam Swakarsa, PPI was established around August 18, 1974, led at that time by Viegas Carascalao, activities (sic!) of anti-Clandestine, and it was they who fought directly against the Fretilin;

Before becoming PPI, the group was a partisan group called KOMBATITA ANTI COMUNISTA, firstly established to fight against communists in East Timor, which was perceived to be in contrary to religion;

Because the security disturbances escalated, the group that had existed earlier had been re-established in 1999, and called themselves PPI (Pro Integration Forces) using similar attributes, equipments and goal with the previous one, and there were members who were also Pam Swakarsa members;

Their clothes was camouflage uniforms, civilian clothes, equipped with knives, arrows, spears and homemade firearms led by its Commander, Joao Tavares and the Deputy Commander who was the Defendant himself;

Besides being the Deputy Commander, the Defendant was also Aitarak Commandant whose headquarters was in Tropikal Dili, a former Portuguese hotel, as a Deputy Commander of PPI and as a Commandant of Aitarak, the Defendant exercised big influence on the troops or his subordinates;

An example of his big influence was after the popular consultation announced when the witness family (the Governor family) was going to leave Dili for Atambua, encountered several problems and could go forward after getting letter of travel from the Defendant as the Deputy Commander of PPI, because it was only the Defendant who could issue such letter of travel;

It was correct that on April 17, 1999 at the East Timor Governor office courtyard a Big Inauguration was held attended by thousands of people and its first aim was to hold Pam Swakarsa Rally whose implementation was carried out by Major of Dili City;

The Inauguration was held in the morning and when the event was about to begin, the witness got information from Kakansopol, that the participants of the inauguration were PPI groups, that three days before the inauguration, the witness got an information and invitation from Major of Dili City to deliver a speech but the witness did not pay attention on the agenda of the event which as far as the witness knew, the event was the Inauguration of Pam Swakarsa but because it was a PPI rally and there was Irish Ambassador visiting, the witness did not deliver a speech;

At the inauguration location, when the witness was walking towards the Muspida, the witness saw the Commander of PPI, Joao Tavares, accompanied by the Defendant Eurico Gutteres and Zeboah Haipon, they were standing on the stage;

The witness did not know the number of PPI masses attending the Rally, but the witness saw thousands of people, there were people wearing camouflage uniforms, carrying sharp weapons such as machetes, knives, spears, arrows, homemade firearms, and TNI and Polri apparatuses were there, they did not do anything;

The witness did not prevent the participants of Big Inauguration from bring weapons, because the persons who had the authorization to prevent that were TNI and Polri;

When the inauguration was over, the witness got information that the persons who delivered the speeches were Joao Tavares, the defendant Eurico Gutteres and Zeboah Haipon, and when

the Big Rally was over, there was an incident of attack to Manuel Viagas Carrascalao's house resulting in 17 people dead and some wounded, the 20 perpetrators had been arrested;

According to information from Kakansopol which the witness did not know whether it was true or not, when the Rally was over and the participants were passing Manuel Viegas Carrascalao's house, heard cries for help from Manuel Viegas Carrascalao's house, the crying voices were the voices of missing families had been looked for and were inside Manuel Viegas Carrascalao's house, when they were going to help, a conflict took place resulting in dead and wounded people, including Manelito Carascalao was dead;

During the big rally, on April 17, 1999 in the office courtyard, it was heard shouts among the rally participants, "shouts of independence" (sic!);

The Big Rally activity was covered by various mass media and broadcast on RRI (Radio of the Republic of Indonesia), Catholic Radio Nai Veto (Bunda Maria), therefore the event was listened to by many people;

FDPK and BRTT, were established by they who felt evocation, as an agreement among community leaders who wanted integration to Indonesia or pro Autonomy, therefore it was an organization for Pro Integration;

It was impossible that the members of Pam Swakarsa were from Pro Independence but the members were from Pro Integration, like MAHIDI, Aitarak, BMP, some of them had job and some others jobless;

9. Witness Joao Da Silva Tavares

The witness recognized the Defendant as a youth leader, he led an organization or Pro Integration group which was Aitarak Commandant and as the Deputy Commander of Pro Integration Force (PPI) and the Commander of PPI was the witness himself and also Commandant of Pro Integration group called HALILINTAR;

The PPI Commander and Deputy Commander were elected by Pro Integration community in Balibo meeting, PPI did not have any structure but had leaders and members, and there was job distribution to each of them to safeguard their own regions, the Defendant and his group, Aitarak, had a task to safeguard Dili City, and the witness as the HALILINTAR Commandant had a task to safeguard Maliana territory;

Before it was given name PPI, it was Partisan group, which was reestablished in 1999, because it had to fight the FALINTIL which was anti Integration and which trouble had escalated, and the Defendant was an influential figure among his troops and among the society;

HALILINTAR group had weapons such as machetes, knives, spears, arrows, and homemade firearms and also G.3 weapons of NATO standard, the other groups like Aitarak, BMP, SEKAP definitely also had;

The other groups' leaders whom the witness knew were BMP led by Agus Sousa, SEKAP led by Juantiko, MAHIDI led by Laimus;

There were HALILINTAR members who were also TNI personnel because it was not prohibited, and HALILINTAR group had three platoons led by platoon commanders named Paul, Rosalindo and Yose, and HALILINTAR, Aitarak had their own platoon commanders too;

On April 17, 1999, the Defendant as PPI Deputy Commander invited the witness to attend the Big Rally at the Governor office courtyard, Dili, at that time the Defendant asked the witness to serve as an inspector of the ceremony (Irup) and gave a speech;

The Big Rally was attended by 5000 participants, the participants were members of PPI, Aitarak Dili, BMP, SEKAP, MAHIDI and other groups, the participants brought machetes, spears, arrows and homemade firearms;

When the ceremony began, the witness as the Irup, accompanied by the Defendant rode on a Jeep to inspect the troops, after that, the witness delivered the first speech, followed by the Defendant but the witness did not remember the content of the Defendant's speech, the witness only remembered that the Defendant said "there should be a patriotic spirit, obey the nation and the state and the unity of the nation", after it was over, the witness went back to Atambua;

The aim of the Big Rally was to know each other, to support and fight over Integration to Indonesia with the granting of autonomy;

In the afternoon the witness had just realized that after the Big Rally, there was an attack to Manuel Viegas Carrascalao's house, resulting in the death of his son, it was said that the masses who attacked were the masses who took part in the Big Rally, the distance between Manuel Viegas Carrascalao's house and the location of the Big Rally was around 300 meters, and during the rally, the police and TNI were there to guard;

The witness had been honored as an Honorary member of the KOPASSUS, the award was granted in KOPASSUS's headquarters in Batu Jajar, because the witness participated in military operations when the witness was a partisan;

10. Witness Agustinus B. Pangaribuan

It was correct that the witness had been appointed as the Chief of the Police Detective Squad (Kasat Serse) at Dili Polres since November 1996 until mid of 1999;

As a Kasat Serse in Dili Polres, the witness's task was to follow up reports from community, do criminal investigation/question, execute superordinate's order / policy and he was responsible to the Kapolres for the implementation of his tasks.

The Dili Kapolres at that time was Supt. Drs. Hulman Gultom, while the Wakapolres was Ass. Supt. Drs. Mangatas Tambunan;

Concerning the Dili and East Timor general situation, before and right before the popular consultation, clashes and disputes often took place between two groups, the Pro Integration and Pro Independence groups, each of the group had its own masses and weapons;

The witness recognized the Defendant since he was a Kasat Serse in Dili Polres, the Defendant was known to the witness as a main figure of the community, and a respected figure, and had a big influence in East Timor, especially among his groups;

The Defendant was involved in Pro Integration group, had masses or followers, or subordinates, and had influences so that he was respected, because so many people admired him;

The Defendant was the Commandant of Aitarak group and the Deputy Commander of PPI, headquartered in Tropikal Dili (former Portuguese hotel), but the witness did not know who provided the place to the Defendant;

Since there were two conflicting groups, Pro and Anti Integration, the clashes often occurred between the two groups and if the clash occurred, the witness often asked for help to or coordinated with the Defendant to calm down the effect or the incident;

Members or followers of the Pro Integration group, such as Aitarak group led by the Defendant, the, had no firearms, but had homemade firearms, machetes, knives, and they used to wear camouflage uniforms or attributes marked Pulau Timor (Timor Island) and wear Red and White headband;

The witness knew the Pro Integration group as well as Pro Independence group had weapons, because sweeping was often conducted on weapons' owners and the weapons were found among both Pro Integration as well as Pro Independence members;

The witness knew the incident of attack on Carrascalao's house on April 17, 1999, committed by Rally participants at Governor of Dili courtyard, from TV news when the witness was in Denpasar;

After the witness was back to Dili, the witness did visit the location of the incident (TKP), in Carrascalao's house, the witness saw damages on windows, holes in the wall, bloodspots, but the witness did not conduct any investigation nor examination about the incident, because based on the superordinate's policy, the investigation will be conducted by East Timor Provincial Police Command;

Based on the information received by the witness, the perpetrators had been arrested, numbering of 20 people, the dossiers had been completed, but the witness did not know who the perpetrators were and the how the dossiers were produced, because the witness did not see directly the perpetrators who had been arrested;

As far as the witness knew, the perpetrators had not been brought to the court, and the case simply proceeded as far as completing the dossiers, because at that time the situation and condition did not allow;

The witness did not know from which group the attackers came in Manuel Viegas Carrascalao's house, but based on information, the perpetrators were from Pro Integration group, that were the groups who participated at the Rally at Dili Governor's courtyard;

As far the witness knew the Defendant's job was Aitarak Commandant and Deputy Commander of PPI, he also worked private and did not work as a civil servant (PNS);

During the Dili Diocesan incident, the witness saw and recognized the members of Aitarak, Besi Merah Putih group were there, bringing sharp weapons, such as machetes, knives, sticks and homemade firearms;

11. The witness Dominggus M. Dores Soares, SH; MH.

The witness had been Dili Regent since 1994, and the witness's task as the Regent was among others to run the government, Development and Socialization, in Dili Regency, including had to perform tasks and be responsible for security measures and public orders;

When running the government, as a Regent had encountered many disturbances, that were, from the groups who wanted independence, and topple down the Indonesian Government such as the CNRT, the Falintil;

Therefore clashes often took place between Pro and Anti Integration, and the clashes had been happening since a long time ago, all people already knew about that, and it escalated when the Option of independence came out which meant to give rights to the Anti Integration to be independent;

The result of the clashes was the security and public orders disturbed;

In order to help to deal with the security and public orders, and discipline the public, an alternative was looked for, which was in reactivating the Pam Swakarsa , therefore the Pam Swakarsa already existed before, but based on the situation and condition at that time, it should be reactivated;

The Pam Swakarsa reestablishment expenses were borne by Local Government budget, each of Pam Swakarsa member was paid Rp150.000,- per month;

The witness had proposed to the Governor 1200 people to become members of Pam Swakarsa in Dili regency, and the leader of Dili Pam Swakarsa was the Major of Dili City;

In order to guide and protect the community, and to prevent escalation of violence, the solution was to reactivate the Pam Swakarsa which had existed before, therefore the witness suggested the Governor to hold an Inauguration Rally, held in Dili as a Provincial Capital City, then the guidance should be carried out throughout the regions;

After getting instructions from the Governor, then a committee was formed to arrange the Pam Swakarsa Inauguration Rally at Governor office courtyard, Dili on April 17, 1999;

It was planned that the person who would give a speech was the Governor, but because not all participants from every regions were present, the Governor cancelled the speech;

The Governor cancelled to deliver his speech a moment before the event began, and the witness saw Kakan Sospol made a report to the Governor shortly before the event commenced, but according to information from the committee, the Governor cancelled the speech because there were not so many participants attending the ceremony and not all participants invited from every regions were present, then the Governor was disappointed, therefore he did not give a speech;

Joao Dasilva Tavares was a PPI Commander, and its Deputy Commander was the Defendant;

The witness was present at the Pam Swakarsa Inauguration Rally at Dili Governor courtyard on April 17, 1999, from the beginning until the end of the event, which began at around 9 until 12 noon;

Pam Swakarsa was not Aitarak, BMP, MAHIDI, Sakaur, or PPI, but there were members who were also members of Aitarak, BMP, MAHIDI, PPI and other groups;

The witness did not see any participants bringing weapons, what he saw was the Rally participants bringing clubs;

The Rally participants were wearing civilian clothes, there were who wore camouflage uniforms, T Shirts, and the witness forgot whether Pam Swakarsa had uniform;

It was correct that after the Pam Swakarsa Inauguration Rally at Dili Governor office was over, an incident of attack on Manuel Viegas Carrascalao's home took place, committed by Rally participants resulted in 12 people dead including Manuel Viegas Carrascalao's son, and there were wounded people;

According to the committee's report, the incident proceeded when the rally participants were passing by Carascalao' house, then cries for help were heard, and it was known that the person was from Liquisa forced to come to Carascalao's house, then resulted in a clash in the Carascalao's house;

The rally at Governor courtyard was not a PPI rally but it was intended to be Pam Swakarsa rally;

The program and the list of the speeches became the committee's responsibility, and the witness did not know why Joao Dasilva Tavares delivered the first speech;

The witness did not know whether the perpetrators of the attack on Manuel Viegas Carrascalao's house had been sentenced or not;

During the rally, the police and TNI were present around the place of the ceremony and did not do anything;

Considering to the testimonies given by the witnesses above namely:

Witness 1 ALFREDO SANCHES

Witness 2 JULIO SOUSA

Witness 3 DOMINGGUS DOAVIDA

Witness 4 MANUEL VIEGAS CARRASCALAO

Considering to the testimonies, given by the witnesses above the Defendand rejected the witnesses' testimonies, whereas towards witnesses' testimonies of:

Witness 5 Drs. BASILIO DIAS ARAUJO, MA

Witness 6 JOSE AFAT AMP

Witness 7 SOEDJARWO

Witness 8 ABILIO JOSE OSARIO SOARES
Witness 9 JOAO DA SILVA TAVARES
Witness10 AGUSTINUS B. PANGARIBUAN
Witness11 DOMINGGUS M. DORES SOARES, SH,.MH

The Defendant approved and has no objection:

Considering that the Panel of Judges had explicitly ordered before the court that the prosecuting attorney present and allow, by force if necessary, the witnesses to testify before the court:

LEANDRO ISAAC
VICTOR DOS SANTOS alias APIN
SANTIAGO DOS SANTOS
FLORINDO DE JESUS
MARIA CHRISTIANA CARASCALAO
JUANICO DASIVA
SUPARNO

But it turned out the witnesses could not be presented before the court by the prosecuting attorney;

Considering, according to the prosecuting attorney's statement before the court, the witnesses LEANDRO ISAAC, VICTOR DOS SANTOS, SANTIAGO DOS SANTOS, FLORINDO DE JESUS and MARIA CHRISTIANA CARASCALAO had been called, even by asking assistance from responsible officials in Timor Leste, as mentioned in the contents of summon letter (surat panggilan), assistance requested from Timor Leste Government, which subject had delayed the court examination to wait the witnesses to appear many times;

Considering, that the witnesses LEANDRO ISAAC, VICTOR DOS SANTOS alias APIN, SANTIAGO DOS SANTOS, FLORINDO DE JESUS and MARIA CHRISTIANA CARASCALAO were Timor Leste citizens and lived in Timor Leste, then it was difficult to present the witnesses before the court because they lived far away, and during the investigation they had given their testimonies under oaths, while the witness JUANICA DA SILVA and the witness SUPARNO, according to the prosecuting attorney's statement, their addresses were no longer found, because they had moved to another place, therefore the prosecuting attorney could not give any guarantee to present the witnesses before the court, and demanded that the witnesses' testimonies as mentioned in the Police Deposition Document (BAP) should be read before the court;

Considering, the Criminal Code (KUHAP) allows the reading of investigation documents before the court, and one of the reason for that is the distance of witness' residence, which stated in article 162 paragraph (1) Law No. 8/1981 (KUHAP) which declares that when after the witness gave a testimony, the witness passes away or due to legal reason can not appear in the court or is not summoned due to the distance of the witness' residence or due to other reasons related to the state's interest, then the given testimony is read. According to article 162 paragraph (2) KUHAP, whenever the testimony is given under oath, then the testimony should be treated equally with the one given by the witness under oath in the courtroom.

Considering, because the prosecuting attorney's request to read the witnesses' testimony who could not appear before the court, has met one of the qualifications stipulated in the article 162 (1) KUHAP, therefore if the Defendant and Defendant's Lawyer Team objected, the objection can be ruled out and the witnesses' testimonies had been read before the court, whose testimonies mentioned in the BAP as follow:

Considering the witnesses' testimonies:

LEANDRO ISAAC, as mentioned in BAP dated July 21, 2000, Sworn Deposition on July 21, 2000;

VICTOR DOS SANTOS alias APIN, as mentioned in BAP dated July 21, 2000, Sworn Deposition on July 21, 2000;

SANTIAGO DO SANTOS, as mentioned in BAP dated July 21, 2000, Sworn Deposition on July 21, 2000;

FLORINDO DE JESUS, as mentioned in BAP dated July 21, 2000, Sworn Deposition on July 21, 2000;

MARIA CHRISTIANA CARASCALAO, as mentioned in BAP dated July 27, 2000, Sworn Deposition on July 31, 2000;

JUANICO DASIVA, as mentioned in BAP dated July 28, 2000;

SUPARNO, as mentioned in BAP dated October 16, 2000;

Each of them gave testimonies to the Investigator of Grave Human Rights Violation in East Timor whose had earlier been sworn by the investigator from the Office of Indonesian Attorney General, whose testimonies were principally as follow:

Witness Leandro Isaac:

The witness always met with Manueel Viegas Carrascalao at his home before the incident, with political reason and visit the refugees;

On April 17, 1999, the witness was at his home in Lahane/Dili;

The witness's house was attacked by the Militia around 10:00 and called Manuel Viegas Carrascalao around 12 noon on the same day, the witness reported the attack on the witness' house and about the general situation in Dili, his son named Manelito answered that there had been signs that their house was going to be attacked by Militia;

When the attack to Manuel Viegas Carrascalao's house took place the witness was at his home, while Manuel Viegas Carrascalao, according to the information from his son named Manelito, when he was called by the witness, said that his father (Manuel Viegas Carrascalao) was already at the Korem Dili (military base in Dili);

According to Manelito his father went to the Korem to report that there had been indication that his house was going to be attacked;

The attackers on the witness' house was the Militia, numbered around 40 people led by Eurico Guterres where at that time Eurico Guterres was on the first row of the convoy riding a motorcycle and went straight from the back of the witness' house around 11.30, the convoy consisted of 2 (two) trucks, 1 (one) kijang pick up, 1 (one) kijang minibus, and 6 (six) or 8 (eight) motorcycles, and Eurico Guterres was now in Kupang, they fired 3 (three) times towards the front door, and three times towards a location where the witness parked his car at the back of the house. They forced to enter and destroyed everything inside the house, and the witness was assisted by Pro Independence youths from Lahane;

The witness went back to his home after the attack and later on the witness made a phone call to Manuel Viegas Carrascalao's house;

According to the information received by the witness and later on from the CNRT, that two Militia groups called BMP and Aitarak were responsible for the attack to Manuel Viegas Carrascalao's house and the leader of BMP was Manuel Sousa;

The witness did not report the incident of attack on the witness house to the security apparatuses, because the witness did not trust them on April 18 around 7.00 went to the Bishop's house in Licide-Dili, and at that the time the witness met with Manuel Viegas Carrascalao, we discussed a situation at that time, and after Bishop Belo went to Kapolda and Korem whereas (sic!) they were the Head of Police and Korem Commander to talk with them about the security situation. Bishop Belo reported again that the only safest place for us was Provincial Police Command (Polda);

The attack towards Manuel Viegas Carrascalao's house took place at 11.30 in the morning until 20 in the afternoon (sic!), it was correct because the witness made a phone call to Manuel Viegas Carrascalao's house at 11.30 in the morning and Manuel Viegas Carrascalao's son answered that their house was also been attacked by the Militia, and when the witness called again at 2.00 in the afternoon, there was no answer. The Manuel Viegas Carrascalao's house which was attacked was located on the two main roads in front of the beach, beside the Dili Governor (sic!);

According to the witness' opinion, the motive of the attack on Manuel Viegas Carrascalao's house mainly because he was a Pro Independence, he was a CNRT person, he always reported situations in Dili to foreign countries, finally Indonesia planned to exterminate all resistensia leaders;

The reason why the witness' house was attacked, on the day of the attack, around 08.00 an official ceremony was held in front of the Governor office of the Militia organization, Governor Abilio Osario, Kapolda Timbul Silaen, Danrem Tono Suratman and the Milita Commandants who participated at that time were Eurico Guterres the leader of Aitarak Militia, made a political statement that the witness (Leandro Isaac) Manuel Carascalao, David Diaz Ximenes and Mario Carascalao who leaders of CNRT should be killed, then after the statement was announced the witness' house was attacked, the witness had a copy of Eurico Guterres' statement;

Besi Merah Putih Militia had communication facility in Liquisa Regency Maubara District, at the beginning of July 1999 the witness passed by and saw with his own eyes communication radio with all of its equipments similar to the one belonged to ABRI during the attack on the

witness' house on April 17, 1999, the pistol used by Militia was caliber 9 similar with the one used by TNI, therefore the witness was convinced that TNI gave assistance to the Militia;

Witness Victor Dos Santos alias Apin:

On that day, April 17, 1999, the witness happened to pass by after made a phone call from a public phone near Manelito's house, after made the call, the witness saw they were sitting altogether and the witness came towards them, then began talking to them, and then came into the house;

On April 17, 1999 the witness was at Manuel Viegas Carrascalao's house around 12.00 o'clock, Militia rode on a truck and stopped in front of the house, they yelled "kill Carrascalao", we saw through the window, many Militia whom we knew were Militias from Aitarak and Besi Merah Putih, we also saw there were armies wearing Militia uniform the witness knew there were armies wearing Militia uniform, because the witness often saw and met them at Tropical (Aitarak Headquarters) before the incident. Among them were those wearing headcovers and speaking in Javanese accent, some of them remained there and some others left. One (1) hour later, the Militia who had left came back and attacked collectively before they forced in, Manelito had gotten a chance to chase them out and said that if they wanted to come into the house please do it in a proper manner then they went out immediately;

At the same time, two reporters come and around 20 minutes later more Militia arrived from other places such as from Herman's house and Becora bus station, shouting kill Carrascalao. Not long after that, they attacked and forced in, after they had forced in the witness and the witness' friend Joao Junior, we were trying to run out, but we were besieged. We returned into the house, Joao, Manelito, and the witness were still receiving a call from Manelito's uncle, a policeman Capt. Paul, his uncle said that we should out, we asked Manelito to go out, but he refused;

When the Militia was attacking the house and smashing the windows, Manelito moved into the living room, when he was in the living room, they shot him. The witness and Joao Junior ran to the rear of the house, and the Militia came into the kitchen, attacking the witness and Joao with machetes, samurai, homemade pistols, Joao was dragged out, the witness' right and left hands and right ear were cut by machetes, eventhough the witness tried to resist with his right hand, his right knee was shot and above his right knee was cut by machetes;

When they cut the witness' right ear, the witness pretended to die, then there were two of the witness' friends who were still alive and were hiding inside boxes in the kitchen, when the witness fell down, the witness saw them and the witness told them not to go out and said just remain there. Later on the Police and the Mobile Brigade (Brimob) arrived, the Milita then said let us dismiss the security apparatuses had come when I heard I was able to stand up the witness saw many corpses in the dining rooms;

When the witness went to the living room, the witness saw that Manelito was already dead, then the witness tried to go out but the security (Police and Brimob) guarded strictly, the witness tried to escape through the side door in the dining room. The witness managed to escape and tried to climb the fence but it was difficult as the witness' hands were injured. But as soon as he was out he was at Dr. Longginus's courtyard the witness was arrested by Brimob. The witness was asked to sleep there, then the witness was asked to get into an ambulance together with two other wounded persons named Alfredo and Florindo, to be taken to Wira

Husada Hospital. On the way to the hospital, the driver, a policeman, stopped the ambulance at Tropical Hotel, the Aitarak Headquarters there the Militia with their machetes, homemade weapons, pistols surrounded the ambulance and shouted kill right away, around one hour later, the ambulance driver took us to Wira Husada hospital;

The witness recognized some of the perpetrators, some of them were familiar to the witness, such as Ameo from Aitarak was a Bacau native, AGUS from Aitarak was a Bacau native, Lois, son of Akadiruhun from Dili who joined the Aitarak, Jose Renatu from Bidau Santana Dili was also an Aitarak member, Apiu from Bidau Santana (Dili) was also a member of Aitarak, Luciano from Bidau Santana (Dili) was also an Aitarak member, Andre from Bidau Santana (Dili) was also a member of Aitarak, the were others whom the witness recognized their faces, but did not know their names;

During the attack there were security apparatuses they were behind the Militia they did not wear uniforms but from their profil and crewcut hair, the witness knew that they were security apparatusesl, the witness did not see any weapons but the witness guessed they carried weapons;

There were many people died, the witness did not count them but the witness saw many corpses the witness recognized only the witness' friend Manelito;

The witness did not know when and where the victims were buried, the witness saw Aitarak militia brought the corpses out of the house, and mounted them onto a car, the witness did not recall the car's marks;

Witness Santiago Do Santos:

The witness came to Manuel Viegas Carrascalao's house because Militia activities in Maubara to terrorize/surpress all men to support Pro Integration to Indonesia, and on January 8, 1999 Militia started to attack everybody from one house to another to join the group, from the information given by the witness' friend saying that the witness had been sought, therefore on January 15, 1999 the witness escaped to Dili, and like the witness' friend beforehand, the witness also joined them to take shelter at Manuel Viegas Carrascalao's house. The witness stayed there because hearing from friends that Manuel Viegas Carrascalao was a neutral person;

During the attack on Manuel Viegas Carrascalao's house, the witness was in a small house at the rear of Manuel Viegas Carrascalao's house and the attack took place on April 17, 1999;

On April 17, 1999, on Saturday around 09.00 - 10.00 the witness turned on the radio and heard live report of the Dili radio there was a Big Rally in front of the East Timor Governor office led by East Timor Governor, Danrem, Kapolda, Militia leader Joao Tavares and his Deputy Eurico Guterres and attended by all militias. After the ceremony Eurico Guterres (sic!) the witness heard Eurico Gutteres ordered to exterminate all CNRT leaders and particulartly Manuel Viegas Carrascalao family should be killed;

Upon hearing that, the witness told friends to run away from the house because Militia was going to attack Manuel Viegas Carrascalao's house, hearing that, then a number of the refugees more or less than 50 people ran away leaving Manuel Viegas Carrascalao's house. Not long after that, Militia had already encircled Manuel Viegas Carrascalao's house, the

witness and the witness' family could not escape the witness run to a storagehouse near the kitchen later Manuel Viegas Carrascalao's son (Manuel Gama Carrascalao) called the witness to come into the dining room, at that time the witness heard gunshots and homemade firearms smashing the windows and door, then they entered from the front and heard machetes cutting people and after that heard people fell down. After that the Militia entered the dining room and everybody there ran away. At that time the witness saw the witness' friend Raul was killed by Augusto with machetes/samurai;

During the time the witness was in the bathroom there were 2 (two) TNI personnel the witness recognized named Jose Matheus and Theofilo Da Silva who joined the attack using weapons commonly used by TNI, and the witness knew them because they were Maubara natives, at that time they were wearing Militia uniform, that was, black jacket, helmet and black and red headband;

Besides the two personnel, people committed the attack whom the witness know were two Kamra members: Matheos Do Santos from Vawiquenia Village and Inasio from Watuo village, and Militias from Maubara, those were, Fransisco Alfonso, Honorio Manuel Goncalves, Nicolau, Abrao, Joselino, Augusto, but the witness did not know the numbers of people who attacked Manuel Viegas Carrascalao's house;

The total numbers of people died during the attack were 12 people, those were: 1. Manuel Gama Carrascalao, 2. Raul dos Santos Cansela, 3. Alberto dos Santos, 4. Januario Ribeiro, 5. Alfonso Ribeiro, 6. Crisanto dos Santos, 7. Rafael da Silva, 8. Cesar dos Santos, 9. Eduardo de Jesus, 10. Antonio de Soares, 11. Joao dos Santos, 12. Agustino B.X. Lay;

When the witness was taken by the Police from Manuel Viegas Carrascalao's house to Dili Polre for interrogation, the witness was interrogated by the Police to admit that the party starting to fire the gun from inside Manuel Viegas Carrascalao's house was Falintil group, therefore the Militia attacked Manuel Viegas Carrascalao's house but the statement was denied by the witness because there was no Falintil group inside Manuel Viegas Carrascalao's house. On the other day, the witness was brought to the morgue room at Wira Husada Hospital and there the witness identified names of killed victims at Manuel Viegas Carrascalao's house, and all of them were 12 dead people, later on April 18, 2000 (sic!), the witness was told by a Police (Joseph) that the corpses would be buried in their native place Maubara, after that the witness was brought from Polres to Polda to be detained;

When the corpses were brought to Maubara to be buried, the witness did not come to Maubara, numbers of the corpses taken to Maubara were 11 (eleven) corpses, and 1 person was buried in Dili, the witness knew because he was told by Police;

Additional information given by the witness was that eventhough Eurico Gutteres instructed to attack CNRT leaders in front of the officials (Abilio Osorio Soares, Tono, Provincial Police Commander Timbul Silaen) attended the ceremony, but they did not try to prevent the attack, the witness was sure about that because the Militia group led by Eurico Guterres, after the ceremony immediately attacked Manuel Viegas Carrascalao's house without any prevention from the security apparatuses;

Witness Florindo de Jesus:

The witness was in Manuel Viegas Carrascalao's house as a refugee, because the witness was hunted down by the Militias in Maubara, one of District in Liquisca;

Manuel Viegas Carrascalao's house was located near Tropical Dili, but the witness did not know the name of the street and the number, during the attack to Manuel Viegas Carrascalao's house, the witness was inside Manuel Viegas Carrascalao's house;

The witness and refugees arrived at Manuel Viegas Carrascalao's house in January, more or less than 200 refugees were at Manuel Viegas Carrascalao's house, but the correct number of refugees in the house the witness did not know, because many people came and went;

The witness was taking shelter at Manuel Viegas Carrascalao's house, because we believed that Manuel Viegas Carrascalao had responsibility on refugees and was also a CNRT member;

Manuel Viegas Carrascalao's house had been attacked around 12 East Timor Time, on Saturday, April 17, 1999;

When the attack was taking place, the number of refugees at Manuel Viegas Carrascalao's house were more or less than 200 people, among them the witness knew were: 1. Alberto Dos Santos, 2. Eduardo de Jesus, 3. Alfredo Sanches, 4. Januario Pereira, 5. Maria Fatima, 6. Augusto de Jesus, 7. Silbano, 8. Jacinto, 9. Luis, 10. Antonio, 11. Joao de Silva;

When the attack to Manuel Viegas Carrascalao's house was going on, Manuel Viegas Carrascalao and his family were not at home, only his son also named Manuel Carrascalao who also known as Manelito was there;

The group who committed the attack was the Militias and TNI, because at that time the witness was in front of the house's fence, therefore the witness saw that the attackers were Militias and TNI with the total number the witness predicted more than the number of the refugees inside the house;

Militias and TNI the witness recognized were: 1. Dominggus Bondia, 2. Joaon Doumesa, 3. Grasino, 4. Dominggus Metan, 5. Alfonso Batleri, 6. Manuel Sousa, 7. Mancuro Metan, 8. Camilo, 9. Sico Curbuti, 10. Mandua Curbuti, 11. Fernando Sousa, 12. Dennis Locoban, 13. Victor Orlando, 14. Manuel Orlando, 15. Felik Dasilicio, 16. Miguan Buti, 17. Simao Santana, 18. Matius Ecdal;

From TNI: 1. Jose Matius, 2. Antonio Basicao, 3. Duarte, 4. Carlos Amaral, 5. Bataris, 6. Teofilo.

Types of weapons used in the attack:

Militias: firearms, homemade weapons, machetes, samurai and arrows, which number the witness did not know;

TNI: firearms, types was unknown by the witness, but the witness saw that the kind of firearm were used to be carried by TNI, which number the witness did not know.

When the attack was taking place, the witness was in front of Manuel Viegas Carrascalao's house's fence, together with the witness at the time was the witness' relative named Albertus

do Santos, the attackers consisted of the Militias and TNI arrived in a large group, riding many cars, one of the cars, a blue-colored kijang pick up belonged to a Militia member named Pedro Mai who now was in West Timor, the blue kijang car was driven against the fence to let the Militia entered the house, in the house, the attackers, using automatic, homemade weapons, samurai, arrows and machetes took action at once, among them was witness' relative, a TNI member, Jose Mateus instantly shot witness' relative named Albertus do Santos and then was physically abused by Dominggus Bondia a member of the Militias until he was dead. When the Militia/TNI had come forcefully into the house, the witness was trying to crouch down to hide and run onto the fence to get into the house, but he did not succeed since the house had already been surrounded by the Militia/TNI, the three of us: the witness, Alfredo Sanches and Eduardo de Jesus were hiding on the fence, at first they were unnoticed by the Militia/TNI, but after the killings was over and the Militia/TNI was about to retreat, they saw the three of us and one of them shot Sanches. After Sanches was killed and fell down on the ground, the witness saw Jakeus, a Militia member, and Antonio Besikau, a TNI member shot Eduardo de Jesus to death they shot the witness but they missed, but when the witness jumped down on the ground, the witness was slashed by Militias, one of them was Dominggus Bondia, the result was the witness suffered but at that time the witness pretended to die, when the Militia/TNI had left, the International Red Cross came and took the witness to Wira Husada hospital. The attack resulted in heavy injuries, but the wound marks remained to be seen on his body;

Parts of the witness' body suffered injuries due to the slashing by Dominggus Bondia were on his right hand, left hand finger, back, shoulder, toes to sole, because of the injuries, the witness was hospitalized for 4 months.

At first, the witness did not know who died. After the witness released from the hospital and visited the graveyards of the victims of attack on Manuel Viegas Carrascalao's house, it was just known that 12 people had died: 1 person was buried in Dili, and 11 people in Maubara. Their names were: Manuel Carrascalao who was buried in Dili, Alberto dos Santos, Eduardo do Santos, Antonio Soares, Januario Peretra, rafael Da Silva, all of them were buried in Maubara, Alberto Santos was the witness' older brother, those injured were the witness, Alfredo Sanches, and Victor Do Santos, all of them were still alive;

Manuel Carrascalao as the witness had explained, had died and had been buried in Dili, was a son of Mr. Manuel Viegas Carrascalao;

The clothes wore by the Militia was camouflage uniform, trousers or camouflage trousers, civilian clothes, whereas some of the TNI wore civilian clothes, commonly wore by local people;

Witness Maria Christiana Carrascalao:

The event that happened on April 17, 1999 in Dili was on that day, Saturday, April 17, 1999 around 09.00 East Timor Time the witness listened to RRI radio broadcast and heard Eurico Guterres' speech in the ceremony to raise the Red and White Flag and the ceremony of blood-drinking oath, the witness knew that the participants were East Timor Governor, Danrem, Kapolda and other participants, those were Eurico Guterres's members who were militias, in the speech, Eurico Guterres said that people who were Pro Independence should be killed, and one thing that shocked the witness was a threat to kill the witness' uncle (sic!), who was Manuel Viegas Carrascalao, former Governor of East Timor- who was in Jakarta at that time.

Upon hearing the news, the witness reported it to the witness' father (sic!), Mario Viegas Carrascalao to listen to the radio, after the news was told, the witness' Father immediately made a phone call to the witness' uncle (sic!), Mario Carrascalao in Jakarta. Then the witness got prepared to pick her stepmother up at Comoro Airport then the radio which had been placed in the room before, the witness moved to the living room to be listened to by people in the living room, who were friends of the witness' younger brother, then rode on a Taft Hiline DF-145 departed to the Airport, the route we supposed to take was the left route, but coming from in front of us, there were lots of militias carrying weapons just returned from the ceremony, we had to take the right route and went along the beach to the Airport. Because the plane was canceled, then it was decided to go the witness' older brother' house about more or less than 4 km from the Airport. On the way, the witness' father got a phonecall from a person unknown to the witness, saying that Herman's house (niece of Dili Regent) had been burned down and Leandro Isaac's house had been attacked, then it was decided to go back home, on the way a phonecall from the witness' younger brother, Mario Manuel Carrascalao saying that father shouldn't go home, because the house was surrounded by the militias, due to the information, the witness and her father intended to report the incident at the witness' house to the Danrem Tono Suratman. When Danrem Tono Suratman was receiveing a guest who was Irish Foreign Minister then spoke to us and the witness told that we wanted to meet Danrem to report the incident at our house. While we were talking, a kijang pick up loaded with several people, one of them wore camuoflage uniform, and the others wore civilian clothes carrying firearms, the witness said to the Irish Staff that the situation now in Dili City was everywhere civilians carrying weapons, not long after that a staff of Irish Foreign Minister came out and said that the meeting was almost ended, after the meeting was over and the Irish Foreign Minister and his staff came out accompanied by the Danrem, the witness saw that the Danrem was surprised to see us there, then the witness' father reported the incident to the Danrem, but with cynical face the Danrem said that TNI was neutral. Then the witness' father said, in that case give us Weapons, to protect ourselves. The Danrem said that just asked the CNRT, because father was a CNRT Secretary General, at that time Basilio Naseimento, the FPKD spokesman was also present;

During the meeting, 5 (five) local reporters and 2 (two) foreign reporters and 2 (two) or 3 (three) staff of Danrem were present;

After getting Danrem Tono Suratman's answer, the witness and the witness' father turned back and went out, got into the car, and headed toward Dili Polres, and after arrived at the location, the witness' father talked to the Police but the witness did not know what they talked about during that time the witness saw 1 (truck) loaded with Brimob was in Polres courtyard, then we headed toward Bishop Belo's house, but we did not take the main road, but we took a road along the beach. On the way to Bishop Belo's house, the witness saw lots of militias in front of our house, after arriving at Bishop Belo's house the witness went straight to the back to the office of Justice and Peace, while the witness' father talked to Bishop Belo, the witness did not know what they talked about;

After that the witness tried to make phonecalls to several foreign embassies in Jakarta, the embassy that the witness was able to contact was foreign embassies in Jakarta (sic!) and the embassy that the witness was able to contact was the Embassy of Canada to inform the incident that had happened in Dili at that time;

After that the witness went out and outside the witness heard shootings, then the witness got information from the people whose names the witness did not know who were passing by that

our house was being attacked. Upon hearing that news, the witness came inside the Bishop Belo's room and because there was a guest of Irish Foreign Minister, the witness was asked to wait outside;

When the witness was outside, brother Betinho Aibu Quergue came soaked with blood and reported that Niki was badly wounded while Manelito was dead. After getting the information, we were not able to do anything because our house was still being surrounded;

Our whole family had been staying at Polda since April 18, 1999 until May 22, 1999, the numbers of us were around 80 (eighty) people, most of them were small children, later on a Police named Carlos come together with the witness' stepmother;

The official report from the Police of the deaths as a result of the incident at Manuel Viegas Carrascalao' house on April 17, 1999 were 12 (twelve) people, consisted of 11 refugees and one younger brother of the witness, they were: 1. Raul Dos Santos Cansela, 2. Alberto Dos Santos, 3. Januario pereira, 4. Rafael Dos Santos, 5. Casar, 6. Avelino, 7. Crisanto dos Santos, 8. Afonso Ribeiro, 9. Eduardo De Jesus, 10. Antonio Da Silva, 11. Joao Da Silva, 12. Manelito Carrascalao;

2 (two) or 3 (three) days after, accompanied by Brimob, witness Papa Manuel Viegas Carrascalao and the witness' stepmother Fatmawati Sultan, the witness saw the house was covered by plastic marked Police, guarded by the Police together with a civilian wearing light brown uniform, the witness entered through the side door in the dining room and observed the messy condition of the house, here and there were bloods, whereas there were bloodspots scattered along the corridor;

At noon, the witness was brought by Police to see Manelito corpse at Wira Husada hospital, and saw the witness' younger brother with other 11 corpses in black boxes made of woods, the corpses conditions were very miserable, some of them were cut, some of their faces were invisible soaked in blood;

Witness Juanico Dasiva:

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That the witness knew about the event on April 17, 1999, was a Pam Swakarsa Inauguration Rally held at East Timor Governor office courtyard in Dili, at 8.00 to 10.00 Central Indonesian Time, the participants who attended the ceremony were all of Eurico Guterres's followers and other people more or less than 8000 people;

The speaker at that time was Joao Tavares who was a community leader, the content of the speech among others was to pledge allegiance to the Red and White, and all society of security guards of public order of each neighborhood (sic!);

The event was over at 11.00 Central Indonesian Time, the witness and friends returned home to Becora on a Truck, when passing by Manuel Viegas Carrascalao' house, heard cries for help, then the truck stopped, we (a lot of people) got out of the truck towards Manuel Carrascalao' house, then fights took place inside the house and we helped our friend, a BMP (Besi Merah Putih) member (forgot the name) who was shot, and did not know who did the shooting, then we took the person into the truck;

We returned carrying woodstones to take revenge to save our 4 friends inside from Liquisa, we asked them to go home rode on the Truck, while the witness did not know other incidents, because the witness was not able to get out of the village;

The witness was invited by friends from Bocora station to participate in a Pam Swakarsa Inauguration Rally and the witness was a member;

In taking part in Pam Swakarsa activities the witness was paid Rp.150.000 per month given by the Head of Vaterino Village, and was paid on the third day of each month, he only got paid twice beginning in May;

There was a prohibition to use homemade firearms, but having confiscated by security apparatuses, the witness made another one, because afraid of being bothered by other hooligan group/CNRT;

The witness was also a member of Aitarak led by Eurico Guterres of Becora area since April 1999;

During the attack to the Manuel Viegas Carrascalao' house, no one was leading/ordering the attack, the security appartuses who were there only Police to dismiss the attack;

Regarding victim of Manuel Viegas Carrascalao's son, who was slashed by machetes on his hand and neck, later on was dead on the location;

The witness had no chance to come into Manuel Viegas Carrascalao' house, only came into the courtyard, because fires were heard, according to the witness' friend the person who was shot was Manuel Viegas Carrascalao's son, later on died slashed by machetes;

The witness did not see any TNI or Police personnels inside Manuel Viegas Carrascalao's house, after 30 minutes of the incident, Police/Brimob came to safeguard, the witness did not know the further incident because he went home directly;

Witness Suparno:

As a Bataud officer of Koramil-03/Maubara responsible to the Dan Ramil, all orders came from the Dan Ramil were executed right away;

As a Bataud officer, the witness' task was:

To manage administration matters

To manage personnels' salaries

Task/orders were received from Dan Ramil, and the witness should report responsibility to the Dan Ramil;

Koramil-03/Maubara had accepted more or less 20 territorial troops who were on BKO (troops reinforcement sent in from outside the territorial command) assignment, the witness could not recall their unit, but the only thing witness knew that they were from Sumatra, placed to assist territorial tasks of the Koramil;

Types of firearms, communication equipments and vehicles used by Maubara Koramil were:

Pistol;

PM/Sten Pistol;

M-16 AI rifle

Sp I and Sp II rifle;

G 3 rifle;

The communication equipments used by the Koramil were:

PRC (already broken), HT;

The vehicles used by the Koramil were:

GL - 100 (Honda) motorcycle;

A - 100 Suzuki motorcycle;

As far as the witness knew there were no Wanra in the Koramil, only Ratih (trained people) who wear Hansip (Civilian Defense) uniforms, numbered more or less than 20 people they did not get any payment or rice, their task was only to take part in ceremonies such as:

Mawil Hansip Anniversary;

Indonesian Proclamation Day;

ABRI Anniversary;

Before the court had been heard extenuating testimony of Witness presented by the Defendant's Lawyer Team:

Witness Marcaleno Martin Ximenes:

The witness recognized the Defendant because the witness lived in Dili as a teacher in a state elementary school in East Timor and admitted that he had no any kin relationship with the Defendant, nor any blood or marriage relationship, and had no job relationship with him;

The witness knew the location of the Defendant's house or Manuel Viegas Carrascalao's resident in Dili;

The witness heard from his friends that there were many refugees sheltered at Manuel Viegas Carrascalao's house, consisted of senior people (mothers, fathers), youths, children, women, but the witness did not recognize those refugees;

According to hearsay or information, those refugees were from Liquisa, Maubara, and the witness did not recognize them;

The witness did not see the incident of attack on Manuel Viegas Carrascalao's house, but the witness knew that there had been an attack on Manuel Viegas Carrascalao's house from those who were escaping from the house and passing by the witness' house;

At that time, the witness was inside his house, after attending the ceremony at East Timor Governor courtyard, then people running pass by the witness' house, and when the people were asked, they said that Militias had been attacking Manuel Viegas Carrascalao's house;

The witness did not know the numbers of the dead or wounded victims as a result of the attack on Manuel Viegas Carrascalao's house;

On April 17, 1999, a Rally or a ceremony was held at East Timor Governor courtyard, and the witness attended the ceremony;

The witness attended the the ceremony, because there was an invitation to attend the ceremony from the Regent and Major of Dili City, the witness knew about the invitation because the witness was told verbally by the school principal as well as information from other colleagues;

Since the witness was a government officer, a Teacher, and the Education Office was under the authority of the Regent and Major Office, and the witness' awareness as a government officer and a Pro Integration member, then the witness came to attend the ceremony at the Governor courtyard;

The Dili Regent at that time was Dominggus Soares and the City Major was Mathius Maia;

The witness arrived at the ceremony location at Dili Governor courtyard around 08.15 morning, the ceremony was a Pam Swakarsa Ceremony attended by the Regent and Major of Dili, the witness came as an invited guest but not a participant;

The ceremony participants came from Regencies of Bacao, Liquisa, Vique-que, Suai, Ermera, Ambino, the witness knew about that because the witness recognized flag symbol of each Regency they carried;

The participants who came from the Regencies were Pro Integration group, and the witness was also a Pro Integration;

The groups of Pro Integration the witness knew, among others, were Aitarak (it means thorn) from Dili, BMP (Besi Merah Putih) from Liquisa-Maubara, Halilintar, Saka Sera, Ablai, Maha Domi, Mahidi, Laksaur, all of of them were under PPI (Pasukan Pejuang Integrasi);

The PPI Commander as far as the witness knew was Joao Da Silva Tavares, and the Deputy Commander was the Defendant Eurico Gutteres;

Besides being a PPI Deputy Commander Eurico Gutteres was also a Commandant/Leader of Aitarak troops in Dili, the witness recognized the defendant as a friend, a respected and influential young figure in Dili;

The person who delivered speech at the Big Rally in Dili Governor courtyard on May 17, 1999 (sic!) was the Commander of PPI, Joao Da Silva Tavares, but at that time, the witness

did not see whether or not the Defendant delivered a speech, because after Joao Tavares delivered his speech, the witness went home ;

The witness had went home before the event was over, because the witness felt that during that time in Dili and in East Timor in general there had been turmoils between Pro Integration and Pro Independence, and if thousands Pro Integration masses gathered at the ceremony, it would be possible that riot would ensue;

Because the witness was worried that something or riot might happen, the witness immediately went home before the ceremony was over to see and protect his family;

When the ceremony was over, when the witness was at his home, then people running away from Manuel Viegas Carrascalao's house, and when the witness asked the people running what happened, they explained that Carrascalao's house had been attacked by Militias after the ceremony was over;

The witness did not see whether the Defendant delivered a speech or stood on the Podium, because before the ceremony was over, the witness had gone home;

The witness did not know who asked Tavares to give a speech, and did not know whether Tavares gave a speech because the defendant had ordered him to do;

As far as the witness remembered, the content of Tavares's Speech were, among others, we should not accept ballot/popular consultation, we should persist on Pro Integration, and was greeted by thousands masses that gathered;

The gathering masses wore civilian clothes, some of them were from Aitarak, BMT (sic!), Halilintar groups, and whether or not they were carrying weapons the witness did not notice, but all of them was Pro Integration group;

The Pro Independence or anti Integration groups in East Timor, that the witness knew were, among others, CNRT led by Samanta Toumagoa, Falintil, Makigit led by Casio, Samba Sabika, whereas Manuel Viegas Carrascalao was CNRT main figure;

According to information the witness heard, those who attacked Manuel Viegas Carrascalao's house were ceremony participants from Liquisa Regency and those who had been attacked were refugees from Liquisa, the reason of the attack the witness did not know;

The ceremony participants from Liquisa who wanted return to Liquisa did not pass by or go through the road where Manuel Viegas Carrascalao's house was located because from the location of ceremony at the Governor courtyard if one wanted to return to Liquisa one should head toward the East, whereas Manuel Viegas Carrascalao's house was located at the Western side of the Governor Office, on the other hand, if one arrived from Liquisa towards the Governor courtyard one would not pass by Manuel Viegas Carrascalao's house, because one came from the Eastern part of Dili;

The Regent of Dili was FPDK Chairman, and the invitation to the ceremony for teachers/Civil Servant (PNS) came from the FPDK;

As far as the witness knew, the Defendant who was Aitarak Commandant was not a Civil Servant (PNS) and he had no job;

The Defendant as a Pro Integration Main Figure, an Aitarak Commandant, and a PPI Deputy Commander, had influence and was feared, was loyal and like helping people, he had a lot of supporters the witness did not know the number;

During the ceremony, thousands masses yelled, among others, long live the Integration, live or dead for the Integration;

As far the witness knew, whatever the Defendant said his supporters/subordinates always followed, the echo was listened to by his group, for example if a dispute occurred in an area, the Defendant Eurico Guterres was able to prevent it, because the Defendant had influence on his subordinates/group;

The ceremony at the Governor courtyard began at around 9 in the morning, the Regent, the City Major, the Governor attended, but the one who delivered a speech the witness saw was Tavares, the PPI Commander;

During the ceremony, the TNI, Police were present to guard, but did not do anything;

Considering, that besides hearing the above witnesses' testimonies, the Defendant Eurico Guterres' statement was also heard before the court, which explained primarily as follow;

After Portugal left East Timor, a Coup was committed by Fretilin, a group who wanted independence and fought against Partisan group, UDT group, APODITI group which later on became Pro Integration group and received support from the TNI;

The Defendant's father was a Fretilin member, a friend of Xanana Gusmao who wanted independence, and many of the Defendant's relatives joined the Fretilin;

The Defendant' father was a Fretilin member died in the civil war, because the witness did not want to have a similar fate with his father, therefore it forced the Defendant to join the Pro Integration group;

The Defendant's last job in Dili was a Gambling Dealer, which brought in money and the money was distributed to Police and TNI who visited the gambling place which was managed by the Defendant;

Besides being a Gambling Dealer, the Defendant worked as a Commandant of Aitarak troop, a Deputy Commander of PPI in Dili, and lived in a former Portugese Hotel called Tropikal belonged to East Timor Local Government;

The Defendant had been living in Dili since 1985, at first, did not have a permanent address, later in 1999 since becoming a Commandant of Aitarak group and Deputy Commander of PPI, he had been living in Tropikal, a place where the Defendant managed the gambling, and also a place where Aitarak and PPI established their headquarters;

PPI did not have any structure, for example no secretariat, no task force etc, but had a leader and members, the Leaders was a Commander and a Deputy Commander, while the members were Troops or groups of Pro Integration;

The Commander of PPI was Joao Da Silva Tavares, the Deputy Commander was Eurico Guterres, there were also Deputies Commander of PPI in Dili namely Casio and Juanico who ruled over and controlled Becora and Ainaro Dili;

PPI had members and it supervised Pro Integration communities and Youths in all Regencies of East Timor, that were, Aitarak troop in Dili, BMP (Besi Merah Putih) in Liqisa-Maubara, Halilintar in Maliana, Alpha in Los Palos, and other groups of Pro Integration troops, like Mahidi, Laksaur, Ablai, Saka Seramaha Domi, and the rest led by troops commandants;

PPI was a Military Wing of FPKD and BRRT groups or organizations, politically they had been fighting for East Timor to remain integrated with Indonesia, which on regency level, the leaders of FPKD and BRRT were the Regents, on District level were the District Heads, and on village level were the Village Heads;

The troops Commandants of Pro Integration in each Regency were equal to Batalyon Commandants, who had the authority and rights to control their troops in each Regency;

The PPI Commander, PPI Deputy Commanders and Pro Integration's troops Commandant had duties, authority, and rights in each territory in fighting against the Pro Independence groups such as CNRT, Falintil, and Fretilin;

Some of the Village Heads and Aitarak troops Commandants in the village were TNI personnel, such as Lesi Derek, whose village the witness forgot;

There were thousands of Aitarak troops in Dili and in the villages throughout Dili, they had weapons, such as machetes, rifles, musers, G.3, SKS, homemade rifles and homemade pistols, homemade mortars;

The Defendant did not know from where the weapons were obtained, but upon joining the Defendant to be Aitarak troops, they already had the weapons and their amunitions;

The Defendant admitted that he carried and owned the weapons. Firearms and homemade weapons were banned, however apparatuses often conducted sweepings, after the sweeping was conducted, they made the weapons again using welded pipelines, the amunition was made of matchstick and paper, to fire, the amunition in the gunbarrel was burned, and the bullets were made of stone or pieces of metal;

The Defendant had 160 troops armed with firearms type SKS, G-3. mousser, homemade rifles and pistols, and thousands armed with homemade weapons and machetes, similar to weapons owned by other Pro Integration groups, such as BMP, Halilintar etc, as well as Pro Independence groups;

The Defendant admitted that as a Deputy Commander of PPI and Commandant of Aitarak, was able to control effectively his troops or subordinates who were scattered in Dili and all villages throughout Dili, the Defendant's order and instruction was obeyed by his troops or subordinates;

Among the Village Heads who were Heads of Aitarak/subordinates of Aitarak troops, only one Village Head who was a bit stubborn and out of control, namely, Head of Ainaro Village named Matheus, because he felt he was a former Partisan member who had been warned by the Defendant because he carried M.16 weapon owned by the TNI, the rest of the troops or the Defendant's subordinates obeyed, loyal, under control, and followed the Defendant's order;

The Defendant's activities as the Deputy Commander of PPI and Aitarak Commandant began in 1999 from Defendant's headquarters, Tropikal Dili, started with activities to organize Pro Integration young generation and other Pro Integration community groups to love the Integration with Indonesia, because Integration was the best way to independence, which began to be threatened by anti Integration actions and movements, and also to secure the community from the groups' intimidation and intrusion;

The Anti Integration groups who mentioned to often commit agitations, terrors, intimidations, murders were the pro Independence group, such as Falintil, Fretilin, CNRT, even churches were used as anti Integration campaign posts;

In order to perform activities organizing Pro Integration masses and guiding his troops and subordinates, the Defendant visited villages to explain the meaning of Pro Integration, wide autonomy given by the Government to the people, he came to villages either through invitation from Village Head or through the Defendant's own initiative to come to the villages;

When disputes, clashes happened, the Defendant and his subordinates came to the location to monitor and resolve the problems to prevent further disputes and clashes;

In guiding the troops, as a Deputy Commander of PPI and Aitarak Commandant, the communication and information and instruction routes were performed through the network of Village Heads, information from a certain area was reported by Village Head to the Defendant, therefore the Defendant was able to easily and quickly get the information on the incident in a particular area, and as well as information and instruction from the Defendant to his subordinates were relayed through the Village Heads, or they informed verbally to the Defendant;

The Defendant had many or thousands members/masses of Aitarak group spread out in 6 Districts, Villages and Regencies in Dili, they had weapons, such as machetes, spears, arrows, G.3, SKS, mousser firearms, homemade rifles and pistols, homemade mortars, the kinds of weapons that were also owned by other Pro Integration groups under PPI, such as BMP, Halilintar etc and Pro Independence groups such as Falintil, CNRT, Fretilin;

The Defendant himself had G.3 weapon inherited from the Portuguese, obtained from PPI Commander Joao Da Silva Tavares, while he did not know from where his subordinates got the weapons, the Aitarak troops had homemade rifles and pistols, moussers, SKS, G.3, the numbers of them were around 160 people trained to fight the Pro Independence groups;

The weapons had been collected in August 1999 before the ballot/popular consultation by KPS, at that time there was kantongisasi (lit. sacking) by Police, UNTAED and KPS members, but after the weapons were collected, the weapons were brought back to Aitarak headquarters in Tropikal and kept in the storage room, and was controlled everyday by the Police, or was opened and showed when there was an inspection;

After the ballot/popular consultation was announced, the weapons had been missing, the Defendant himself brought the weapons when he went out of Dili, and handed them over to the responsible authority, had even been sentenced in jail in relation to the possession of the weapons;

Regarding the mechanism of reporting, there were reports directly delivered to the Defendant or the Defendant delivered them directly to his subordinates, but most often the Defendant used the communication network through Village Heads who were Aitarak Troops Commandants in the Villages;

As the Deputy Commander of PPI and PPI as a Military Wing of Pro Integration group had been conducting several meetings with the Wing Military of Pro Independence group which was the Falintil on the invitation from UNAMET/UN, held a meeting before ballot/popular consultation, to maintain security before the implementation of ballot/popular consultation and the result of the meeting was reported to the Pro Integration groups including Aitarak group or the Defendant's subordinates;

The Defendant admitted that there were terrors, intimidations, threats committed by the Pro Integration groups as well as by Pro Independence groups on the community in order to gather masses according to their own aims;

As the Deputy Commander of PPI and Aitarak Commandant, the Defendant had proposed request to UNAMET to delay the ballot/popular consultation after he had seen many conflicts occurred;

As the Deputy Commander of PPI and Aitarak Commandant, the Defendant had issued a statement that political elites should not leave Dili City before and after the ballot/popular consultation, referring to the past experiences when many political elites left Dili when conflicts broke out and neglected the people;

It was correct that people asked letters from the Defendant, as the Deputy Commander of PPI to escape from Dili safely, and thousands of that kind of letters had been signed by the Defendant everyday;

According to information, if they did not bring a letter from the Defendant or from the Deputy Commander of PPI, the refugees was not able to escape Dili or encountered problems on their way, therefore the Defendant issued the letter, including giving the letter to the Governor family who wanted to flee Dili and went to Kupang;

Besides that, the Defendant often accompanied refugees who wanted to go to NTT in order for them not to be disturbed;

The Pro Integration groups armed with weapons, such as Aitarak, BMP, Hallintar, etc under PPI especially to face the threat from the Pro Independence who were also armed with weapons, who were threatening the community, government, therefore, the aim was to protect the community and was ordered not to do anything harmful to people;

The Defendant's order as the Deputy Commander of PPI and Aitarak Commandant was followed and Aitarak members followed the Defendant's order;

Regarding the election of the Defendant as the Commandant of Aitarak or the Deputy Commander, that was because the spontaneous election from the community themselves, and as a child of the nation the Defendant accepted the responsibility after got elected;

Regarding the attributes the Defendant wore, as the Defendant wore in the courtroom (in several times of the court sessions especially at the beginning of the sessions) had been considered by the Defendant as a honorary uniform as the Deputy Commander of PPI and Aitarak Commandant, that was purchased at Jakarta markets;

Regarding the Aitarak troop's uniforms, was civilian clothes, some wore camouflage uniforms, T Shirt printed with Timor island, because they could not afford to buy military uniform or boots;

They possessed weapons to face the threat, but no one trained them, they trained themselves, it was different from the Partisan era, whom the TNI might have trained;

Regarding the links between the Aitarak group and PPI members who became Pam Swakarsa members, Kamra, Hansip, because many of them who were jobless, some of them were laborer, then some of them became Kamra under the guidance of Kodim or the Police;

When there was Government's program to establish Pam Swakarsa, they were paid Rp. 150.000 and 10 kg rice per month from the Local Government, many PPI members including Aitarak troops who joined Pam Swakarsa;

The Defendant had proposed 150 Aitarak members to be Pam Swakarsa members, then the became Pam Swakarsa Members and got salaries of Rp. 150.000 and 10 kg of rice from the Local Government;

The Chairman/ Leader of Pam Swakarsa in Dili was the Major of Dili City Matheus Maia;

Pam Swakarsa's duty was to assist to secure public order and to help the community to face the threats from Pro Independence groups, they were Pro Integration group and there were also Pro Independence group who became Pam Swakarsa members;

As the Deputy Commander of PPI and Aitarak Commandant, the Defendant had issued a statement that whoever and from whichever groups that planned to disturb security in Dili, would face the Aitarak group, and the Defendant had stopped truckloads of masses who wanted to enter after receiving information that there were masses who were coming to Dili City;

The Defendant, as the Deputy Commander of PPI and Aitarak Commandant, who had the power and had a headquarters in Tropikal Dili, was a victim of those who had clashed, because the Defendant took responsibility for every disputes taking place in Dili, although it should had been the responsibility of the State;

The defendant realized that before and right before the ballot/popular, violent clashes had escalated between groups and realizing that security responsibility rested on the Police, TNI and Indonesian Government, but at that time, the Government did not do anything and the government situation was crippled, resulted in conflicts everywhere. Seeing the development, upon his own initiative as the Deputy Commander of PPI and Aitarak Commandant the

Defendant proposed to Unamet to postpone the implementation of ballot/popular consultation, but it was neglected and the riot broke out;

The violence, disputes, and conflicts forced the people to take refuge because the situation was not safe, either from Pro Integration or Pro Independence;

The Defendant was closely acquainted with Manuel Viegas Carrascalao, because he used to be a Pro Integration main figure, because of his brother had not been elected as a Governor, then he betrayed and became a leader of Pro Independence group, that was, a CNRT Leader;

Besides, the Defendant's house and Manuel Viegas Carrascalao' house were next to the Defendant's headquarters in Tropikal, Dili, and the Defendant knew that there were many refugees stayed at Manuel Viegas Carrascalao' house;

The refugees stayed at Manuel Viegas Carrascalao' house were many, there were children, mothers, young people, old people, and the Defendant had once helped the refugees by giving several sacks of rice;

On the attack on Manuel Viegas Carrascalao' house the Defendant did not know the incident, because at that time the Defendant was going to Becore to visit the house of the Defendant's mother which had been burned by masses;

After visiting the Defendant's mother's house and returned to Tropikal, Dili, seeing shattered glasses of Manuel Viegas Carrascalao' house and was guarded by the Police, and according to the Defendant's wife, the attackers had been Besi Merah Putih (BMP) group from Liquisa;

It was true that the Defendant had inaugurated Besi Merah Putih group in Liquisa, the leader was Manuel Sousa, the inauguration was attended by more or less 4 thousand people;

It was true that the attack on Manuel Viegas Carrascalao' house resulted in 11 people dead, including one of Manuel Viegas Carrascalao's son, named Manelito, some wounded, and the Defendant had happened to help one victim, Manuel Viegas Carrascalao's Aunt who had been injured and took her to Wira Husada Hospital;

It was true that the attack on Manuel Viegas Carrascalao' house happened on April 17, 1999 and before the attack in the morning a Big Rally held at Dili Governor courtyard;

The Big Rally at the Governor courtyard on April 17, 1999 was initially a Pam Swakarsa Big Inauguration Rally, the committee was from the Local Government and it was planned that the one who would deliver speech was the Governor of Dili or East Timor;

The Rally was held by Local Government, and the Defendant as Aitarak Commandant and PPI Commander attended on invitation and the invitation to the Defendant came from FPDK, the participants of the event were the Commander of PPI, Joao Tavares, the Governor, the Major and the Regent of Dili;

The participants of the ceremony were all Pro Integration group members of PPI, they were groups of Aitarak troops, BMP, Halilintar, Alpa, Mahidi, Laksaur, Ablai, Saka Sera, Maha Domi, and others and also Pam Swakarsa members;

The person who led the Aitarak troops from Dili was the Defendant, the invitations to come to the Governor courtyard was through Village Heads, and the Commandant of the Ceremony was Jose Ximenes, an Aitarak group member;

The Big Rally was attended by thousands masses, more or less than 4.000 to 5.000 people, some of the masses carried homemade firearms, spears, machetes, and it was possible that some of them carried M.16, who were TNI personnels who joined there, but the Defendant could not identify the persons;

In the Pam Swakarsa Rally, the PPI Commander inspected the troops on a open jeep, and the Defendant was also on the Car, after that, the PPI Commander Joao Dasilva Tavares delivered a speech, followed by the Defendant to give a speech;

The Defendant did not know the reason why the Governor cancelled his speech, and the Defendant and Joao Dasilva Tavares as Deputy Commander and Commander of PPI delivered the speeches because they were asked by the Committe;

The Defendant had instructed the members of Aitarak troops to only carry weapons such as sticks, but it was possible that there were members who carried homemade weapons, the defendant saw that PPI members from BMP (Besi Merah Putih) group led by Manuel Sausa from Liquisa, Maubara, carried homemade weapons, because among them, there were people who fired upwards during the Rally;

The main point of the speech delivered by Joao Dasilva Tavares as the PPI Commander was that East Timor should always be united and be integrated with Indonesia, but carried out in a peaceful means and rejected the ballot/popular consultation for independence;

After that, the Defendant delivered a speech, whose main point was that the Integration was the best way and extensive autonomy granted through remained integrated with Indonesia the road to independence or prepare for independence;

It was true that after the Defendant and Tavares finished the speeches, there were shouting and yelling from the participants of the ceremony on the field, yelling exterminate them, exterminate them, and there were those firing guns upwards to greet the speeches;

However, the words such as kill them, exterminate them had oftenly heard in campaigns by the Pro Independence group, said or yelled by campaign participants to greet the speeches;

The defendant denied that in his speech he delivered any specific words or special messages to kill Manuel Viegas Carrascalao's family, or to kill the CNRT leaders as indicted by the Prosecuting Attorneys;

It was true that the event was covered and broadcast by radio, TV and covered by the Media;

The Big Rally event was started at around 10 (Indonesian Eastern Time, sic!) and finished at around 11 or more;

After the Rally in Governor courtyard was over, the troops dismissed and they returned to their regions, on the way back riding trucks and cars could not be considered as a parade around the city;

After the Rally was dismissed and the Defendant was having lunch, got news, that the houses of the Defendant' mother and relatives in Bocora were burned down by masses, therefore the Defendant went to Bocara and saw the houses of the Defendant' mother and relatives were burned down completely, therefore did not know about the incident at Manuel Viegas Carrascalao' house;

The Defendant knew the incident at Manuel Viegas Carrascalao' house, after the Defendant's wife called the Defendant on HP, informing there was an incident at Manuel Viegas Carrascalao' house which was committed by Besi Merah Putih (BMP) group, then the Defendant went back to Tropikal, Dili, and saw that Manuel Viegas Carrascalao' house had been completely destroyed;

After the incident, many Besi Merah Putih (BMP) members from Maubara Liquisa and also Aitarak members were still at Aitarak headquarters, but the Defendant could not do anything because he was worried that a clash between Aitarak and BMP could had occurred, and after seeing Manuel's relative, who was his Aunt wounded, the Defendant took the victim to the Wira Husada hospital;

At that time, there were refugees from Manuel Viegas Carrascalao' house inside the Defendant's room hidden by the Defendant's wife, because there were troops of BMP group there and the Aitarak Headquarters in Tropikal was full of BMP troops, therefore the refugees had to be saved;

The Defendant did not come inside the location of incident, which was the Manuel Viegas Carrascalao' house, because the place had already been guarded and marked by yellow tape by the Police or apparatuses;

It was true that Police and TNI guarded the location of Big Rally, it was their task to safeguard any rallies and campaigns, but did not conduct any action seeing the masses carried weapons and fired upwards;

All members of Aitarak who were members of Pam Swakarsa attended, there were around 150 people wearing civilian clothes and carried weapon which was sticks and did not wear any specific attributes;

The Aitarak members who carried firearms and homemade firearms besides sticks most probably they were at the center or last row of the ceremony participants, muddling with other PPI groups, because the fires were heard from anywhere at the last row during the speeches;

The Defendant did not recognize the names of the dead or injured persons as the result of the clash at Manuel Viegas Carrascalao's house, as mentioned in the indictment letter of Prosecuting Attorney, except Manuel Viegas Carrascalao's son, named Manelito;

The Defendant did not know the names of the perpetrators of the attack on Manuel Viegas Carrascalao's house, but according to the Defendant's wife, they were from BMP group;

The perpetrators of the attack on Manuel Viegas Carrascalao's house had been arrested, the numbers of them were 20 people, but the Defendant did not recognize them and from which group, and did not know whether or not they had been taken to the court because that matter was not under the Defendant's responsibility, but was under Police's responsibility;

The Defendant did not know nor understand the reason of the attack on Manuel Viegas Carrascalao's house, because even though the Defendant and Manuel Viegas Carrascalao had different views, meetings were oftenly held in Manuel Viegas Carrascalao's house, and the Defendant was present there to discuss any matters about East Timor;

(notes from the Panel of Judges, during the trial of Manuel Viegas Carrascalao, the Defendant strongly accused Manuel Viegas Carrascalao as a traitor of the country and demanded that he should be brought to the court and face the trial as a Defendant);

The Defendant did not do any action although participants at the Rally on April 17, 1999 in East Timor Governor courtyard masses of the number (sic!) and carried weapons, because according to the Defendant, there were apparatuses, who were the TNI or Police guarding not doing anything towards the people who carried the weapons;

The Defendant denied the attack on Leandro Isaac, because when the attack on Leandro Isaac's house was taking place, the Defendant was in Becora, as far as the Defendant knew, Leandro Isaac used to be a Pro Integration who failed to be elected as a Regent, then had become Pro Independence and a CNRT leader; and it was not true that the Defendant riding on a motorcycle attacked Leandro Isaac's house;

The Defendant denied that the driver who used to drive his Toyota Kijang car was a Kopassus member, the truth was, as said by the Defendant, his driver was an East Timorese native who was supposed to take stand as a witness, but until the Defendant was questioned, the witness had not been able to be presented before the court;

Regarding there was parade participants clashed with the Pro Independence in Ainaro, the Defendant did not know the incident, knowing it after the incident, which was the participants returning home on vehicles upon reaching Ainaro there were stones thrown on them by Pro Independence people, and resulted in a clash and burning of the houses, the Defendant came to the location of the incident after the clash was over and saw only ruins of the burned down houses;

The witness did not see the incident of the attack on Pastor Rafael' house in Liquisa on April 6, 1999;

One day before the incident, the Defendant had been asked by Bishop Bello to see and solve (had been asked to help by Bishop Bello), had a chance to seek information about the incident in Liquisa, but since it was already dark, the Defendant could just come on the next day, on April 6;

Later, the Defendant went to Luquisa (sic!) and met Pastor Rafael in the Church's courtyard, and asked whether there was Pro Independence group committing murder in Liquisa and carried weapons hidden by the pastor, the answer was that Jacinco and his friends chased after by people and carried weapons;

The Defendant then informed that Pro integration Group, BMP, would assault/attack if the perpetrator was not handed over and the pastor asked the Defendant to see the Regent of Liquisa to arrange a meeting at Pastor Rafael's house;

When the Defendant met the Liquisa Regent, Lemito Marten, he did not want to come to the Pastor's because he was a high ranking official, after that, the Defendant planned to go back to Dili;

The Defendant then went back to Pastor Rafael's and found out that Pro Integration group: the BMP had already attacked Pastor Rafael's place, and found that Jacinco, a Head of a Village, and his 3 friends had already been dead, its relation (sic!) they had been found hiding in a bathroom and then were killed;

On the way home, the Defendant met the Military Post Deputy Commander (Wa Danrem) Mujiono, Col. Yayat and they gathered at the Liquisa MaKodim, had no idea what they were talking about, because the Defendant went home right away;

The Defendant did not know anything about the incident at Bishop Belo's house and Dili Diocesan, because at that time the Defendant was accompanying Refugees, after the incident was over, found out that an attack on refugees at Bishop Belo in Dili Diocesan committed by Pro Independence groups who were not satisfied in the result of the popular consultation/ballot and that the house and Diocesan in Dili had been used to hide ballot cards, therefore forced the people to attack Bishop Belo's house and Dili Diocesan;

Concerning the letter from the Pangdam, as was mentioned in a letter submitted by the Prosecuting Attorney, on the details of incident in Ainaro, when the Aitarak group after committing sweeping in Ainaro took a rest at the Batallion Headquarters, then they returned to Aitarak Headquarters in Tropical, the Defendant denied the evidence and the incident, and said that the Head of Ainaro Village who claimed to be the Head of Aitarak Ainaro was a Village Head who was out of control and stubborn, never obeyed any instructions from the Defendant because considered as an ex-Partisan, and had ever been warned by the Defendant because of carrying M.16 weapon belonged to the TNI;

The Defendant recognized AK 47, M.16 weapons commonly used by the TNI, those were found among Pro Integration and Pro Independence, the Defendant did not know how it happened;

The firearms used by Pro Integration had usually been equipped with bullets, the Defendant did not know from where the weapons and bullets were obtained;

Many Local natives who became TNI personnels, therefore it was possible that TNI personnels joined Pro Integration and mingled with the masses while carrying M.16, AK 47 weapons, but the defendant could not identify persons;

Concerning the close links between the Defendant and the TNI and Police, it was true that the Defendant was oftenly asked by the Police and the TNI, whether information (sic!) or resolved the conflicts, they asked for help when disputes occurred for the Defendant to come to the location to resolve or make sure if any of the Defendant's subordinates were involved;

The Defendant had not been arrested as a Gambling Dealer, even though they knew and often gave them money, therefore considered as a loyal and close to apparatuses, the Defendant said that it was common in Dili and in any big cities including Jakarta;

The sacking of weapons (kantongisasi) by KPS was implemented among Pro Integration only, no implementation among Pro Independence groups and Fretilin;

The sacking of weapons among Pro Integration group including PPI, Aitarak was implemented in August, shortly before popular consultation, it was taking place at Paramuka field, witnessed by the Police, Cipol, KPS, but after the weapons were collected, the weapons were handed over and brought to Aitarak Headquarters, and Kept in a storage room or in a room in Aitarak Headquarters and it was locked;

After the announcement of popular consultation/ballot result, gunshots had been heard, burnings happened everywhere, including in Dili, therefore the weapons in the storage room might have been taken by Aitarak members, because at that time, either civilians or Indonesian Army (ABRI) as well the Defendant had been busy to save themselves and fled from Dili to NTT (East Nusa Tenggara), Kupang;

After the Government's announcement to implement the popular consultation/ballot, in which the Government offered the OPSI (option) to people to remain integrated with Indonesia through granting extensive autonomy or independence, then, in order to struggle politically in order East Timor remained integrated with Indonesia, FPDK and BRRT organizations were established;

PPI was a military wing of FFDK (sic!) and BRRT which fought the military wing of Pro Independence under the CNRT, which were Falintil and Fretilin;

As a military wing, PPI had a structure, there was a Commander, Deputy Commanders and troops of Pro Independence (sic!) groups which were under PPI, therefore the Commander, Deputy Commanders, the Commandants of Pro Integration troops, all were in charge in their own territories, and in every activities they coordinated with FPDK and BRRT;

The leaders of FPDK, BRRT and Pro Integrations main figures had met the President, and the Defendant as the PPI Deputy Commander and Aitarak Commandant had also been invited and joined them to meet the President;

During the meeting with the President, at that time was President B.J. Habibie, the President said that East Timor was a part of Indonesia, it was the Indonesia's dignity, so not even the evil could separate East Timor from Indonesia, therefore PDK, BRRT including the Defendant fought sternly over East Timor to remain integrated with Indonesia;

The meeting between the Pro Integration leaders and main figures who depended on (sic!) under FPDK and BRRT and the Defendant as the PPI Deputy Commander was held shortly before the implementation of popular consultation/ballot;

The FPDK, BRRT elements who met President B.J. Habibie were, among others, the Governor, Regents, Major of Dili City and Pro Integration main figures;

The Defendant as Aitarak Commander owned around 1000 members in Dili, they had weapons because there was threat from conflicting Facties such as Falintil and they were told not to do any activity that would disadvantage East Timor's position, because there were two conflicting factions in East Timor;

The Defendant did not have any Aitarak members outside Dili, because each region or regency had its own Pro Integration troops, such as BMP in Liquisa Maubara, etc and each Commandant was responsible for his own region;

Concerning the wiping out, burning after the announcement of the result of popular consultation/ballot, all communities in Dili whether the apparatuses, the army, or the Police or individual Police had gotten involved in the destruction and the extermination, that was the fact that happened;

Considering, that the Prosecuting Attorney had submitted before the court evidences, among others:

- 1 (one) Getau firearm/G-3 No. FMP.172322;
- 1 (one) SKS firearm No. OH.2289;
- 1 (one) Mauser firearm Los No.;
- 1 (one) Homemade firearm;
- 1 (one) Homemade Pistol;
- TNI Directive Commander:

No 02/P/ix/1999 dated on September 6, 1999, concerning the Military Emergency Territorial Command of East Timor (Komando penguasa darurat militer wilayah Timor Timur);

- Decrees (Surat Keputusan):

- i. - Skep/991/P/XII/1998 dated December 31, 1998 concerning the Discharge and Appointment within the Indonesian Army's Office (Pemberhentian dari dan Pengangkatan Dalam Jabatan Di Lingkungan Angkatan Bersenjata RI/Indonesian Army), for Maj. Gen. TNI I Gede Nyoman Asrana along with 99 personnel;
- ii. - Skep/821/P/IX/1999 dated September 20, 1999 concerning the Use of Authority of the Military Emergency Territorial Command of East Timor (Penggunaan Wewenang Penguasa Darurat Militer Daerah Timor Timur);

- Letters of Order (Surat Perintah):

- i. Sprin/757/IV/1999 dated April 15, 1999 concerning the Official Travel to East Timor (Perjalanan Dinas Tim Tim) for Marsda Tamtomo along with three personnel;
- ii. Sprin/889/V/1999 dated May 10, 1999 concerning the Special Assignment to Assist the Independent Commission (Bertugas Khusus Membantu Pelaksanaan Komisi Independen) for Maj. Gen. Zacky Anwar Makarim along with two personnel;
- iii. Sprin/1096/VI/1999 dated June 04, 1999 concerning the Order to Maj.Gen. Zacky Anwar Makarim along with two personnel as members of TP40KTT;
- iv. Sprin/1660/VIII/1999 dated August 13, 1999 concerning Security Advisor (Sebagai Penasehat Keamanan) P3TT in Dilli, East Timor for Maj.Gen. TNI Zacky Anwar Makarim along with two personnel;
- v. Sprin/1798/IX/1999 dated September 07, 1999 concerning the East Timor Territorial Command (Penguasa Daerah Militer Wilayah Tim tim).

- Telegrams:

- i. TR/614/1999 dated June 17, 1999 concerning the Security Guarantee in East Timor;
- ii. STR/675/5/1999 dated July 6, 1999 concerning Popular Consultation for East Timorese;
- iii. STR/551/1999 dated September 5, 1999 concerning the Anticipation of Developing Situation in East Timor Territory.

- Reports of Situation (Laporan Situasi):

- i. STR/560/1999 dated September 22, concerning the Report of Situation of the Fourth Week dated September 14 to 20, 1999;
- ii. STR/17/2000 dated January 20, 1999 concerning the Report on the Indication of

Worsening Security Situation in East Timor;

iii. R/33/1999 Lapsit dated October 11, 1999 concerning the Report of the Development of the Situation in East Timor on October 11, 1999.

- Others (Special Report / Laporan Khusus):

i. R/184/Lapsus/IV/1999 dated April 7, 1999 concerning the Clashes between Pro Integration and Anti Integration People in Liquica Regency;

ii. R/02/X/1999/Lapsus dated October 11, 1999 concerning the Chronology of Incident on Gunshoot Contact between Interfet and TNI (Indonesian Army) and POLRI (Indonesian Police) Troops;

iii. Suggestion from Pangdam IX/Udayana as Pangkoops TNI Nusara dated September 7, 1999;

iv. STR/551/1999 dated September 5, 1999;

v. STR/553/1999 dated September 6, 1999;

vi. Letter of Order (Surat Perintah) from TNI Commander No.: Prin/1798/P/IX/1999 dated September 7, 1999;

vii. STR/253/1999 dated April 13, 1999;

viii. STR/550/1999 dated August 31, 1999;

ix. STR/558/1999 dated September 3, 1999;

x. Letter of Order No.: Prin-/1000/VII/1998 dated July 30, 1998;

xi. TR/614/1999 dated June 17, 1999;

xii. STR/172/1999 dated May 5, 1999;

xiii. STR/223/1999 dated March 1999;

xiv. Examination (not visum et repertum) provided by 2nd Lieutenant CKM dr. Maksum Pendelima;

xv. Situation Report No.: R/ / Lapsit/IX/1999;

xvi. Situation Report No.: R/ /IX/1999/Lapsit;

xvii. Special Report No.: R/ /Lapsus/IX/1999 dated September 22, 1999;

xviii. TR/909/P/1999 dated September 7, 1999;

attached in the dossier to be used in other cases.

Considering, the witnesses' testimonies and the Defendant statement before the court and the material evidences presented before the court, it was true the facts as follow:

The conflicts and disputes between Pro Integration and Pro Independence groups during April until September 1999 in East Timor were related to the announcement by Indonesian President concerning two OPSI offered to East Timorese on January 27, 1999;

Over the long history of violence in East Timor, President B.J. Habibie seek for a comprehensive resolution for East Timorese who had up to this moment been in conflict, therefore President B.J. Habibie announced two OPSI for East Timorese as a solution to resolve the long conflict, the two OPSI were:

1. First OPSI : a certain OPSI granted to East Timorese, if East Timorese chose this OPSI, it means that East Timor would become a part of Indonesian territory;

2. Second OPSI: reject the special autonomy, if this OPSI was chosen by the people, East Timor no longer a part of Indonesian territory;

The offered comprehensive resolution of East Timorese problem by means of the OPSI, welcomed by the UN, then followed by an agreement between the Indonesian Government and Portuguese supervised by the UN and signed on May 5, 1999;

It could be said that the implementation of popular consultation/ballot in East Timor started from an agreement between Indonesia and Portuguese, initiated by the UN on May 5, 1999, and later in New York, the "New York Agreement" between Indonesia, Portuguese and the UN, known as Tripartit Agreement was signed;

The incident at Manuel Viegas Carrascalao happened before the "New York Agreement" was signed and before the popular consultation/ballot was implemented;

Before the incident on April 17, 1999, there were many civilians taking shelters at Manuel Viegas Carrascalao's house such as: mothers, children, youths, old people who came from Turiscai, Alas, Liquisa, Ainaro, Maubara, numbered around 136 people, among the refugees, many felt insecure in their regions, because they were threatened to be killed if they did not join BMP or they took shelter because afraid of Pro Integration Militia;

On April 17, 1999, a Big Rally was held at East Timor Governor office courtyard and was attended by more or less than 6000 people, the participants came from all regencies in East Timor, the officials who attended the event, among others were: East Timor Muspida, East Timor Governor Abilio Osorio Soares, Regent of Dili, Major of Dili City;

The Big Rally at Governor office courtyard on April 17, 1999, was initially a Pam Swakarsa Inauguration Rally, and the East Timor Governor was supposed to deliver a speech, the committee was from the Local Government, the Defendant as Aitarak Commandant and PPI Deputy Commander took part through invitation from FPKD whose chair was Dominggus M.D. Soares, SH., MH.;

At noon, after the Big Rally was over, the participants of the Rally who were passing by Manuel Viegas Carrascalao's residence attacked Manuel Viegas Carrascalao's house;

One of the victim witnesses (saksi korban), named Alfredo Sanches who was taking shelter at the house, when was at the back of the house, saw with his own eyes a car loaded with Militias and TNI bumped into the front gate, then after they were inside, they shot Manuel Viegas Carrascalao's house which was full of many refugees;

During the attack, the victim witness Alfredo Sanches and his friends Florindo De Jesus and Elduardo ran onto the wall behind the house, then Antonio Besikau came, a TNI member whom Alfredo Sanches recognized, and shot Eduardo to death and Fransisco, a BMP member shot the witness with a homemade weapon, so that the witness fell down, Fransisco, then, stabbed the witness with knife resulted in the witness was injured (before the court, the witness showed the part of his body which was shot at the back, chest, near armpit, and hand);

Two TNI members named Yose Matheus and Theolifo Dasilva participated in the attack, using weapons commonly used by they TNI, they came from Maubara. Besides that, Kamra personnel Matheus de Santos, Inasio and Militias from Maubara among others: Fransisco Alfonso, Honario Manuel Gonzalves, Nicolao, Abrao, Joselino, Agosto also participated in the attack on Manuel Viegas Carrascalao's house;

In order to go back to Liquisa, the participants of the Big Rally from Liquisa were not supposed to pass by Manuel Viegas Carascalao's house, because Liquisa was on the east while Manuel Viegas Carascalao's house was on the west of East Timor Governor office, however when the Big Rally on April 17, 1999, the participants of the Big Rally who was going to Liquisa definitely passed by Manuel Viegas Carascalao's house;

The attack resulted in 17 refugees killed, including Manelito Carascalao, 11 of them came from Maubara, besides the killed, many wounded victims had been found, and during the attack, no police and TNI came to help;

On April 19, 1999, 11 corpses were brought to Maubara by army in 3 trucks, then, the 11 corpses in the coffins were buried in 11 holes in Lebukee Maubara, and attended by Danramil, Maubara District Head, Militias and the families' victims, among the killed were Raul Dos Santos, Alfonso, Eduardo;

The dead victims as result of the attack of Militias, Aitarak, BMP, and PPI among others were:
1. Raul dos Santos, 2. Alberto dos Santos, 3. Januario Pereira, 4. Rafael dos Santos, 5. Casar, 6. Avelino, 7. Crisanto dos Santos, 8. Alfonso Ribeiro, 9. Eduardo de Jesus, 10. Antonio Da Silva, 11. Joao Da Silva, 12. Manelito Carrascalao;

Witness Florindo De Jesus saw the 11 corpses at Wira Husada hospital, one other corpse was his brother, all corpses were put into black wooden coffins, the witness saw that the corpses were in a horrible condition, some of them were cut, some other corpses their faces were covered by blood;

On April 17, 1999 at 11. 30 witness Leandro Isaac's house was attacked by more or less than 40 Militias led by the Defendant Eurico Gutteres, at that time, the Defendant rode on a motorcycle in the first row of the convoy right away entered the back of the witness' house and committed the attack;

Militia's convoy which committed the attack consisted of 2 trucks, 1 kijang pick up, 1 kijang minibus, and 8 motorcycles;

Witness Victor Dos Santos alias Apin around 12 at noon on that day, saw Aitarak Militia and BMP rode on a truck and stopped at Manuel Viegas Carrascalao' house, among the militias, the witness recognized a soldier who wore militia uniform, the witness recognized the soldier because he often saw him at Aitarak Headquarters in Tropikal Dili. Later, the militias left the place and returned around one hour later and committed an attack on Manuel Viegas Carrascalao' house;

The Regent of Dili, Dominggus M.D. Soares suggested the East Timor Governor to held an Inauguration Rally of Pam Swakarsa in Dili as the capital city of East Timor, after the Governor gave guidance, then a committee of the Pam Swakarsa Inauguration Rally was established;

Militia groups belonged to the military, whose aim was to defend the integration, this group had a special relationship with the military, because it was supported by the military, such as support of weapons, the military who supported the militias was Kopassus;

Victim witness Manuel Viegas Carascalao knew that his house was going to be attacked from radio news around 10 to 11 in the morning when the defendant Eurico Gutteres said "kill all Manuel Viegas Carascalao's family" and the witness also received phonecalls from the witness' son Manelito Carascalao and the witness' friends both from Pro Independence and Pro Integration, who said that his house was going to be attacked by the Militias, then, the witness met the Danrem, Col. TNI. Tono Suratman, to ask protection and to inform that his house was going to be attacked by the Militias, but the Danrem only made fun of the witness when the witness asked weapons to fight the Militias and asked the witness to ask weapons from CNRT;

Victim witness Manuel Viegas Carascalao had earlier struggled for Pro Integration, but after witnessing the TNI's cruel and heartless actions on the community, quickly arresting, shooting, the witness did no longer support the Pro Integration because it has made the people suffered, also when the witness was a member of the East Timor Provincial Legislative Council (DPRD) struggling for Pro Integration, the witness had ever been offered a rifle and a pistol by Pangdam Maj. Gen. Dading Kalbuadi.

The attack on Manuel Viegas Carascalao' house by Pro Integration group and the military had destroyed the house, many damages inside the house, bulletholes found on the walls, bloodspots on the floor and wall, windows had been shattered;

Injured victim witnesses as a result of the attack on Manuel Viegas Carascalao' house, among others were: Victor dos Santos, Alfredo Sanches, Florindo De Jesus were taken from the location by an ambulance and the ambulance was stopped by the police in front of the Aitarak Headquarters in Tropikal. Holding machetes, homemade weapons, and pistols, they surrounded the ambulance and shouted, "kill right away", one hour later, the ambulance's driver brought the victim witnesses to Wira Husada Hospital in Dili;

Witness Santiago dos Santos heard from the radio news on April 17, 1999, that Eurico Gutteres, during the Big Rally delivered a speech and gave command to "exterminate all CNRT leaders, in particular Manuel Viegas Carrascalao's family;

The Pro Integration group consisted of among others were Aitarak, MAHIDI, BMP, SEKAP, SAKA SERA, ALPHA, ABLAI, MAHA DOMI, LAKSAUR, BRRT (Barisan Rakyat Timor Timur), FPDK (Forum Persatuan Demokrasi Keadilan) as the political wing, the PPI was a military wing of FPDK and BRRT which politically struggled for East Timor to remain integrated with Indonesia, later PPI became a member of Pam Swakarsa; on regencies level, the leaders of FPDK and BRRT were the Regents themselves, the leaders on districts level were the District Heads, and the leaders in the villages were the Village Heads;

Pro Independence group consisted of RMA, LAKTAO, AIPESAKH, FALINTIL (as a military wing), CNRT (as a political wing), FRETILIN;

PPI Commandants in each regency were equal to Battalion Commandants who had power and authority to arrange their troops in each territory to fight CNRT, FALINTIL, FRETILIN;

The numbers of Aitarak troops in Dili and in all villages reached thousands of people, they owned weapons such as machetes, rifles, Mausser, G.3 (Getmi), SKS, homemade firearms, such as homemade rifles and homemade pistols, homemade mortars, they had already owned the weapons before they joined the Defendant;

As the Deputy Commander and Commandant of Aitarak in Dili, the Defendant had members scattered throughout the 6 villages in Dili and the Village Heads were both Aitarak members and Aitarak leaders in Dili villages;

Conflicts between Pro Integration and Pro independence groups often occurred, therefore in order to prevent the conflicts, coordination meetings between the Governor and the Regents had been held to hear their reports and propose the establishment of Pam Swakarsa, then each Regent initiated the establishment of the Pam Swakarsa, to help maintaining security and public order, followed by the Governor Decision to reactivate the Pam Swakarsa which had been existed in East Timor before;

Originated from a Partisan group called COMBATITA ANTI COMUNISTA formerly established to fight the communist in East Timor, then to struggle for Pro Integration the PPI was created in East Timor around August 18, 1974, at that time its leader was Viegas Carascalao, an anti Clandestine activist;

After Portuguese had left East Timor, a "coup" was launched by Fretilin, a group who wanted independence and fought against the Partisan group, the UDT group, APODITU, who later became Pro Integration group supported by the TNI;

The Defendant's father was a Fretilin member, a friend of Xanana Gusmao who wanted independence, the Defendant's father was killed in the civil war, this incident forced the Defendant to join Pro Integration group because he did not want to be like his father;

The Defendant had been living in Dili since 1985, the latest job the Defendant had was as a gambling dealer, the money he got from the gambling was distributed to the Police and TNI who visited the gambling place the Defendant managed;

Besides as a gambling dealer, the Defendant's job in Dili since 1996 was an Aitarak Commandant and a PPI Deputy Commander, had a Headquarters in Tropikal Dili, a former Portuguese hotel owned by the East Timor Local Government; the other two Deputy Commanders were Casio and Juanico who had authorities on Becora and Ainaro Dili, the PPI Commander was Joao Tavares who was also a HALILINTAR Commandant;

PPI had no structure, but it had leaders and members, the members were troops or Pro Integration groups, PPI had members and supervised Pro Integration communities, youths in all regencies of East Timor;

The Defendant had thousands members or masses of Aitarak troops scattered in 6 (six) districts in Dili, villages in Dili and Dili regency, they owned firearms of the types SKS, G.3, Mousser, AK 47, M 16, homemade rifles and homemade pistols, homemade mitraliur, spears, machetes, arrows, these types of weapons were also owned by other Pro Integration groups, such as BMP, HALILINTAR, as well as the Pro Independence groups such as FALINTIL, CNRT, and FRETILIN;

These homemade weapons were made of welded ironpipes, the ammunition was made of matchsticks and papers, to ignite them, the ammunition inside the gunpipe was burned, the bullets could be made of stones or pieces of iron;

The Defendant himself owned G.3 weapon left by the Portuguese that he got from the PPI Commander, Joao Tavares, the Defendant's weapon and Aitarak troops' weapons had been collected in August 1999 before the popular consultation/ballot by KPS, at that time, there was kantongisasi executed by the Police, UNTAET, KPS, but after the weapons had been collected, the weapons were brought to and stored in a storage room at Aitarak Headquarters in Tropikal, controlled everyday by the Police, and whenever there was an inspection it was opened and shown;

After the announcement of popular consultation/ballot, the weapons were no longer found in the storage room, the Defendant himself took a weapon out of Dili and handed it over to the authority, even the Defendant had been sentenced for weapon possession;

It was the fact that practices of terror, intimidation, threat had been committed by both Pro Integration and Pro Independence groups to gather masses to achieve their own goals;

As an Aitarak Commandant and as a Deputy Commander, the Defendant had given a statement that political elites should not leave Dili City before and after popular consultation/ballot, because in the past, many political elites left Dili when conflicts occurred;

The Defendant issued a kind of travel letter to help people fleeing from Dili, because people could not manage to escape from Dili and often found troubles on the way, therefore the Defendant signed thousands of travel letters everyday;

At the beginning of the court sessions, the Defendant wore military attributes, a green camouflage outfit, which to the Defendant was a honoured uniform as a Commandant of Aitarak troops and a PPI Deputy Commander, which had been purchased at Jakarta markets by the Defendant, whereas some of the Aitarak troops wore civilian clothes, camouflage uniform and T Shirts printed with Timor Island, because they could not afford military outfits and boots;

Aitarak troops or PPI members who became Pam Swakarsa, Hansip, Kamra were trained by Kodim or the Police, because many of them were jobless, the Pam Swakarsa members were paid Rp. 150.000,- and 10 kg rice per month by the Local Government;

The Defendant as the Deputy Commander or Aitarak Commandant was able to exercise effective control on his troops or subordinates who were spread throughout Dili and in all Dili villages, his order and instruction was obeyed by his troops and subordinates;

Before and shortly before the popular consultation/ballot, the clashes and violence had become more extensive between the Pro Independence and Pro Integration groups, the Police/TNI and the Indonesian Government should be responsible, but at that time, the apparatuses ignored and relented, therefore the disputes occurred everywhere; this situation forced the Pro Integration and Pro Independence people to take refuge since the situation had no longer been safe;

The person who led the Aitarak troops in Dili was the Defendant, the instruction given to Aitarak troops to come to the Governor office courtyard was relayed through Village Heads, the Field Commander of the Ceremony (Komandan Upacara) was a member of Aitarak troops named Jose Ximenes, among the participants, there were people carrying M.16 weapons, those were the TNI members who joined the crowd;

At the Pam Swakarsa Rally, there was an inspection of the troops by the PPI Commander riding a jeep and the Defendant accompanied him on the car, after that, Joao Tavares as the PPI Commander delivered a speech, the main point of the speech was "East Timor should remain integrated with Indonesia, but it should be done in a peaceful way, and rejected the popular consultation/ballot to achieve the independence", after the PPI Commander ended his speech, then the Defendant delivered his speech;

During the speeches delivered by the Defendant and the PPI Commander, shoutings and yellings were heard among the participants in the field, they shouted, exterminate them, kill them, and fired the weapons upwards to greet the speeches;

It was true that the event was covered by and broadcast on the RRI, TV and mass media, and when the ceremony was over, the Defendant and other Pro Integration main figures had lunch at a special location, near the East Timor Governor office;

After the incident at Manuel Viegas Carascalao's house, many Aitarak members and BMP members from Liquisa still gathered at Aitarak Headquarters in Tropikal;

During the Big Rally Ceremony, there were the Police and TNI personnel to safeguard, but they did not do anything on seeing the masses or participants carried weapons or fired the weapons upwards;

On April 5 and 6, 1999, an attack on Pastor Rafael's residence/ house and Catholic Church in Liquisa took place committed by Pro Independence Group (sic!), resulting in civilians consisting of children, mothers, and old people taking shelter inside the church dead and wounded;

On September 6, 1999 a raid on Bishop Bello's house and Dili Diocesan took place committed by Pro Integration Group who were dissatisfied of the result of popular consultation/ballot and were informed that Bishop Bello house residence and Dili Diocesan had been used to store the ballotboxes;

Many Children of the Local Native (Putra Daerah) became TNI members and joined the Pro Independence (sic!) and joined the groups of masses, therefore there were AK 47 and M 16 weapons commonly used by the TNI had been found in the Big Rally, but the Defendant could not identify the persons;

The close link between the Defendant and the Polri and TNI derived from the apparatuses often asked the Defendant for information and for help to settle conflicts and disputes or to identify the Defendant's subordinates involved;

After the popular consultation/ballot result was announced, shootings were heard everywhere, burnings were taking place, so it was possible that the weapons stored in the storage room might have been taken by Aitarak members;

Regarding the incident of exterminations, burnings after the announcement of the result of the popular consultation/ballot, all communities in Dili, apparatuses, the Police and the army had all been involved in committing destructions and exterminations, that was the fact of what was going on;

Bullets of the homemade weapons were the bullets made of pieces of stone cement (beton) mixed with matchstick ammunition;

There was a telegram from Pangdam Udayana about the incident in Ainaro, where Aitarak group after committing the sweeping visited the Battalion Headquarters to take a rest, then they returned to the Aitarak headquarters in Tropikal Dili;

Considering, that before the Panel of Judges makes a judgement and further deliberates on this case of Grave Human Rights violation, it is necessary to consider several principles of Laws which underlines a certain decision on a criminal case, among others shall be:

Law No.14/1970 on the Basic Principles of Judicial Authority

Article 1 A Judicial Authority is an independent authority of the State to arrange for the administration of justice in order to uphold the law and justice based on Pancasila, For the Sake of the State of Law of the Republic of Indonesia

Article 4 (1) Any involvement in the administration of justice outside of the judicial authority shall be prohibited, except for the functioning of the State of Law of the Republic of Indonesia

Article 5 (1) No one shall be criminally sentenced except on the occasion of the court based on legal and convincing evidences finds that the person shall be responsible for the deeds charged on him/her

These principles shall become a pillar of the law for the independency of the Panel of Judges to make a judgement on the case

Considering, that besides that, since this case is concerning a Grave Human Rights violation, it is considered necessary to refer to several general principles of the International Laws concerning the universal crimes against humanity, as follow:

That no one is above the Law, that a responsibility shall be taken, and that no one can escape from the Law for his/her past or future crimes;

That the crimes against humanity, the crimes of war and genocide are *hostis humanis generis* (crimes against a common humanity) which are included in the international crimes of any lawsuit and punishment (*sic!*);

The crimes against humanity is a part of general law principles acknowledged by nations, a person who commits a crime (commission), or consent (omission, *sic!*) shall be charged retroactively;

Considering, that in the explanation of Law no 26/2000 on Human Rights Court, mentioned that Grave Human Rights violation is an "Extra Ordinary Crimes", while in the explanation Article 7 of the same Law mentioned that genocides and crimes against humanity are adapted from the "Rome Statute of International Criminal Court" (Article 6 and Article 7), therefore the law-makers and the Government had been adopting the International Law principles into national laws, so that applying the International Law principles, conventions and judicial practices on the perpetrators of the crimes against humanity shall be applied in the court of

Grave Human Rights Violation in our Country, as in this case is valid as long as there is any relevancies in the case of Grave Human Rights Violation in East Timor.

Considering, that besides referring the above law principles, the Panel of Judges considered it is necessary to present and discuss several principles related to verification in the Criminal Code, which consists of the system of verification, and how a Judge's stance in examining each of the evidences, which shall be used as a guidance and basis to adjudicate this case, since Article 10 Law No.26/2000 on Human Rights Court stated that, among others, which was not stated otherwise in this law, the code (Hukum Acara) on Grave Human Rights Violation was implemented based on the Criminal Code principles, therefore Law No.8/1981 KUHAP was stipulated as a basis for the Code on Grave Human Rights Violation, including the system of verification.

Verification According to Negative Law (Negatif Wettelijk Stetsel)

The verification system according to the Negative Law is a theory that is situated between the verification system according to positive law and the verification system according to Judge's conviction or Conviction in Time.

This system is a balanced system between the two contradicting extreme systems. According to this system, whether a Defendant guilty or not guilty is determined by the Judge's conviction based on legal ways and evidences (alat bukti) according to the Law;

Based on the above principles, then, in order to determine whether a Defendant is guilty or not guilty, two components shall be considered:

- a. Verification shall be conducted according to legal ways and evidences according to the Law.
- b. and the Judge's conviction shall also based on legal stipulations, ways and evidences according to the Law.

Considering, that based on Article 183 KUHAP which states as follow:

"A Judge is not allowed to pronounce a criminal sentence on anyone, except through at least two legal evidences, he arrives at a conviction that a crime has really happened and that the Defendant is guilty for having committed it."

Considering, that the above articles concluded that our Criminal Code follows the verification system according to the Negatif Law (Negatif Wettelijk Stetsel).

Therefore, Article 183 KUHAP states that in order to determine whether a Defendant is guilty or not guilty, and to pronounce a criminal sentence on the Defendant, therefore:

His crimes shall be proven by at least two legal evidences and

On the verification by at least two legal evidences, the Judge arrives at a conviction that a crime has really happened and the Defendant is guilty for having committed it;

Considering, that article 184 paragraph (1) KUHAP has limitatively mentioned legal evidences according to the Law, as follow:

- a. Witness' Testimony
- b. Expert's Testimony
- c. Letters
- d. Clues
- e. Defendant's Statement

Considering, that when article 183 is related to article 184 paragraph (1) KUHAP, therefore it means that a Defendant could be sentenced if his/her crimes could be proven by at least two evidences out of the above five evidences;

Therefore, the minimum verification which can be weighted to sufficiently prove a Defendant's crime are at least through verification of two legal evidences;

Considering, that the next question to the Panel of Judges is, what the 5 (five) evidences as mentioned in the article 184 paragraph (1) KUHAP mean, and what the requirements to fulfill it are;

Considering, that therefore the Panel of Judges need to explain the meaning of each of the evidences, and how the Judge's stance on the evidences which has become a guidance in adjudication of the case;

1. Witness' Testimony

Witness' testimony as an evidence is statements delivered by the witness before the Court on a criminal incident heard, witnessed, and experienced by him/herself, by giving explanations of the knowledge, and the witness' statement was taken under oath according to his/her Religion as stipulated in article 185 paragraph (1) jo article 1 point 27 jo article 160 paragraph (3) KUHAP.

A statement of a witness who has not been taken under oath, even though it conforms the others, is not considered as an evidence, but if the statement conforms to the statement of a witness who has been taken under oath, can be used as an addition to other legal evidences;

The Law also stipulates that, if a witness is passed away after giving statements in the investigation or due to any legal reason that he/she is not be able to attend the trial or cannot be summoned to attend the trial because his/her residence is too far, or due to any other reasons related to the National interest, then, his/her statement shall be read, and if the statement has been given earlier under oath, then, the statement has on equal weight to the under oath statement given by the witness before the court (article 162) paragraph (1) and (2) KUHAP.

Regarding how the Judges examine the validity of the witness statement, the KUHAP stipulates the guidelines as follow:

- a. The connection between one witness' statement and other witnesses' statement;
- b. The connection between one witness' statement and other evidences;
- c. The reason which might be given by the witness to deliver a certain statement;
- d. The witness' way of life and morality and any matters which can affect the reliability of the statement;

Statements delivered separately by several witnesses on an incident or a situation can be used as an evidence, as long as the statements were related to each other, so that it verifies the fact of an incident or a specific situation (article 185, paragraph 4).

Any opinion or presumption derived from merely a thought process is not witness' statement article 185, paragraph (5) KUHAP, also the statement given by other person or testimonium de auditu is not included as the witness' statement (explanation of article 185, paragraph 4).

The Law does not explicitly mention about the weight of evidence of a witness' statement read before the court without taken under oath.

Based on the stipulation in article 161, paragraph (2), related to article 185, paragraph (7),

Then, M. Yahya Harahap SH, in his book *Pembahasan Permasalahan dan Penerapan KUHAP Jilid II (The Discussion of Problems and Implementations of KUHAP, 2nd Volume)*, page 815, argues that the witness' statement taken without under oath before the court is not an evidence and has no weight of verificating evidence (nilai kekuatan pembuktian), but it can be used as a legal additional evidence to convince the Judges.

How about the weight of verificating evidence of a witness' statement taken under oath?

As has been described before, to make the witness' statement legal as an evidence, several requirements shall be accomplished:

- Shall take an oath or vow;
- The crime incident shall be heard, witnessed, experienced by the witness him/herself, and shall explain the reason of his/her knowledge;
- The witness' statement shall be delivered before the court, and;
- A statement delivered by one witness is not adequate;

Considering, that if a witness statement has accomplished the requirements above, can it be said that the witness' statement automatically binds and determines for the Judges, the answer is no, therefore, basically, the witness' statement as an evidence in a criminal case has unbinding weight of verificating evidence (mempunyai kekuatan pembuktian yg bebas), therefore no perfect verificating weight lies on the evidence of witness' testimony (Volledig Bewijskracht) and nor lies on the weight of binding and determining verification (Beslissende Bewijskracht).

Considering, that based on the description above, a Judge can, with certain reasons, accept or ignore a witness' statement, even though the Judge cannot do it without any reason to accept or ignore the witness' testimony, but shall do it in responsible manner, with moral integrity and honesty, the characters which a good Judge should own.

2. Expert's Testimony:

An expert's testimony is a statement given by a person who has a special skill about something needed in order to shed light on a criminal case, for need of investigation stated before the Court (article 1 point 28 jo article 186 KUHAP).

Similar to the witness' testimony above, the Expert's testimony has no weight of binding and determining verification, therefore the expert's testimony has unbinding verificating weight (nilai pembuktian yg bebas) or vrij bewrijkracht;

3. Letters:

According to article 187 KUHAP, a Letter could be considered as a legal evidence, they are:

- A Letter written under Official Oath;
- A Letter written under Oath;

The article 187 KUHAP has explicately elaborated the letters considered having weight of evidence:

a. Deposition and other official letters written by authorized Officers or written before the authorized Officers, under a condition that the letter consist of:

- The incident or the situation that the Officer has heard, witnessed and experienced him/herself, with explicit reasons about his/her explanation;

b. A kind of letter met the requirement stipulated by the Law or a letter written by an official about such specific matter under his/her authorities and which is aimed to prove a certain incident or situaton;

c. An expert's statement that consists of opinion based on his/her knowledge about an incident or situation, officialy asked from him/her;

d. Other letters are valid, only if their contents are relevant to the other evidences;

The letters described in a, b and c are official letters written by authorized Officers or based on stipulations or an expert's letter of statement about a specific situation written under oath or official oath or is warranted by an oath, while the letter described in d is a form of common letter;

That the weight of letter evidence is equal to witness' testimony or expert's statement, those have unbinding weight of evidence, the Judge is free to weight the evidence, because the principle of crime investigation is to seek the truth (Materiel Waarheid) and not the Formal Truth (Formeel Waarheid).

4. Clues:

Clue is an action, incident or a situation which is relevant to each other or to the crime, and indicated that a crime had happened and the perpetrator of the crime, and the clue is obtained from:

- a. Witness' Testimony
- b. Letters
- c. Defendant's Statement

(article 188, paragraph 1 and 2 KUHAP)

If a Judge wants to use a clue as an evidence to prove the Defendant's crime, the Law insisted that the Judge should use his/her responsibility and conscience.

Article 188, paragraph (3) states that, the weight of an evidence of a clue in a specific situation should be implemented by the Judge with Wisdom and Wise, after he has carefully examined with his/her conscience.

Considering, that from the stipulation above, it could be concluded that a Judge should not use clue as an evidence to prove the Defendant's crime, unless in a crucial and critical situation, the Judge should examine and use other evidences, and if the evidence has been used to their maximal capacities but has not been adequate, then use the clue as an evidence. Regarding the weight of the clue evidence is equal to the witness' testimony, the experts's statement and the letter, has unbinding weight of evidence (sifat pembuktian yg bebas), therefore the Judge is free to weight and to use it as an evidence, and clue could not stand by itself in proving the Defendant's crime.

5. The Defendant's Statement:

The Defendant's Statement is what the defendant delivers before the court about an action he has committed or known to or has experienced him/herself, and the defendant's statement could be used only on him/herself.

(article 189 paragraph (1) and paragraph (3)).

The Defendant's statement delivered outside of the court can be used to help finding evidences in the court, as far as the statement is supported by legal evidences in relation to the crime charged on him/her, and the Defendant's statement is not sufficient to prove that he/she is guilty of doing charged crime, but it shall be supported by other evidences (article 189 paragraph (2) and paragraph (4) KUHAP.

Considering, that the weight of evidence of the Defendant's statement is equal to other evidences as mentioned above, that is it has unbinding weight of evidence because the Judge is not bound to the weight of evidence in the Defendant's statement. The Judge could accept or ignore it as an evidence with a particular reason. Besides that, only the Defendant's statement will not be sufficient to prove that he/she is guilty for committing the charged crime, but it should be supported by other evidences.

Considering, that based on the explanation above, after the Panel of Judges has listened to the witness testimony, delivered or read before the court, as well as the Defendant's statement delivered before the court and has examined carefully the evidences presented before the court, the Panel of Judges should examine first the witnesses' testimonies;

Considering, that out of the 11 (eleven) witnesses that have been proposed, only 7 (seven) have been presented before the court:

Witness 5 DRS. BASILIO DIAS APAJUO
Witness 6 JOSE AFAT MPA
Witness 7 SUJARWO
Witness 8 ABILIO JOSE OSORIO SOARES
Witness 9 JOAO DA SILVA TAVARES
Witness 10 AGUSTINUS B. PANGARIBUAN
Witness 11 DOMINGGUS DIAS

Their testimonies have been accepted by the Defendant, whereas regarding the 4 witnesses presented before the court named: Witness 1 Alfredo Sanches, Witness 2 Julio Sousa, Witness 3 Dominggus Boavida and Witness 4 Manuel Viegas Carascalao, their testimonies have been rejected by the Defendant;

Considering, that the Defendant and the Defendant's Lawyer Team have rejected the reading of testimonies of the witnesses Leondo Isaac, Victor Dos santos, Santiago Dos Santos, Florendo De Jesus, Manria Christiana Carascalao, although the witnesses have been taken oath by investigators from the Attorney General Office, as well as regarding the testimonies of witnesses Juanico Dasiva, and Suparno who have not been taken oath before, and rejected the witnesses' testimonies, after their testimonies were read before the court;

Considering, that the reading of BAP of the witnesses' testimonies (sic!) before the court, which has been deliberated by the Judges above, are legal according to the law since the Law which is the KUHAP verified the practice, at least it does not violate the law, because the reason of the reading of the witnesses' testimonies has fulfilled the reason mentioned in article 162 KUHAP (Law No.8/1981), so that the stipulations are applied in the case of Grave Human Rights Violation in East Timor, which is this case;

Considering, that in this case, one (sic!) witness who is also a victim has been presented, and is the witness who experienced and saw himself the incident of attack on Manuel Viegas Carrascalao's house on April 17, 1999, the witnesses are: Witness 1 Alfredo Sanches, and Witness Victor Dos Santos alias Apin, Santiago Dos Santos, Florendo De Jesus who witnessed and experienced the incident of the attack at the house whose testimonies have been read before the court;

Considering, that before the court, witness 1 Alfredo Sanches, testified among others:

On April 17, 1999, the witness was at Manuel Viegas Carascalao's house in Dili, he had been staying there as a refugee since February 1999 after fled from his home in Laubuaae (sic) Maubara because he was afraid, forced to be a militia member;

What the witness meant by militia groups were Aitarak, Besi Merah Putih (BMP), Naga Merah groups and others who were Pro Integration;

Considering, that the witness 1 Alfredo Sanches' testimony that he was at Carascalao's place as a refugee is reliable, because his testimony is supported by testimonies of witnesses Santiago De Santos and Florendo de Jesus, who said among others that they had been chased down and had been looked for in their regions to be forced as Militia members, they were afraid and fled to Dili and stayed as refugees at Manuel Viegas Carascalao's house;

Considering, that the Defendant admitted before the court that before and shortly before the popular consultation/ballot around 1999, he admitted there were suppressions, terrors and intimidations on civilians committed by both the Pro Integration as well as the Pro Independence groups;

Considering, that the witnesses' testimonies of Witness 1 Alfredo Sanches, as well as Florendo De Jesus and Santiago De Jesus are reliable, that they were civilians who became refugees because suppressions, terrors and intimidations had forced them to flee to Dili and to stay at Manuel Viegas Carrascalao's house;

Considering, that as testified by witness 4 Manuel Viegas Carrascalao, before the attack took place, at his house there had been 136 refugees, and after the attack, the numbers were more or less than 60 people, while according to witness Maria Christiana Carrascalao, besides the refugees at his house, there was a friend of his brother named Manelito;

Considering, that the witnesses' testimonies are supported by witness viktor Dos Santos alias Apin, who testified that at that time he was at Manuel Viegas Carrascalao's place because he was a friend of Manelito, Manuel Viegas Carrascalao's son, and he happened to visit the house. Since the witness was a native of Dili and knew and was a friend of Manelito, Manuel Viegas Carrascalao's son, then, the witness presence at Manuel Viegas Carrascalao's house was reliable;

Considering, that since the witnesses' testimonies are related to each others and their presence at Manuel Viegas Carrascalao's place are reasonable, then, their testimonies have a weight to verify a fact of Law that convinces the Panel of Judges, that on April 17, 1999 many civilians gathered consisting of friends of Manuel Viegas Carrascalao's son, or refugees who had fled from their homes because they got suppressions, terrors, intimidations from the militias which they thought were Pro Integration group;

Considering, that the militia group which according to the witnesses was a Pro Integration group on April 17, 1999 at noon had attacked Manuel Viegas Carrascalao's house, as testified by witness 1 Alfredo Sanches;

Considering, that according to witness Alfredo Sanches, on April 17, 1999 he heard from the radio news, that a ceremony was held at the Dili Governor courtyard, and in the afternoon an attack on Manuel Viegas Carrascalao's house happened, the Militia and TNI attacked Manuel Viegas Carrascalao's house by means of, first a car loaded with the Militia and TNI bumped into the front door, then shot the house, because they were afraid the witness and Florendo De Jesus ran and climbed onto fence; then an Army member named Antonio Besikau shot Eduardo to death and Fransisco shot the witness, and the witness fell down because he was shot, after the witness fell down, the witness was stabbed by Fransisco and got injured on his back, stabbed wound on his body, there were scars on the witness' back, leg, hand and chest showed to the Panel of Judges before the court;

The witness 1 Alfredo Sanches's testimony which explained the incident of attack at Manuel Viegas Carrascalao's house and that he recognized some of the perpetrators, since they were the TNI and BMP Militia members who came from the same region with him, from Maubara, is reliable because he has been a victim and he has experienced and seen the incident himself;

Considering, that the Judges' conviction on the witness' testimony is supported by the witnesses' testimonies named: Florendo De Jesus, Victor Dos Santos alias Apin and, who also has seen and experienced the incident of attack since they have been the victims of the attack;

Considering, that Victor Dos Santos alias Apin testified that after the militia attacked the refugees with machetes, samurai, homemade weapons, he who was inside the house, was shot on his knee, was cut on his left hand, and right hand and ear, and saw when they shot Manelito. The witness also recognized some of the perpetrators who committed the attack on Manuel Viegas Carascalao's house, among others were Ameo, Agus, Idis, Jose Renatau, Apiu, Lusiano, Andreas, they were, according to the witness, members of Aitarak Militia group from Dili, the witness' recognition of the Aitarak members is reliable since the witness is a Dili native, it is logical if he recognizes them;

Considering, also witness Florendo De Jesus, at that time, he was with witness Alfredo Sanches and Eduardo De Jesus on the fence behind Manuel Viegas Carascalao's house, he witnessed when Antonio Besikau, a TNI member, shot Eduardo De Jesus, saw a militia member named Dominggus Bondia abused his relative named Dos Santos until he died, witness Florendo Jesus himself was slashed by machetes by a militia member named Dominggus Bondia resulted in injuries on his body;

Considering, that witness Florendo De Jesus also recognized people who committed the attack at Manuel Viegas Carascalao's house who were Maubara natives named: Dominggus Bondio, Joan Doumesa, Grasiano, Domunggus Metan, Alfonso Batleri, Manuel Sousa, Menruco Metan, Camilo, Sisca Curbuti, Mandua Curbuti, Fernando Sousa, Denis Lacoban, Victor Orlando, Manuel Orlando, Felix Dselicao, Mingguan Buti, Simon Santana, Matius Edcal, while the TNI whom the witness recognized were Jose Matius, Antonio Besikau, Duarte, Carlos Amaral, Batisar, Theofilo;

Considering, that the recognition of the witness on the attackers is reliable, because they come from the same region with the witness, and the witness is a living witness who has experienced the incident himself;

Considering, that witness Alfredo Sanches as well as witnesses Victor Dos Santos and Florendo de Jesus testified that the numbers of the dead victims are 11 people, and they have survived because they pretended to die, when the apparatuses came, the attackers left and they were brought to Wira Husada hospital by an ambulance, but before the ambulance arrived at the hospital, the ambulance made a stop at Tropical, the Aitarak Headquarters;

Considering, that in his Pledoi, the Defendant admitted that there was an ambulance bringing victims made a stop at the Aitarak Headquarters, Dili, the ambulance was surrounded and was hit repeatedly by several young men, therefore the witness' testimony was related to the Defendant's statement;

Considering, also witness Santiago Dos Santos, who came from Maubara, at the time of the attack on Manuel Viegas Carascalao's house on April 17, 1999 was inside the house, tried to escape when the house was going to be attacked, he testified that that some of the refugees had run away, but the witness was not able to escape, because the house had already been surrounded by the attackers;

As a Maubara native, the witness recognizes the attackers who come from Maubara, namely, two Kamra members named Matheos do Santos, Inasio, and the BMP Militia members who come from Maubara the witness recognizes are Fransisco, Alfonso, Honorio, Manuel Goncalves, Nicolau, Abrao, Joselino, Augusto, while the TNI members are Jose Matheus and Theofilo da Silva, and witnessed the witness' friend named Raul shot to death by the attacker named Augusto, a BMP member, at that time the witness heard a gunshot and homemade firearms on the glasses and door, the attack resulted in 11 people were dead, on the next day the witness was taken to the morgue room, and the witness identified the 11 dead bodies named, 1. Manuel Gama Carascalao, 2. raul Dos Santos, 3. Alberto do Santos, 4. Januario Riberto, 5. Alfonso Riberro, 6. Crsissantos Do Santos, 7. Rafael Da Silva, 8. Cesar Dos Santos, 9. Eduardo De Jesus, 10. Antonio Des Soares, 11. Agustino BX Lay, the 11 bodies have been buried in Maubara, while one person has been buried in Dili, named Manelito Carascalao;

Considering, that the fact that 11 victims have been dead and buried in Maubara is supported by the testimonies of witness 2 Julio Sousa and witness 3 Dominggus Boavida, who have witnessed the funeral of the corpses, besides that witness Dominggus Boavida has been one of the witnesses who mounted onto the truck and counted 11 coffins with corpses inside who had been killed at the incident of the attack on Manuel Viegas Carascalao's house who were Maubara natives and buried in Lebukoe (sic!) Maubara in the afternoon on April 19, 1999. Therefore, the witnesses' testimonies are also reliable;

Considering, from reliable witnesses' testimonies, because they are related to each other, and the Panel of Judges has obtained convincing fact of law, that the Militias who attacked Manuel Viegas Carascalao's house on April 17, 1999 was Pro Integration Militia group from Aitarak group Dili and Besi Merah Putih group and several TNI officers who came from Maubara, whose their names mentioned by the witnesses above, and they have collectively surrounded and attacked Manuel Viegas Carascalao's house which at that time was occupied by Refugees, the incident resulted in 11 civilians dead including Manuel Viegas Carrascalao's son named Manelito, while the others injured as happened on witnesses Alfredo Sanches, Victor Dos Santos, Florendo de Jesus, even as said by the Defendant that he had a chance to bring a wounded person, namely, Manuel Viegas Carrascalao's aunt to Wira Husada hospital, therefore the facts that people died and injured as a result of the attack committed by militia groups from Aitarak and BMP groups on Manuel Viegas Carrascalao's house on April 17, 1999 has been proven because the facts are undeniable, not because it has been rejected by the Defendant and The Defendant's lawyer Team on the witnesses' testimonies, so that Unus Testis Nulus Testis in this case has not been proven because witness Alfredo Sanches's testimony has been supported by some of the witnesses' testimonies which are related to each other and by the Defendant's statement himself;

Considering, that witnesses Alfredo sanches, Florendo De Jesus, Santiago Do Santos, Victor Dos Santos, Manuel Viegas Carrascalao and Maria Christiana Carrascalao only heard from the radio that the Big Rally was held at Dili Governor on April 17, 1999, but the fact of the Big Rally which was held at Dili Governor on April 17, 1999 has been verified by the Defendant and has been supported by the testimonies of witness 5 Basilio Dias Araujo, witness 6 Jose Afat, witness 8 Abilio Jose Osario Soares, witness 9 Joao Da Silva Tavares, witness 11 Dominggus M. Dores, those who attended the ceremony, including witness Ad de Charge Marcelino Martin Ximenes who was also present there;

Considering, that according to the Defendant and the witnesses, the participants of the Big Rally were Pro Integration groups from all over East Timor, Aitarak Group from Dili, BMP (Besi Merah Putih) from Liquisa Maubara, Halilintar from Maliana, Alpha from Los Palos, and other Pro Integration Groups such as Saka Sera, Ablai, Mahidi, Maha Domi, Mahidi, Laksaur numbered thousands of them;

According to Marcelino Ximenes, the regions of the groups were recognized from their regional symbols;

Considering, that according to the Defendant, the leader of the Aitarak Troops in the ceremony was the Defendant, he was the one who instructed his members to carry weapons such as sticks, but admitted that there might be any possibilities if some of Aitarak members carried weapons such as machetes, homemade firearms, since such weapons were also carried by other groups, such as homemade weapons carried by BMP group from Liquisa, as well as the TNI personnel who wore civilian clothes, carried weapons among the participants.

Considering, that the ceremony participants carried weapons has been verified by witness Abilio Osario Soares, the former East Timor Governor, who saw lots of members of the PPI group carrying weapons such as machetes, homemade weapons and firearms during the Big Rally at Dili Governor Courtyard on April 17, 1999, he had cancelled his speech because the ceremony was not a Pam Swakarsa Rally, but was a PPI Rally.

Considering, that according to the Defendant and witnesses 5 Basilio Dias Araujo, Abilio Jose Soares, PPI was a military wing organization of BRRT and FPDK. BRRT and FPDK were groups of East Timorese who had struggled over political aspirations for East Timor to remain integrated with Indonesia, whereas the PPI as the military wing was acknowledged by International bodies like the UN.

PPI was led by a Commander named Joao Da Silva Tavares, and the Deputy Commander was the Defendant Eurico Gutteres, but according to witness Basilio Dias Araujo who was often became a translator in meetings with foreigners and the UN, the person who often represented PPI was the Defendant EURICO GUTERRES. PPI had group members from all over East Timor territory like Aitarak, BMP, Hallilintar, Alpha, Mahidi, Saka Sera, Ablai, Maha Domi, Laksaur, the groups which were attending the ceremony at east Timor Governor courtyard on April 17, 1999, so it makes sense if Abilio Soares said that the ceremony was a PPI ceremony.

Considering, that according to the Defendant as well as the witnesses Joao Tavares, Abilio Soares, Basilio Dias Araujo, Dominggus M. Dores Soares, PPI was a new name of a Partisan group, a group of armed civilians who fought against Fretilin before East Timor was integrated with Indonesia.

In order to maintain security in East Timor territory and to face the 1999 popular consultation/ ballot, the PPI was established.

Considering, that the PPI supervised Pro Integration groups such as Aitarak, BMP, Hallilintar, Alpha, Mahidi, Saka Sera, Ablai, Maha Domi, Laksaur, and thousands others (sic!), some of them had become Pam Swakarsa members as described by the Defendat who said that the Defendant had proposed 150 Aitarak members to become Pam Swakarsa members and were paid Rp. 150.000,- per month including 10 kg rice provided by the Local Government, so that,

as admitted by Joao Da Silva Tavares, many of Halilintar members became Pam Swakarsa members, and so the other Pro Integration Group members.

Considering, that according to witnesses Abilio Soares and Dominggus M. Dores Soares, it was true that Pam Swakarsa was created to deal with security problem, disorder in the community, particularly from Anti Integration groups, such as Fretilin, Falintil who destabilized the Government, they were paid Rp. 150.000,- per month, provided by each of their APBD (Local Government Budget) after approved by the Governor;

Considering, that since the PPI supervised Pro Integration groups such as Aitarak, BMP, and others, and some members of Aitarak and BMP were also members of Pam Swakarsa, then, it is reasonable if the Rally on April 17, 1999 at Dili Governor courtyard was also a Pam Swakarsa Rally, because the members of Pam Swakarsa were also members of Aitarak and BMP Group, and members from many regions in East Timor also attended the ceremony;

Considering, since originally the PPI derived from a Partisan group of armed civilian group, while the members of Aitarak and BMP were also armed civilians, even though those were homemade weapons and machetes and others, and who were also members of the PPI, and in the ceremony there was a military-style troop inspection, it is reasonable if Aitarak and BMP groups have been acknowledged by witnesses Alfredo Sanches, Victor Do Santos, Florendo De Jesus, Dominggus Boavida, Julio Sousa and Manuel Viegas Carrascalao as well as Maria Christiana Carrascalao as Pro Integration militia group which had attacked Manuel Viegas Carrascalao's house after the Big Rally at Dili Governor courtyard on April 17, 1999 was over;

Considering, that witnesses Abilio Soares, Dominggus M.D. Soares, witness Jose Apat MFA, and witness Joao Da Silva Tavares, admitted that after the Big Rally at Dili Governor courtyard on April 17, 1999 was over, a clash between the ceremony participants and the people at Manuel Viegas Carrascalao's house took place, according to the information from the location, the incident started when the ceremony participants from Liquisa Maubara were going to return to Liquisa, when they were passing by Manuel Viegas Carrascalao's house, cries for help were heard from inside the house, so that the ceremony participants who thought that their families were there, tried to help and a clash at the house took place which resulted in dead and wounded victims;

Considering, that the Panel of Judges have doubts on the reason of the clash at Carrascalao's house, as testified by the witnesses and was verified by the Defendant, because:

- The information obtained by the witnesses is not told by those victimized or witnessed the incident, so it is an information told by other person (saksi de auditu);
- Witness Abilio got the information from Kadit Sospol Witness Dominggus M. Dores from the Chairman of the Committee, while witnesses Jose Apat and Joao Tavares heard from the ceremony participants in Dili, but not from the people who committed the attack.
- Witness Juanico Dasilva testified the same version of information or almost similar to the stories of witnesses Abilio, Dominggus, Jose Apat and Tavares, but the witness had not been taken oath before giving the testimony.
- According to the Ad De Charge witness Marcelino Martin Ximenes, the people who wanted to go back to Liquisa or Maubara did not pass by Manuel Viegas Carrascalao's house, because

if they wanted to go back to Liquisa from the Governor courtyard, should take the east direction, while Manuel Viegas Carrascalao's house was on the west of the Governor office;

Considering, that it therefore is difficult for the Panel of Judges to accept the witnesses' and the Defendant's testimonies, regarding the cause of the clash at Manuel Viegas Carrascalao's house as described earlier, because their testimonies are doubtful, so that it is reasonable for the Panel of Judges to ignore the witnesses' testimonies, and paid more attention on the victim witnesses who witnessed and experienced the incident at Manuel Viegas Carrascalao's house, they are witnesses Alfredo Sanches and his refugee friends.

Therefore the Panel of Judges obtained a convincing fact of law that the people who committed the attack on the refugees at Manuel Viegas Carrascalao's house on April 17, 1999, among others were the participants of the ceremony at Dili Governor courtyard from Aitarak group from Dili and Besi Merah Putih group from Maubara Liquisa, whom perpetrators have been recognized by the victim witnesses;

Considering, that the 136 victim witnesses and the refugees at Carrascalao' house were civilians who have rights to live, rights of security, safety of soul and body, rights to get law protection and other rights as human beings created by God, so that it is appropriate to call them dignified human being because they have Human Rights who are secured and protected by the Law;

Considering, that since there was the attack on refugees committed by Aitarak group and BMP group, the groups under PPI organization, its members have committed a violation against the law on civil rights, who are the refugees;

Considering, that there have been dead and wounded victims among the refugees at Manuel Viegas Carrascalao's house is a sufficient evidence of crimes committed by Aitarak members and BMP group;

Considering, that the crimes and violations committed by members of Aitarak and BMP groups who were part of the ceremony participants at Dili Governor courtyard on April 17, 1999, the incident happened after taking part in the ceremony program such as hearing to the speech delivered by the Defendant;

Considering, that the Defendant verified witness 5 Basilio Dias Araujo who said in the court that there were responses from the ceremony participants after and/or during the Defendant giving speech, moreover, the Defendant said that there was a response in the form of shootings of homemade weapons from various corners of the Rally participants;

Considering, that the witness' testimony according to the Criminal Code is an evidence, as well as the Defendant's statement, and since the testimony of witness 5 Basilio Dias Arujo has been verified by the Defendant, a minimum evidence verification required by the Law to verify the fact has been fulfilled, so it can be considered to have proven that the Defendant's speech got a response from the Ceremony participants in the form of yells or shouts "kill, kill, kill";

Considering, that the Defendant's speech has therefore been proven for resulting in or evoking emotion of the thousands masses who were the Rally participants to commit murder, and the most logical reason of the masses' emotion for killing was resentment or revenge;

Considering, that the PPI members and/or PPI organization had resentment or revenge can be simply understood, since it is a new face or a new name of the partisan group, which in the past was a group of armed civilians fighting against Fretilin, and was wound up through the integration of East Timor in the Indonesian territory, if PPI was reactivated before and shortly before the popular consultation/ballot implementation, which subject of the election in the popular consultation/ballot were the citizen or civilians, then, as a military wing, the target of its revenge was the citizen or civilians, who were certainly those anti Integration civilians, such as witnesses Alfredo Sanches, Alfredo De Jesus, Santiago Do Santos, who ran and chased after by the Militia because they did not want to join and become Pro Integration Militia and later took shelter at Manuel Viegas Carascalao's house;

Considering, that there has been a correlation between the Defendant's speech delivered at the Rally at Governor courtyard on April 17, 1999 and the incident of attack on the refugees at Manuel Viegas Carascalao's house on April 17, 1999, in the way of transferring a final and deadly blow towards the ceremony participants to kill anti Integration civilians, in the form of evoking the emotion of the masses to commit murder, as part of the revenge by allowing the armed Aitarak and BMP groups killed Anti Integration refugees and injured them who were at Manuel Viegas Carrascalao's house;

Considering, that as testified by the witnesses and admitted by the Defendant that he was Aitarak troops Commandant and had members in all over the villages in Dili, he was a PPI Deputy Commander, who was a leader who supervised Pro Integration groups in all East Timor territory;

Considering, that the Defendant admitted that during his elementary and secondary school, he had always been a leader in his class, and he became an OSIS (Student Organization) Chairman in high school or had been a Student Senate Chairman in the university, if the statement is true, the Defendant has an awareness of his position and realizes the importance of being a leader, ruled and led and conducted his rights and duties, and has a responsibility on the organization he leads, so that he realizes and know the meaning of responsibility as a leader of Aitarak troops and a Deputy Commander of PPI;

Considering, that the Defendant knew very well situation in Dili and general condition in East Timor, as described by the Defendant how he blocked roads, and guarded by crowds of Aitarak group to prevent any clash, the Defendant's instruction was obeyed by his subordinates, the other meaning of the Defendant's instruction on that matter, according to the Panel of Judges, was that in order to control his territory, the Defendant assigned Heads of Villages to be Heads of Aitaraks in their villages to facilitate the Defendant's order, instruction to his subordinates and to obtain reports, so that the Defendant knew the communication network very well to assist him in obtaining information, information was very important for a leader to make a decision on a problem, so that the Defendant easily knew any single incident in a region as reported by his subordinates, and admitted that he could effectively control his members except one person, the Head of Ainaro Village, who had been warned by the Defendant for carrying M.16 weapon belonged to ABRI (Indonesian Army), this fact is an evidence that besides he is able to give order, rule, and his order is obeyed by his members and he is able to take measure such warning the head of Aonaro (sic!);

Considering, that as a Deputy Commander of PPI, the Defendant had issued a statement to prohibit all political elites to leave Dili during and after the popular consultation/ballot. The Defendant's statement was considered as an instruction, so that all people who wanted to

leave Dili should obtain a Pass or a letter signed by the Defendant as the PPI Deputy Commander, as admitted by the Defendant that he signed thousands of letters everyday to help people leave Dili, this statement has been supported by the statement of Dili Governor Abilio Soares who said that the Governor family managed to go out of Dili after asking a letter signed by the Defendant, this fact became one of the evidences that the Defendant's influence and authority have surpassed regional borders;

Considering, that therefore the Defendant as Deputy Commander of PPI, a military wing of FPKD and BRRT and/or is acknowledged as the leader of Pro Integration Military wing group during and shortly before the process of popular consultation/ballot, often represented PPI in meetings with anti integration military wing, especially on the request of the international bodies or the UN, as testified by witness Basilio Dias Araujo whose testimony has been verified by the Defendant;

Considering, that the Defendant's influences had been seen at the Rally on April 17, 1999, as testified by witness Joao Da Silva Tavares whom the Defendant had asked to be the Supervisor of the Ceremony (Inspektur Upacara/Irup) and to deliver a speech, the Defendant's request had been conveyed several days before the ceremony, the witness' testimony has been verified by the Defendant, so that the one who acted as the Irup in the ceremony was the PPI Commander, Joao Da Silva Tavares, there was troop inspection performed by the PPI Commander accompanied by the Deputy Commander, the Defendant, riding on a vehicle, which was identical to a military ceremony, therefore it is not wrong if the event has been called a PPI Rally and a Pam Swakarsa Inauguration Rally as had been planned before, the Field Commander was Jose Ximenes, a member of Aitarak group, this fact shows how big the Defendant's influence in organizing the event and not merely the Committee Chairman from the East Timor Local Government of Dili;

Considering, that witness B. Pangaribuan as a personnel of the Indonesian Police, who was Kasat Serse Polres Dili admitted the Defendant's big influence towards his subordinates, as well as among Pro Integration groups, the witness often asked for help from the Defendant to settle a case related to his tasks; and as testified by witness Marcelino, the Defendant was a Youth Figure who had big influence towards his subordinates as well as among the community, the Defendant's instruction and order were obeyed by his subordinates as a supervisor or as an Aitarak Commandant, this witness' testimony has also been verified by the Defendant;

Considering, that since the Defendant had a big influence among Pro Integration group, then, it is not surprising if his speech evoked emotion of thousand masses of the ceremony participants who most of them were armed, and the consequence has certainly been realized and understood by the Defendant because the Defendant knew exactly the situation and condition in Dili and East Timor in general before and shortly before the popular consultation/ballot, the clashes that often happened, and PPI had to face it to undoubtedly win the popular consultation/ballot for the Pro Integration group;

Considering, that since the Defendant was a person who had a big influence in his position as a Deputy Commander of PPI and Aitarak Commandant on his subordinates who were group or members of Pro Integration group during and before and shortly before the popular consultation/ballot in East Timor, had delivered a speech before thousands of masses who most of them were armed, at a Rally in East Timor Governor courtyard on April 17, 1999, which had evoked emotion of the masses to kill which was a retaliation against anti

Integration civilians, but the Defendant as a superordinate or as a leader of Pro Integration group who was aware of the emotion of the masses to kill, or at least received direct information from the shouts and yells, kill, kill among the rally participants after hearing his speech, so that he had been trapped and deliberately put himself into the situation, since he thought that the circumstance was common to take place in the gathering of masses, although he knew that the situation of the community at that time was prone to conflicts;

Considering, that as a consequence a part of the Pro Integration group from Aitarak group who were the subordinates of the Defendant's troops and members of the BMP group whose the groups's Inauguration was also attended by the Defendant, or in other words that members of the Pro Integration group who were directly trained by the Defendant, the Aitarak and BMP, because they had been influenced by the Defendant's speech, had deliberately committed an attack on civilians at Manuel Viegas Carrascalao' house, after the Rally was over, resulted in 11 civilians dead, and three persons wounded. Therefore the fact has proven the crime committed by the Defendant's subordinates who were the Aitarak group or PPI group members, who were the BMP group trained by the Defendant, and the Defendant did not try to prevent or has failed to prevent the action committed by his subordinates and his trainees, so that resulted in the dead and the injured, so that the Defendant should take responsibility for the deeds committed by his subordinates;

Considering, that the Defendant's Lawyer Team has submitted a Pledoi, whose main points are as follow:

Pledoi of the Defendant's Lawyer Team:

1. Declare that the Defendant EURICO GUTERRES has been legally and convincingly not proven guilty for committing a Criminal Violation against Human Rights, as stated in the Indictment Letter of the Ad Hoc Prosecuting Attorney;
2. Free the Defendant EURICO GUTERRES from the first indictment and the second indictment;
3. Restore the Defendant EURICO GUTERRES's Rights from (sic!) his capabilities, statuses and dignity;
4. Order to return all evidences to those rightful owners, except the ones which should be included in the dossier;
5. Order the State to pay all court expenses;

Based on these arguments:

1. The Human Rights Ad Hoc Court at the Central Jakarta District Court has been problematic, since the Presidential Decision (Keppres) No.53/2001 issued in contradiction to the proposal of the House of Representative (DPR) which has become the basis of the Presidential Decision;
2. The crime at Manuel Viegas Carascalao's residence cannot be classified as a Grave Human Rights Violation (extra ordinary, sic!), because:
 - The background of the Rally on April 17, 1999 has been a vow of commitment to the Red and White performed by the Pro Integration Fighters;
 - The incident on April 17, 1999 at Manuel Viegas Carrascalao's house was a spontaneous action committed by families of the Maubara Liquisa people who had been gathered by Manuel Viegas Carascalao on February 28, 1999, on Sunday at 14.00 Indonesian Central Time to be used as a Manuel Viegas Carrascalao's political commodity;

The action committed by the Pro Integration group in East Timor can be called as the act of retaliation, a revenge triggered by a provocative action started by the Pro Independence group and that such retaliation action has not been considered as a violation against the Law;

3. Regarding the difference among the dossier, the letter of official turning over of dossier and the indictment letter:

- The names of the Defendant are different, in the letter of official turning over of dossier it has been written as Eurico Guterres, while in the dossier, it has been written as Eurico Gutteres;
- The Defendant's dates of birth are different;

4. Regarding the Judicial Analysis:

- That the element of a civil superordinate is capable to take responsibility, the Defendant cannot be qualified as a civil superordinate who is capable to take responsibility, because the organizer of the Big rally on April 17, 1999 was the Regent of Dili, while the Commander of the PPI was Joao Da Silva Tavares, moreover, the content of the speeches of the PPI Commander and the Deputy Commander was a summon to make a commitment to the Red and White and an emphasis to win the popular consultation/ballot for the Pro Integration group;

- That the element of having subordinates, which has an authority to conduct an effective control, has not conducted an effective control upon his subordinates properly and correctly has not been proven because factions of the Big Rally participants consisted of various groups from various regions who had their own commandants and were responsible for their own subordinates, moreover, as testified by several witnesses that the attackers of Manuel Viegas Carascalao's house were Besi Merah Putih group from Liquisa Regency, therefore the Defendant as an Aitarak Commandant cannot be responsible for the attack;

- That the elements of knowing or deliberately ignoring the information has not been proven because not even any single witness who witnessed or directly heard the Defendant's speech which contained a provocation to kill Manuel Viegas Carascalao, but only one witness named Drs. Basilio Dias Araujo who heard, kill, kill shoutings from the masses of participants of the Big Rally, moreover, the Defendant knew the incident from the Defendant's wife, and had even a chance to plead to the BMP not to commit the attack, but he was suspected as a double-role agent;

- That the elements of having not conducted necessary and proper actions within his authority, prevented, and stopped the action or handed over the perpetrators to the responsible officials for investigation and prosecution cannot be proven simply by testimonies from witnesses who had not been presented before the court and whose testimonies had only been read and had been rejected by the Lawyer Team, moreover, the incident of the attack on Manuel Viegas Carascalao's house had been handled by the Police and the 20 Perpetrators had been arrested;

- That the element of subordinates committing or has just committed Grave Human Rights violation has no connection to the indictment, because the Aitarak faction had not been involved in the attack;

- That the element of Crimes against Humanity in the form of a spread and systematic attack acknowledged as an attack on civilians in the forms of murder, because the Defendant had not planned the Big Rally which were attended by thousands of masses, moreover, PPI was a community group which was powerless and suppressed;

The Defendant's Pledoi:

- The Defendant's Pledoi is titled: "Salahkah saya Membela Merah Putih" (Am I Wrong to Defend the Red and White);

- To the Defendant, the Integration means the Red White and the Red White is a Symbol of Freedom from Structural Poverty and a symbol of East Timorese human dignity;

- Because the Integration is the best way for East Timorese, had guided the Defendant to take part actively in the Barisan Pejuang Pro Integration (PPI)/ Pro Integration Force;

- Because the development of situation and security in East Timor at the beginning of 1999, had forced to reestablish the Barisan Partisan which was previously an armed group of civilians (the unification of UDT, KOTA, TARBALISTA, APODITI) who fought against the Fretilin group, based on the 3 (three) main ideas:

1. As a political umbrella for self protection and self defence;
2. As a media for mass mobilization to defend and to maintain the Integration;
3. As an organization to control the resurrection of fighting spirit which had arised everywhere;

- That Joao Dasilva Tavares who was previously the Deputy Commander of Barisan Partisan, had initiated the umbrella PPI to carry on the struggle for Integration through mass mobilization, particularly to face the popular consultation/ballot;

- The Defendant was the Aitarak Commandant and Deputy Commander of PPI;

- That the Defendant as the Aitarak Commander and Deputy Commander of PPI has rejected that he had not controlled or conducted any action to prevent his subordinates so that his subordinates had committed Human Rights violation, and had not brought the perpetrators to the responsible officer for prosecution and had allowed and provoked the PPI members under his effective control, so that committed the attack on Manuel viegas Carascalao's residence, because:

1. As an Aitarak Commandant, the Defendant had asked his entire followers and symphatizers not to get involved in violating actions committed by individual, or masses before the April 17, 1999 incident;
2. The Headquarters of Aitarak and Manuel Viegas Carascalao's house was separated only by wall, and the Defendant had been living side by side with Manuel Viegas Carascalao and had a good relationship as a Manuel Viegas Carascalao's neighbor until the incident of attack on Manuel Viegas Carascalao's house happened;
3. The Defendant position as the Deputy Commander of PPI was only symbolic, so that it was difficult to give orders or control people, because the people joining the PPI were the followers or symphatizers to demonstrate their existence and commitment to the Integration.

Besides that:

- PPI was an organization without structure, hierarchy, therefore had no chain of command, therefore no function of effective control;

- The PPI was still premature at that time;

- The only fact that exaggerated the PPI existence as people had mentioned nationally and internationally, was the effect of tremendous and tendentious exposes by international and national mass media;

- That the murder, kidnapping, terror, intimidation, suppression committed by Fretilin and Falintil on civilians, which forced the Pro Integration civilians including the followers and sympathizers to conceal their existences for security reason, had been a pushing factor to establish the PPI to consolidate into one line, one word, and one door to face violence that had occurred everywhere within East Timor territory, as an excess of the second OPSI initiated by President B.J. Habibie;

- That the incident at Manuel Viegas Carascalao's house has been caused among others by:

- Carascalao was a Landlord of coffee plantation in East Timor who had robbed people's lands to make coffee plantations, supported by the colonial government and made people suffered;

- Carrascalao clan had been a Landlord since the colonial era and continued during the civil war, as an UDT Commander owned weapons, led a coup to take over Fretilin authority, so that the coup led by Carascalao started the civil war and was an architect of the humankind disaster in East Timor until now;

- When defeated by the Fretilin, Carascalao who had initiated to establish Barisan Partisan, as the beginning of the Integration had all parties/members of non Fretilin parties, the Carascalao brothers became the iron hand of ABRI under Gen. Murdani authority, fought over civil rights in the Integration, so that the Carascalao brothers did not recognize political morality, had caused many integration fighters hated ABRI and were frustrated;

- Manuel Viegas Carascalao's house had been used as CNRT Headquarters and a shelter to accommodate communities who were picked up from the regions;

Due to the reasons the Defendant and the Aitarak cannot be considered as a party who should take responsibility of the attack on Carascalao's house, since no one exactly knew who the Carascalao's enemies were, no one knew about who planned the attack on Manuel Viegas Carascalao's house;

- That the Defendant had rejected the charge of the Prosecuting Attorney which claims that the Defendant has legally and convincingly been proven for committing criminal deeds as charged in the indictment letter, and that the Defendant should be sentenced with 10 years in prison, which means that the Defendant should be punished for the action committed by other people whom the Defendant does not know, which based on public opinion is positioned as a leader of an organization without any clear structure and chain of command;

- That the Defendant had explicitly rejected the incident of attack on Manuel Viegas Carascalao's house had any connection to the Rally in front of the Governor office on April 17, 1999, because the Defendant had never delivered a speech which threatened particular people and mentioned Carascalao's name, resulted in provoking the masses which then attacked Manuel Viegas Carascalao's house;

- That the Defendant had rejected most of the facts mentioned as bases for the Prosecuting Attorney to write his indictment, since it is obvious the facts are not relevant to evidences of the witnesses' testimonies given under oath because obviously not relevant to the evidences, the witnesses' testimonies given under oath before the court, the Defendant's statement, evidences of letters and material evidences as the fact of law uncovered in the court, even in his deliberation the Ad Hoc Prosecuting Attorney has made a wrong and exaggerated interpretation;

- That besides that, in his Pledoi, the Defendant has discussed judicially in the form of judicial analysis on elements of the Articles charged on him, especially Article 42 paragraph (1) a and b, and Elements of Article 42 paragraph 2 Law No 26/2000 on the Human Rights Court consisting of the Matter of the Command Responsibility:

- A matter of a person who effectively acted as a civil superordinate;

- A matter of a subordinate who according to the Law commits a crime;

- A matter of knowing or based on a certain situation should have known that troops under his effective control are committing or have just committed a crime against humanity in the form of murder;

- That the matter on command responsibility cannot be met linked to the Defendant as an Aitarak Commandant and Deputy Commander of PPI, because the existence of PPI and Aitarak were not the Government's extension nor the state's apparatuses like the Police or TNI or KNPI or AMPI, and during the incident, the situation in Dili city was under the status of civil order, in which the responsibility of Kamtibnas (national security and order) and upholding law belong to absolute control of apparatuses possessing rights under the Indonesian Law;

- That the matter on a person who effectively acted as a civil superordinate cannot be met, since the assignment of the Defendant as an Aitarak Commandant and as Deputy Commander of PPI had not been based on an assignment or decision based on the Law or Authentic Certificate justified by Law, so that the rank was only a name and label, therefore is unqualified as a civil superordinate;

- That the matter on a subordinate who, according to the Law, committed a crime, cannot be met, since the Aitarak or PPI as a political umbrella had never recruited its members, therefore followers and symphatizers from the community cannot be categorized as subordinates;

- That the Defendant did not witness the clash at Manuel Viegas Carascalao's house, did not know whether the perpetrators were Liquisa or BMP natives, therefore the Defendant cannot be qualified as a person who knows or has a reason to know, so that a matter on someone who

knows or based on a certain situation should have known that the troops under his effective control are committing a violation against humanity cannot be met;

Considering, that based on the complete Pledoi, as described in the Pledoi titled *salahkah saya membela merah putih* (am I wrong to defend the red and white), the Defendant has rejected the indictment as well as the charge of the Ad Hoc Prosecuting Attorney;

Considering, that towards the Pledois of the Defendant's Lawyer Team, the Ad Hoc Prosecuting Attorney delivered a Replik as follow:

- That the Replik of the Ad Hoc Prosecuting Attorney in principle has re-emphasized that the Prosecuting Attorney remains with his charges and rejects the Pledoi presented by the Defendant and the Defendant's Lawyer Team;

1. That typing mistakes (error in World Writing [sic!]) shall not be used as a principle to cancel the indictment letter, following the Jurisprudential in criminal lawsuits as mentioned in Arrest Hoge Raad:

- HR on April 7, 1999 N.J. 1919, No. 525, HR. April 20, 1936 N.J. 1936 No. 777, HR. February 29, 1944 N.J. 1944 No. 290, HR. December 14, 1942 N.J. 1942 No. 208, HR March 2, 1948 N.J. No. 171.

The Arrest Hoge Raad has been followed and acknowledged in practices, as has been implemented in a criminal charge at the Central Jakarta Court against Fredirch Yunadi, who has been ruled in the Court of Appeal.

Besides that, the fact shows that such little mistakes do not affect the defense of the Defendant;

2. The criminal incident at Manuel Viegas Carascalao's house mentioned by the Defendant's Lawyer Team as a provoke act retaliation (sic!) is not correct, since the fact is an attack against civil population (sic!), therefore it is inappropriate to use a principle of Provoked Act retaliation:

3. That on the incoherence between the dossier and the indictment letter cannot be used as a reason to cancel the indictment letter, since there is no stipulation which requires the Prosecutor to take over the articles charged by the Investigator, because according to Domisilistis Principle, the Prosecutor has the rights to decide which articles to be charged on the Defendant, as long as it does not bring any cost to the Defendant's interest, however in this case, the articles relevant the Defendant's deeds mentioned in the dossier, moreover which have actually been used as the basis for examination before the court are the indictment letter not charges mentioned in the dossier (Vide Supreme Court Justice's Decision No.47k/Kr/1956 dated March 28, 1957);

Considering, that towards the Replik of the Prosecuting Attorney, the Defendant's Lawyer Team delivered a Duplik, whose main points are as follow:

The Duplik of the Defendant's Lawyer Team:

- That the Defendant did not deliver a Duplik, but entrusted it on the Duplik delivered by the Defendant's Lawyer Team, who has rejected all arguments in Replik delivered by the Ad Hoc Prosecuting Attorney;

- That the Arresten Hoge Raad and the Jurisprudence delivered by the Prosecuting Attorney to declare the error in word writing (sic!) cannot be considered as a principle to cancel the indictment letter, in formal judicial sense has no legal binding and forcing power, unlike the Constitution, or Government Regulations as the Laws that the DPR and Government have drafted;

- That the ciminal incident at Manuel Viegas Carascalao's house cannot be categorized as an attack against civil population (sic!), according to the Lawyer Team, the incident has purely been a provoked act retaliation (sic!), based on evidences:

- During the transitional Government, President B.J. Habibie had deliberately prevented the Parliament or DPR to discuss the OPSI for East Timor independence, the evidence of it that the New Agreement or May 5, 1999 New York Agreement has been called an agreement, the aim is clear to make the DPR RI could not claim their rights to be involved in giving or not giving an approval;

- That the B.J. Habibie Government had practiced an act of seemingly International Conspiracy, that resulted in Indonesian security apparatuses only assigned to secure the popular consultation/ballot in East Timor territory which was at that time still under Indonesian sovereignty:

- Such act of the transitional Government of President B.J. Habibie that smelled of International Conspiracy at the same time could cause the Pro Integration group being provoked, as these events occurred:

- The recruitment of Unamet Local Staff was not neutral;

- There was a claim to replace the Unamet with another more independent and neutral institution;

- Unamet was suspected to be at the side of independence group;

- Unamet was not neutral in processing the recruitment of Staff Committee of the popular consultation/ballot;

- There was a critique from PBNU on Australia who always defended the Unamet which had obviously been never neutral;

- The ignorance of Cover Bothside journalistic principle, or balance of news, resulted in Indonesia having international bad image;

- That during the referendum, these incidents have been found:

- Monitoring Team of the Rectors found 34 infringements during the popular consultation/ballot implementation, in the form of making efforts that East Timorese chose only one choice that was a choice of independence;

- Unamet distributed pamphlets of rejection to the choice of autonomy for East Timor;
- The Unamet staff from Japan and Australia forced 5 voters to choose for Pro Independence, and 23% of the voters were forced by 4 Unamet local staff to support Pro Independence;
- The schedule of popular consultation/ballot implementation was secretly changed from 6 o'clock to 9 o'clock;
- The counting of ballots was conducted only by the staff of International Organization for Immigration, and observers from Indonesia were not allowed to see closely, the counting of ballots was performed within a distance of 15 meters from the crowds and reporters;
- The photographers were not allowed to take any pictures, included using telephoto;
- During the separation of ballot boxes, the observers were not allowed to stand up and were seated only 3 meters behind the organizers;
- An Unamet staff from Spain named Lisa had been caught red-handed at a ballot booth (TPS) persuading the referendum voters to choose Pro Independence OPSI;
- An Unamet staff from Brasil was protested by Ambeno people because influencing them not to vote for autonomy;
- At Kepala Pramuka TPS, the voting had been conducted by Unamet without the presence of observation's witness, at Pantai Kepala 14 TPS observers were not present, also at Negeri 3 TPS observers were not present;
- The Unamet had special treatment on or had prioritized Pro Independence main figures;
- In Lautan Regency, the Unamet Staff had persuaded people to choose Pro Independence OPSI, by giving a reason that the New York Agreement on May 5, 1999 has no longer valid;
- The Australian and New Zealand reporters who had interviewed the voters had been deported on the reason of provoking the voters;
- The obvious frauds had been committed by Unamet staff;
- There was a dissapointment because the assignment of Unamet staff had been monopolized by Pro Independence group;
- That the attitude of the transitional Government of the President B.J. Habibie on Pro Integration group had been:
- Never giving responses when the Indonesian Government was pressured to strongly protest the frauds committed by Unamet;
- The release of Xanana Gusmao was a strategic effort for winning the Pro Independence group;

- There had been no statement of support for pro Integration fighters in President Habibie's speech one day before the implementation of popular consultation/ballot;
- The President B.J. Habibie's speech which accepted Pro Independence victory hurt the Pro Integration group, because the President did not care about the East Timorese who in fact bore the costs of many frauds that happened;
- The second OPSI on the independence had invited international conspiracy which deliberately or not had been enticed by President B.J. Habibie's Government, and regretted the second OPSI on the independence before the first OPSI on autonomy had not been finalized or had just been discussed;
- The Australian Prime Minister had been successful to influence B.J. Habibie to issue the second APSI (sic!) on the Independence of East Timor by furthering an issue on independence;
- The Big Rally event on April 1999 held at East Timor Governor courtyard was initiated by Dili Local Government, represented by the Dili Regent, Dominggus Soares, after the Rally was over the masses dismissed, as BMP faction led by its Commandant, the clash with the Pro Independence group at Manuel Viegas Carascalao's house in which resulted in 11 people dead, was the responsibility of the Local Government, who had invited the participants so that they were provoked by the Big Rally event organized by the Dili Local Government;
- Pointing out the Defendant Eurico Gutteres as a Defendant in the case of Human Rights violation in East Timor was a mistake of the East Timor KPP HAM (Human Rights Fact Finding Commission), therefore the Defendant's Lawyer Team will file criminal and civil lawsuits against the KPP HAM;
- The Prosecuting Attorney did not give any response to judicial analysis of the Defendant's Lawyer Team, it is similiar to accepting the fact delivered by the Defendant's Lawyer Team;
- The Defendant's Lawyer Team rejected the evidence materials, namely, the letters, presented by the Prosecuting Attorney before the court, because the letters are categorized as the State Intelligence data and are not considered as a legal evidence as ruled by KUHAP;
- Regarding the evidences of firearms and homemade weapons presented before the court have been rejected by the Defendant's Lawyer Team, due to a reason that the Prosecuting Attorney cannot prove that Eurico Gutteres has used the materials, moreover, the Defendant was not at the location when the incident took place;
- On the unconformity between the Dossier and the indictment letter, the Defendant's Lawyer Team insists that it still can be used as a reason to cancel the indictment letter, since the Dossier is a fixed reference which has systematicaly been compiled by Public Prosecutor Office as a guidance in order for the Prosecuting Attorney not wildly (secara liar) targeting the Defendant with Articles the Prosecutor chooses by himself, if this is allowed, the Public Prosecutor Office can no longer control its Prosecuting Attorney;

Considering, that regarding the Pledoi of the Defendant's Lawyer Team, the Pledoi of the Defendant, the Duplik, Replik of each side will be deliberated after the Panel of Judges deliberates the elements in the Prosecuting Attorney's charges.

Considering, that the Prosecuting Attorney has charged the Defendant for crime as ruled in Law No.26/2000 as follow:

ONE : article 7 b jis article 9 a, article 42, paragraph (2) a and b and article 37 Law No.26/2000 On Human Rights Court

TWO : article 7 b jis article 9 a, article 42, paragraph (2) a and b and article 40 Law No.26/2000 On Human Rights Court.

Considering, that as has been considered earlier, in deliberating on the Grave Human Rights violation such as this case, the Panel of Judges will also refer to the Principles of International Law, therefore before examining the Ad Hoc Prosecuting Attorney's indictment letter, the Significance of the International Law Principles on Grave Human Rights violation case in East Timor shall be considered;

On the Significance of the International Law Principles on the Case of Grave Human Rights Violation in East Timor

Considering, that genocide and crime against humanity based on Law No.26/2000 is included in the Jurisdiction of the Ad Hoc Human Rights Court, is categorized as Grave Human Rights violation, while the Roma Statuta categorizes it as the most serious crimes. Since the result of this crime has been shocking conscience of mankind, then, the international community has declared it as an enemy of all mankind (*hostis humanis generis*) which requires all countries to fight it.

Considering, that based on the principle of state's responsibility on Grave Human Rights violation, according to the international law, the state is responsible to bring the perpetrator of Grave Human Rights violation to the court and sentence them, and to give compensation to the victim. The sentence on the perpetrator is considered as a responsibility towards all mankind (*erga omnes obligation*), while the compensation paid to the victims is the responsibility of the State, mainly for the victim's benefit. As one of the functions of criminal charge on a perpetrator of the crime, which is a function of prevention (*deterrent rationale*), the absence of a punishment on a perpetrator of the crime will become a virtual licence for the perpetrator or for other individuals to commit the same action in the future;

Considering, that the punishment on a perpetrator of the violation against humanity should absolutly be implemented, so through various instruments of international law, court judgments, or through developed doctrines of international law, the international community has included the international crime within the universal jurisdiction in which each perpetrator can be brought to trial anywhere and anytime regardless the *locus* and *tempus delicti*, and regardless the perpetrator's and the victim's citizenship. It means to show that there are no safe places in the world for a perpetrator of this crime (*no safe haven principle*);

Considering, that the punishment on a perpetrator of crime against humanity, as has been charged in this case, similar to the perpetrator of war crime and genocide has been a common and legally binding practice of international law for all countries, regardless whether the concerned country has ratified or has already adopted the relevant law instruments;

Considering, that in the practice of international law which puts on trial the perpetrator of war crime, crime against humanity and genocide, the instruments of international law is applied

such as conventions on humanitarian and human rights, Statutes and Decisions of Ad Hoc Criminal Court, general Principles of Law and Doctrins, all of them has been accepted by International community;

Considering, that the situation in East Timor, before and after the popular consultation/ballot was full of armed conflicts between parties which structure of disputed parties has fulfilled the requirement in 1949 Geneva Convention, therefore it can be said that the internal armed conflict has took place in East Timor, so that the war crime stipulation ruled in the Geneva Convention's Common article 3 can be applied, moreover, Indonesia has ratified the Geneva Convention through Law No. 59/1958;

Considering, that the Prosecuting Attorney has charged the Defendant for committing a crime as stated in Law No. 26/2000 as follow:

ONE : article 7 b jis article 9 a, article 42, paragraph (2) a and b and article 37 Law No.26/2000 On Human Rights Court

TWO : article 7 b jis article 9 a, article 42, paragraph (2) a and b and article 40 Law No.26/2000 On Human Rights Court.

Considering, that Law No.26/2000 has adopted the Roma Statuta in its elaboration:

Considering, that the Panel of Judges has referred to the Indictment Letter of the Ad Hoc Prosecuting Attorney;

Considering, that the Prosecuting Attorney has charged the Defendant for committing crimes against humanity in the place and time in Dili City as an Administrative and the Capital City of East Timor Province on April 17, 1999;

Considering, that seen from its Form, the Indictment Letter of the Ad Hoc Prosecuting Attorney has been compiled Accumulatively, therefore, either the First Indictment or the Second Indictment must be proven, therefore the Panel of Judges will deliberate on both indictments;

Considering, that therefore the Panel of Judges will first deliberate on the First Indictment;

Considering, that in the First Indictment the Defendant has been charged for committing crime and has violated: article 7 b jis article 9 a, article 42, paragraph (2) a and b and article 37 Law No.26/2000 On Human Rights Court, as follow:

- Article 7 b:

"A crime against humanity as intended in article 7 b is that an action committed as a part of widespread or systematic attack in which is known that the attack is directed towards the Civilians".

- Article 42 paragraph (2) a and b:

"A superordinate, either the police or other civilians are criminally responsible for a Grave Human Rights violation committed by his subordinates under his effective authority and

control, because the superordinate does not take any proper and correct control upon his subordinates:

- a. the superordinate knows or deliberately ignores the information which obviously shows that his subordinates are committing or has just committed a Grave Human Rights violation, and
- b. the superordinate does not take any proper and necessary actions under his authority to prevent or to quell the acts or to hand over the perpetrator to the responsible officials for investigation, question and prosecution"

- Article 37:

"Any person who committed the acts as stated in article 9 a, b, d, e, or j shall be sentenced to death, or imprisoned as long as 25 years and at least 10 years".

Considering, therefore according to the Panel of Judges, the elements of the First Indictment are as follow:

1. A civil superordinate has a capability to take a criminal responsibility
2. Has subordinates, has authority to conduct an effective control, does not take any proper and corect control on his subordinates
3. Knows or deliberately ignores the information
4. Does not take any proper and necessary action in his authority, prevent, quell the action, hand over to the reponsible officials for investigation, question, and prosecution;
5. The subordinate is committing or has just committed a Grave Human Rights violation
6. Crimes against humanity, in the form of widespread and systematic attack, is known that the attack is directed towards civilians in the form of killings;

Considering, that all of those elements will be elaborated by the Panel of Judges and will be examined based on following considerations:

Ad. 1. On the Matter of A Civil Superordinate Has a Capability to Take a Criminal Responsibility

Considering, that based on a principle of individual responsibility on a Grave Human Rights violation, then, all individuals regardless his/her status and occupation who has committed crimes against humanity and violated the law and war convention should be criminally responsible so that can be prosecuted by the court;

Considering, that the principles of individual responsibility has been sustained by various statutas and international practices on Nuremberg and Tokyo Courts has ignored several principles of general law:

- an official cannot be sentenced as an individual due to his/her policy;

- an official cannot be sentenced as an individual due to his/her act performed in his/her capacity as a State's official;

- that someone cannot be prosecuted for committing crimes according to the ruling stipulated as a crime after it has been committed;

Considering, based on a Doctrine of the above International Court Practice which declares that no one is allowed to depend only on the national Law, because law and justice is for the sake of the individual more than the existency of his/her State. Therefore, it is declared as well that each individual shall obey international obligation more than obligation toward his/her national law;

Considering, that from the above Statuta and court judgment also developed law principles which declare:

- A perpetrator of a crime against humanity and of a war crime cannot argue that he has conducted the crime for the sake of his/her country or has been ordered by his/her Country;

- A formal occupation of the perpetrator either as a President of a Country or as an official responsible for Government institution, cannot become a reason to free the individual from his/her responsibility;

- An order from a superordinate cannot be taken as a reason to free a perpetrator from any prosecution and punishment;

Considering, that practices at the International Ad Hoc Criminal Court for Yugoslavia and Rwanda (ICTY and ICTR) and many instruments of international law have extended the above principles by elaborating the parameters of an Individual's responsibility, as follow:

- an individual responsibility can be asked from someone who has planned, provoked, ordered, committed or helped or conspired in making a plan, preparation or executing a war crime and crime against humanity;

- a formal occupation (official position) of someone as a President of a Country, or as a Government Official who takes responsibility, does not acquit his/her from his/her responsibility for a crime or does not remedy his/her sentence;

- a crime against humanity committed by his/her subordinates does not release the leader or the superordinate from criminal responsibility, if he/she knows or with his/her logical thinking he/she has known that his/her subordinates is going to commit a crime and the superordinate or the leader has failed to take any necessary and rational action to prevent or has failed to punish the perpetrator; and

- a reason of superordinate's order will not release from a criminal responsibility, but can be deliberated as a remedying fact;

Considering, that the doctrine of a superordinate's responsibility which later stipulated in article 42 paragraph (2) a, according to the international law is a part of individual crime responsibility, has been developed by the international community to prosecute the perpetrator of crimes against humanity after the World War II, which later has been cristalized

in the Roma Statuta, which meant as a means to ask for the responsibility of a military or non military supervisor for crime committed by his/her subordinates or staff since they have failed to prevent or control their subordinates;

Considering, that the limitations argued by Hugo Grotius on the matter of the responsibility of the supervisor shall meet three conditions, as follow:

1. the person shall have an authority to control the subordinates' actions, a simple example: a relationship between father and son, between an employer and his/her employee
2. there is a knowledge in which a person knows that a crime has been committed by his/her subordinates, but does not prevent the action.
3. there is a capability of the person to prevent a crime. It means that if someone has proven of not being capable or has failed to take any prevention, therefore he/she cannot be charged for supervisor's responsibility;

Considering, that the limitation of the responsibility of a superordinate has provided the basis for the stipulations about the responsibility of a superordinate in the Statute of International Criminal Tribunal for Former Yugoslavia (statuta ICTY), the Statute of International Criminal Tribunal for Rwanda (Statuta ICTR) and Rome Statute, which later adopted to Law No.26/2000 on Human Rights Court (article 42 paragraph 2 (a) and (b)).

Considering, that the implementation of this doctrine besides having been used in the prosecution of military superordinate's responsibility for his/her failure to act like in the cases of Yamashita, High Command, Hostages and Mayer, later, in further development, in the Tokyo Court it has been decided that the superordinate's responsibility also covers civilian (non military) superordinates. This matter shows an indication that in a certain circumstance can be used analogically a responsibility of a Military Commandant and a responsibility of a non military superordinate or civil official. The additional Law are Article 86 Addendum 1 on the Geneve Convention in 1949 and 1947, state that in a certain circumstance, all superordinates (all superiors) should take any responsibility for their failures to take any actions. Then Article 7 paragraph 3 ICTY Statuta also demonstrates not only on the military superordinates but also covers non military superordinate (kasus Celebici).

Considering, that Prof. Muladi, in his paper titled *Kejahatan Terhadap Kemanusiaan (Crime against Humanity)* delivered during the Training for Ad Hoc Human Rights Judges on November 7, 2001, among others said that in Rome Statuta, article 7.... etc (sic!), from the word of organizational policy, it can be concluded that ca rime against humanity in a certain curcumstance, can be committed by a perpetrator who is non-State actors, so it not necessary to have a military character or a state official;

Considering, that in his paper on a *Pertanggungjawaban Komando (Command Responsibility)*, among others said that the Position of responsibility can also be linked to civilian authorities, at the Rwanda Tribunal (ICTR), a factory director has been prosecuted and sentenced because he did not interfere and did not prevent the genocide committed by his subordinates after office hours;

Considering, that according to the Panel of Judges, since genocide is also a grave human rights violation, then, in this case of a crime against humanity, a position of civilian authorities can be applied;

Considering, that the command responsibility is not only applied towards formal commander, but also towards people who have Informal positions, in a circumstance of he/she can use his authority as a Commandant that can happen in a civil war;

Considering, that a civilian who is put on trial as a perpetrator of a Crime against Humanity, and who is responsible for a crime committed by someone else, is found in the Tadic case, he is an owner of a tavern and works as a part time traffic controller, and become a local politician and who has influence in his hometown, and has been brought to the International Court in Hague as a Defendant for committing grave human rights violation.

Considering, that from the above explanation, in fact, in the international court practices against the crimes against Humanity, as well as against the genocide, a perpetrator of Grave Human Rights violation can be applied to and asked responsibility from a civilian, in his/her position as a leader in formal Government or non Government position, moreover a non formal leader can be perceived as a Law subject/as a perpetrator and can be asked for his/her responsibility for committing Grave Human Rights violation or for crime committed by someone else;

Considering, that the Defendant has been brought to the trial on Grave Human Rights Violation in his position as a former Deputy Commander of PPI and/or also an Aitarak Commandant, in other words he has been positioned as a Defendant in his position as a superordinate/leader of an organization;

Considering, that in a simple explanation, an organization is a unit of duties and officers who are working together to achieve a certain goal;

Considering, that in terms of the system of organizational Procedure, an organization can be identified in 3 (three) forms:

1. informal organization, known as entrepreneurial mode (sic!), the design of this organization is commonly used in a new Organization. In a common practice of this kind of organization, someone with the highest rank of position is the one who decides the certain aspect of the organization which he/she thinks has a strategic value for the continuity of the organization to reach the goal from several strategies that have been applied.
2. an adaptive organization, commonly used in a middle-size organization, and works in a stable environment;
3. a design known by a multi level strategic planning mode, this kind of organization requires the involvement of various units, used by big organizations, with extensive hierarchy, large amount of members, and large geographic operational territory.

However, an organization can consist of combination of the 3 forms;

Considering, that according to the Defendant's statement and the witnesses' testimonies, the PPI was a new name or a new face of barisan partisan, an organization of armed civilians which fought Fretilin, which faced the situation and development of security, in 1999 the Deputy Commander of Barisan Partisan, Joao Da Silva Tavares had initiated the Barisan

Partisan based on 3 main ideas, as a political umbrella for self protecting and self defends, as a media for general mass mobilization to defend and maintain the Integration, as an organization for controlling the re-emergence of spirit of struggle which had sporadically occurred everywhere, from the second main idea, it was decided to establish an umbrella of Pasukan Pejuang Pro Integrasi/PPI (Pro Integration Force) to continue the struggle for Integration through mass mobilization, particularly to face the popular consultation/ballot, so that the one who had initiated Joao Da Silva Tavares became the Commander, while the defendant as the Youth Figure became the Deputy Commander;

Considering, that seen from the basic idea and the founders and that this organization was established to face the popular consultation/ballot in 1999, then this organization called PPI was relatively new, even though it had no clear structure, but it can be said as an Informal organization, and as PPI Deputy Commander, the Defendant occupied as a Leader in the organization.

Considering, that as mentioned by the witnesses and the Defendant, it has been proven that the PPI supervised Informal organizations consisted of several Pro Integration groups among others were Aitarak, BMP, Halilintar, Alpha, Mahidi, Mahadomi, Saka Sera, Laksaur, etc, which has its own authority and task in each territory;

Considering, that besides as a Deputy Commander of PPI, the Defendant Eurico Guterres, based on the witnesses' and the defendant's statements, also occupied a position as Aitarak troops Commandant, who had members throughout Dili and villages around Dili;

Considering, that therefore the Defendant has been proven that he, who occupies the position as a Deputy Commander of PPI and Aitarak Commandant, meets the matter on a leader, or a superordinate who has subordinates or members;

Considering, that PPI was also a military wing of FPDK and BRRT, groups of community who politically struggle for Integration of East Timor to Indonesia, therefore the defendant is also a military wing leader from Pro Integration group;

Considering, that as a leader of PPI in his position as a Deputy Commander of PPI, has been proven that his authority applies inside and beyond his organization;

Considering, that this fact as said by witness Drs. Basilio Araujo, as well witness Abilio Osario Soares and whose testimonies verified by the Defendant, that the Defendant as the Deputy Commander of PPI, was acknowledged for his leadership as a leader of military wing of Pro Integration group by international bodies (UN), and several times represented the PPI and/or Pro Integration groups to arrange meeting or ceasefire with Anti Integration's military group initiated by the UN before and shortly before the implementation of popular consultation/ballot;

- On behalf of the fighter group of the Pro Integration group requests the UNAMET to postpone the popular consultation/ballot

Considering, that in the organization, the Defendant as the PPI Deputy Commander, and therefore becomes a PPI leadership, has authority to control his subordinates, and has important influence in his organization led by him, such as:

- To appoint and attend the assignment and inauguration of Besi Merah Putih group, which was attended by thousands of masses from Liquisa Maubara, when the Defendant installed the BMP Commandant and members

- The willingness of the Defendant to install and inaugurate the BMP can be used as a measure that the Defendant's position has a big influence to determine the assignment of Pro Integration Commandants in regions, of course in order to work together with the PPI leader, who is the Defendant, also has a rights to order, warn or discipline the subordinates he has installed;

- The Defendant's statement as the PPI Deputy Commander, that was considered as an instruction that should be obeyed by his subordinates, such as the Defendant's statement that all political elites should not leave Dili before, shortly before and after the popular consultation/ballot, was considered by his subordinates, the Pro Integration groups in regions as an instruction or an order, so that anyone who wanted to get out off Dili should get a Pass or a travel letter signed by the Defendant as a PPI Deputy Commander, so that every day the Defendant signed thousands of travel letter to help people getting out of Dili safely. Moreover according to witness Abilio Soares (former East Timor Governor) the Governor family who wanted to get out of Dili to Kupang just managed to go out of Dili after getting a Pass or a letter from the Defendant as the PPI Deputy Commander, a statement that has been verified by the Defendant;

Considering, that therefore it has been proven that the Defendant's statement as a PPI Deputy Commander, has been considered as an Instruction, order obeyed by his subordinates, so that the Defendant's instruction has gone beyond the Pro Integration groups' authority in throughout East Timor territory, applied towards a family of a high rank officer like Governor Abilio Osario Soares, as well as towards people who want to go out of Dili; If a statement can change to become the instruction which is obeyed, then cannot be imagined how big the Defendant's authority as a Leader, that is the Deputy Commander of PPI authority.

Considering, that other evidences that show how big the Defendant's Influence is in his position as the PPI Deputy Commander, that during the Big Rally at the Governor courtyard on April 17, 1999, according to the witness Joao Da Silva Tavares, it was the Defendant who asked him to be the Irup and deliver a speech in the event, the request delivered several days before the event commenced, so that the Rally which was supposed to be a Pam Swakarsa inauguration, became a PPI Rally as explained by witness Abilio Soares, and the one who became the Irup was Tavares as requested by the Defendant;

Other person who delivered a speech on that day, besides Tavares, was the Defendant as the Deputy Commander who in fact got responses from thousands of masses, it is uncommon if in a formal event both the Commander and Deputy Commander deliver speeches, this fact has proven that the Defendant has a big influence towards his subordinates in the organization led by him;

Also there were requests to the Defendant from apparatuses or other parties to settle conflicts among groups has shown the Defendant's big Influence in his organization;

Considering, that therefore the Defendant in his position as the PPI Deputy Commander has been proven for having authority beyond and inside his organization, so that de facto and de jure, even though the PPI is an Informal organization, has no full Structure, but has leadership element among others the Defendant as a Deputy Commander, a Commander, and

subordinates who obey the Defendant's instruction and Order, because the Defendant's big influence on them;

Considering, that as an Aitarak Commandant, it has been proven that according to the Defendant's statement confirmed by witnesses that he has members or subordinates throughout the villages in Dili regions and city, the Defendant owned 160 fully armed troops in Dili City, equipped with home-made pistols, rifles, mousers, SKS, G.3 firearms, machetes, spears, the Defendant himself had a G.3 weapon, as well as thousand members in the Villages who owned home-made weapons, spears, machetes, who could be utilized anytime.

Considering, that the Defendant has an effective Control upon his subordinates, because he has a good relationship with the Head of the Villages, the Head of the Villages were appointed by the Defendant as the Head of Aitarak in their villages, so that the order, instruction were executed through the Head of Villages and his subordinates were able to be controlled, through the appointment of the Head of Villages as the Heads of Aitarak in the villages was used by the Defendant for communication network or reporting system, so as admitted by the Defendant he was able to know immediately the situation in the villages through the communication network of the Heads of Villages, so was able to act immediately if an incident occurred. The Defendant's instruction, order were obeyed by his members.

Considering, that from thousands of his members, and Heads of Aitarak, there was only one Head of Aitarak, who was the Head of Aitarak in Ainaro Village who was difficult to be controlled, the Defendant had warned the Head of Village and who was also the Head of Aitarak for carrying M 16 weapon, a TNI standard weapon.

Considering, that a leader's or commandant's or superordinate's warning on his subordinates, such as the defendant's action on his subordinates, is a matter of organizational measure, even though it is a small scale or has as small impact, the importance of this fact is that there is a mechanism of authority to take action owned and possessed by the Defendant as a superordinate or an Aitarak Commandant, due to his position he has an authority to take action;

Considering, that the Defendant had ever proposed 150 Aitarak members to become Pam Swakarsa members, and were paid Rp.150.000,- per month and 10 kg rice, while according to the witness Abilio Soares's testimony, witness Dominggus M. Doares Soares (former Governor and former Dili City Major), the proposal of the Pam Swakarsa members was done by the Head of Villages in the villages, on the district level etc, the budget for Pam Swakarsa provided by each region (APBD) approved by the Governor;

Considering, that the Defendant's order was also obeyed by members, such as an order to blockade several streets in Dili, guarded by Aitarak masses, was obeyed by his subordinates, which according to the Defendant to prevent the clash between groups, as affirmed by Sujarwo, the former Dili Kodim Commander, as he testified that several streets were controlled by anti and pro integration groups, one to pass the streets should take precaution, careless one could be shot, to pass certain streets, the witness was accompanied by troops or a truck of troops;

Considering, that the streets blockade as instructed by the Defendant to his subordinates and was obeyed by the Defendant's subordinates who were the Aitarak members, was basically an effective control to rule his territory, to show authority, group existence or authority on the

territory, or the streets that were controlled, besides that it has proven the Defendant's effective order, which was obeyed by his subordinates who were Aitarak group;

Considering, that the Defendant admitted he had been a leader since his elementary school, as a Chairman of OSIS (Student Organization) in his high school, as a Chairman of Student Senate in his university, therefore having a position as an organization leader has been familiar to him since his education, so that the Defendant's capability to organize his subordinates or organization was unquestionable. So that the understanding, awareness and recognizing of the importance of position and responsibility as a leader or a Superordinate has been understood by the Defendant;

Considering, that the awareness, understanding, recognizing of an action or deed done and the awareness on a result of an action or deed becomes a basis of crime responsibility for the action committed by him, included the responsibility as a superordinate;

Considering, that since the Defendant understands the meaning of the importance of being a superordinate or a leader, which is as a PPI leader, in his position as the Deputy Commander, as well as his position as an Aitarak Commandant, who has subordinates or members, has authority to effectively order and control the subordinates or members, as well as the authority to take measure on his subordinates, as it has been proven by the above arguments and the existence of PPI and Aitarak as informal organizations, so that the Defendant position is a civilian superordinate who has authority acknowledged de facto and de jure. Therefore a matter of civil superordinate who has capability to take criminal responsibility according to the Panel of Judges has been met.

Ad.2. On the Matter of having subordinates, having authority to conduct an effective control, on his subordinates properly and correctly

Considering, that on the second matter on the relation between superordinate and subordinate which has the power to conduct an effective control, does not conduct any proper and correct control on his subordinates, the Panel of Judges will make consideration on the matters as follow:

Considering, that in principle the relation between a superordinate and a subordinate is that de jure and de facto the superordinate has an authority to control his subordinate properly and correctly, the superordinate should have an authority to control his subordinate and be able to give order and guidance to his subordinate;

Considering, that the categorization of a superordinate covers political leaders, company directors, and senior civil officials (Celebici case), as well as in a military organization, a superordinate has levels of responsibility from one superordinate onto the lower ranks. Jean Claude Akayeshu, a City Major of (bourgmestre) who implemented an executive function and implemented public governance in the society, including the authority on politicians should take a criminal responsibility for action committed by his subordinates even though he was not a military member who had a responsibility as a Commandant but he was considered as having a legal mandate and was considered as a formal official, agen or a someone who had a public authority, or de facto represented the government to support violence committed by groups of Hutu tribes towards Tutsi tribes, this fact added by the requirement that he knew

that his subordinates conducted such action or was going to commit such action, while the superordinate failed to take any necessary and rational action to prevent it.

Considering, that Dusko Tadic, a Serbian nationalistic figure who was a non military, who was always wearing paramilitary uniform, and who was supporting Serbian militia, was often conducted propaganda to kill Muslim group (balijas) who later when he became a national leader was assigned a task to "clean" Moslem civilians. His ethnic brutality increased when he was assigned to manage Omarska concentration camp, even though he was not a military member. Tadic was not a person who had a command authority or had a capability to take a big role in an event, but he was a symbolic figure, who became a scapegoat of a Serbia-Bosnia communities. ICTY judges admitted that 20 years sentenced on him due to his brutality that violated 11 (eleven) violations against humanity, had become more as an individual criminal responsibility than a collective crime. His responsibility degree had been considered lower than military officers or the main designers of ethnic cleaning in the former Yugoslavia country. This case ignored the principle of "one witness is not a witness", because of the reluctancy of the witness victims to testify before the court because afraid of a revenge.

Considering, that the meaning of subordinate is a person who has a superordinate who directly guides his actions or related activities. In a big organization, someone also has a position both as a superordinate and as a subordinate.

Considering, that the meaning of an effective authority and control is if a superordinate has de jure and de facto authority to issue directive to his subordinate to execute a certain duty or related activity.

Considering, that as stipulated in Article 86 addendum I of the 1977 Convention, stating that a superordinate should make an effective reporting system to assure that in performing his task his subordinates should follow humanitarian rules of law, and if he knows that there has been a potential for violation or a violation that has just been conducted (actual), so he should take any actions to prevent or to deal with the violation. Therefore, a superordinate should take a responsibility for Grave Human Rights violation committed by his subordinate, if:

- the superordinate knows that one of his subordinates has or is going to commit a grave Human Rights violation; or
- the superordinate gets information that enables him to conclude that his subordinate has committed or is going to commit a grave Human Rights violation; and
- the superordinate does not take any action in his authority to prevent the occurrence of the grave Human Rights violation.

Considering, that from the analysis above, the Panel of Judges will deliberate on the defendant's position in relation to the discussion of ad 2.

Considering, that based on the defendant's and witnesses' statements, it has been proven that on April 17, 1999 an attack on Manuel Viegas Carascalao's house took place in Dili, East Timor, resulted in 11 (eleven) people dead and 3 (three) persons wounded, they were civilians who among others were refugees, and one of Manuel Viegas Carascalao's son, named Manelito;

Considering, that several survivors who are Alfredo Sanchez, Florendo de Jesus, Santago (sic) Dos Santos, Victor Dos Santos alias Apin, has recognized some of the perpetrators, according to the witnesses, they are members of Aitarak militia from Dili and Besi Merah group from Maubara Liquisa and has recognized their names, because among the witnesses, they are those coming from the same region with the perpetrators, which are from Dili and Maubara, Liquisa;

Considering, that according to the above witnesses the attackers were numerous, they were the militias participants of the rally at Dili Governor Office courtyard. The witnesses testimonies have been supported by testimonies of witnesses Ablio Soares, Jose Afat, Domingus M. Dores Soares, and Joao Da Silva Tavares, who has said that according to the information they receive, that the Pro Integration group participants of the Rally on April 17 at Governor Office courtyard have been the attackers on Manuel Carascalao's house;

Considering, that according to witness Manuel Carascalao and the above witness victims, they heard about the Rally at Governor Office courtyard on April 17, 1999 and heard from the radio about the speech of the Defendant Eurico Guterres delivered at the event.

Considering, that witness Joao Da Silva Tavares and the Defendant have admitted that at the Big Rally at Governor Office courtyard on April 17, 1999, had delivered speeches before thousands of PPI members, who were Pro Integration group masses, consisted of members of troops of Aitarak, Besi Merah Putih (BMP), Alpha, Maha Domi, Laksaur, Saka Sera, Ablai, Mahidi, and others who came from all regencies in East Timor. Besides that, according to the witnesses and facts uncovered before the court, most of the thousand of masses carried weapons, such as sticks, machetes, samurai, homemade rifles and pistols;

Considering, that according to Witness 5 Dr Baislio (sic!) Araujo MA, one of the witnesses who were at the location during the Big Rally, whose his testimony has been verified or at least has not been denied by the Defendant, testified under oath before the court that during or after the Defendant's speech, shouts and yells of "kill, kill" were heard from thousands of participants who greeted the defendant's speech, moreover according to the Defendant's statement, some participants responded by firing their guns and gunshots were heard from every corners of the crowd;

Considering, that therefore it has been proven that on April 17, 1999 at Dili Governor office courtyard, there was a concentration of thousands of Pro Integration masses and it has also been proven that the defendant's speech got responses from the concentration of thousands of masses with shouts of "kill, kill". This fact is a convincing evidence that the Defendant's speech had evoked emotion of the masses to kill;

Considering, that according to the Defendant that his spech was concerning the East Timorese's willingness to be integrated with Indonesia and accept the full autonomy which was responded by the masses with "kill, kill", according to the Panel of Judges, such shouting of the masses was pointed towards anti integration group or Pro Independence group. Therefore, it has been proven that the Defendant's speech had evoked emotion of the masses to kill Anti Integration or Pro Independence group;

Considering, that Manuel Carascalao was a CNRT figure who was anti integration who was accused by the Defendant before the court as a traitor of the country, his house was next to Aitarak headquarters led by the Defendant, and there were many refugees consisted of

children, women, youth took shelter at Manuel Carascalao's, because at their homes there were many intimidations, terrors, suppressions from pro integration group;

Considering, that even though the Defendant saw thousands of masses at Dili Governor office courtyard on April 17, 1999 carrying various weapons, such as sticks, machetes, homemade firearms, which the presences of the masses had worried the a de charge witness, Marcelino Martin Ximenes, so that he went home before the event was over, because worried that something might happen. The development of such situation of masses concentration was considered as a common matter by the Defendant, so that he did not take any action, in fact the defendant's speech had evoked emotion of the masses to kill, and the threat to kill was aimed directly towards anti integration group or Pro Independence group, and more obviously was showed by shotguns from every corner of the rows, which according to the rule were prohibited, moreover, the Aitarak headquarters in Tropikal Dili was next to Manuel Viegas Carascalao's house who was an Anti Integration figure or CNRT figure who was Pro Integration whereas many refugees came to take shelter at the house;

Considering, that according to the Panel of Judges, at that time, the Defendant as a superordinate or leader of PPI group or as Aitarak troops Commandant, who was very familiar with the situation and condition in Dili and generally in East Timor which was prone to clashes caused by however small misunderstanding between two groups which had different opinions which were the groups of pro and anti integration in facing a problematic situation, in one hand, emotion of the masses to kill pro independence group had occurred, on the other hand next to the Aitarak Headquarters there was a house belonged to an anti integration figure or pro independence group, Manuel Viegas Carascalao, which was occupied with hundreds of refugees consisted of children, youths, mothers which before the attack, according to Witness Manuel Carascalao their numbers were 136 people, and the situation at that time could not be considered as a usual situation;

Considering, that concentration of armed masses was a force, and it was true that evoking emotion to support Pro Integration movement was not prohibited by law and rules, but the action to evoke emotion to kill human being especially civilians, such as the refugees who took shelter at Carascalao's house, was in contradiction to the law, because civilian rights to live is a rights that should be protected and respected regardless the difference in religion, race and political ideology;

Considering, that in a problematic situation where there was a concentration of the masses having emotion to kill, and on the other hand there were many civilians who were refugees at Manuel Carascalao's house, the threat to the refugees was really a fact, as the leader of the group of masses, the Defendant should had taken a position after observing the development of situation of the masses to prevent any excess occurred as a result of his speech.

Considering, that since the evocation of masses emotions to kill anti integration group was considered as a normal matter in such a ceremony by the Defendant, the Defendant did not take any action to prevent obvious problem of threat from the ceremony participants to the refugees who took shelter at Manuel Carascalao's house where the house located not far from Aitarak headquarters, so that a group of the ceremony participants from Aitarak and Besi Merah Putih groups attacked the house resulted in 11 refugees were dead and 3 persons were wounded;

Considering, that the Panel of Judges is convinced that as described in the above facts that the group who attacked the refugees were some members of Aitarak and Besi Merah Putih whose emotion had arisen after hearing the defendant's speech, and committed their intention to kill anti integration group by attacking the refugees;

Considering, that since the attackers were the defendant's subordinates and the defendant as PPI leader which was the PPI Deputy Commander and Aitarak Commandant, had big influence on his subordinates and therefore could control his subordinate effectively, had a capability to prevent his subordinates' actions not to commit attack on Carascalao's house;

Considering, that the Defendant's capability to prevent his subordinates committing attack on the refugees at Carascalao's house, according to the Panel of Judges is equal or similar to his capability to evoke masses' emotion, since the defendant has a very big influence on pro integration group or his subordinates;

Considering, that since the defendant did not use his big influence or his big authority as a PPI Deputy Commander and as Aitarak Commandant and did not take any action towards emotion of the masses who wanted to kill, it means that the defendant has allowed the real threat from his subordinates to kill the refugees, therefore it can be considered that he has not conducted any effective proper and correct control towards his subordinates, although he is capable of doing it, therefore resulted in the attack on the refugees at Carascalao's house committed by some of Aitarak and Besi Merah Putih participants of the rally at Dili Governor office courtyard on April 17, 1999, which resulted in dead and wounded civilians;

Considering, that since there has been mistake of the defendant in which members of Aitarak and BMP members group had attacked Carascalao's house as a result of the defendant did not control his subordinates properly and correctly, while the defendant had a capability as a deputy commander dan Aitarak Commandant to prevent his subordinates' actions, then, the crime of the defendant's subordinates can be asked for the defendant's responsibility as a superordinate or PPI leader;

Considering, that based on the above considerations, according to the Panel of Judges the second item of the First Indictment of Ad Hoc Prosecuting Attorney has been met and related to the Law.

Ad.3. On the Matter of Knowing or Deliberately Ignoring the Information

Considering, that the meaning of "knowing" or "deliberately ignoring the information", consists of elements: there is an actual knowledge, known from direct evidence or based on the condition at that time, he/she should have known. The standard of "should have known" is different between a military superordinate and a non-military superordinate. For a non-military superordinate (civil) it should be proven that:

- the information obviously shows a significant risk that they are committing or are going to committ Grave Human Rights violation;
- the information is obtained by a superordinate; and
- the superordinate knows about the information, but has failed to determine the category of the information

Considering, that as considered by the Panel of Judges, after the defendant delivered a speech at the Governor Office courtyard in Dili East Timor, on April 17, 1999 before thousands of armed masses, had evoked masses' emotions to kill, this matter was a real threat for anti integration or pro independence group because the threat was aimed directly towards them including the refugees who stayed at Manuel Carascalao's house where the house was near the Aitarak headquarters or near some of participants of the pro integration ceremony.

Considering, that there had been a change of emotion and behaviour among participants of the big ceremony after hearing the Defendant's speech by yelling 'kill, kill', accompanied by the shooting of homemade firearms, some of the participants had become more aggressive to kill pro independence group, which matters should have been known by the Defendant.

Considering, that suppose the Defendant, in his position as PPI Deputy Commander and Aitarak Commandant, had used his maximum power to prevent the violence by taking real and logical steps, the attack on Manuel Carascalao's house might not happened or at least would reduce the victims and the damages.

Considering, that Panel of Judges thinks that the Defendant has deliberately ignored the direct information he got which was the escalation of aggressivity among the ceremony participants masses to attack the pro independence group, particularly the refugees who took shelter at Manuel Carascalao's house.

Considering, that the third item which is the matter of knowing or deliberately ignoring the information has been met, therefore it has been proven according to the law.

Ad.4. On the matter of does not take any proper and necessary action in his authority, prevent, quell the action, hand over to the responsible officials for investigation, question, and prosecution;

Considering, that on this matter, the Panel of Judges considered the following:

Considering, that all superordinates have duty to take practical actions which assure that his subordinates follow the rules in conducting their job;

Considering, that the Defendant as a PPI leader and Aitarak Commandant did not conduct any proper and correct action on Aitarak members and BMP members who had attacked Manuel Carascalao's house after the Big Rally on April 17, as testified by victim witnesses Alfredo Sanchez, Victor dos Santos alias Apin, Santiago Dos Santos and Florendo de Jesus, who were living witnesses who had recognized most of attackers at Manuel Carascalao's house.

Moreover, knew most of the attackers because the attackers came from the same region with the witnesses who according to them most of them were TNI and KAMRA personnels, other attackers were known to the witnesses as Aitarak members from Dili and BMP members from Maubara Liquisa.

Considering, that according to the witnesses, the attackers among others were Aitarak and BMP militias who came into the house by bumping against the front door, then shot the door, after that surrounded the house and entered the house, attacking the refugees inside the house by hacking, slashing with machetes and samurai, shot with home-made firearms. Some of the refugees were able to escape and some of them were trapped inside the house, the attack resulted in 11 refugees dead and 3 people wounded;

Considering, that the victims of the attack are refugees, unarmed civilians consisted of children, mothers, and grown ups, so that it upsets human conscience, while the Defendant has not conducted any action to arrest the attackers who in fact are his subordinates from Aitarak and BMP groups established and appointed by the defendant, and the perpetrators are known to the witness victims.

Considering, that at least allowing Aitarak and Besi Merah Putih members, whose emotion has arisen to kill anti integration group and implemented in the form of attack on Manuel Carascalao's house, while the Defendant has a capability to control and prevent his subordinates;

Considering, that based on the above considerations, according to the Judge Panel, the fourth item of the Ad Hoc Prosecuting Attorney's Indictment has been met because it has been proven according to the law;

Ad. 5. On the matter of the subordinates is committing or has just committed a Grave Human Rights violation

Ad. 6. On the matter of Crimes against humanity, in the form of widespread and systematic attack, is known that the attack is directed towards civilians in the form of killings;

Considering, that towards the matters Ad.5 and Ad.6 the Panel of Judges will consider them simultaneously, since the matters are linked and related to each other;

Considering, that the matter of crime against humanity charged in this case is an action committed as a part of an attack, should meet the elements of widespread, systematic and is aimed towards civilians, and the Panel of Judges' consideration on this matter is as follow;

Considering, that a grave human rights violation based on Law No.26/2000 including the crime against humanity, and if factors of widespread or systematic have been found. The Incident in East Timor can be categorized as crimes against humanity, because it has met the elements of "widespread", "systematic" and is aimed towards civilians (civilian population, sic!):

- The "attack" means that the attack is not necessary a military attack, as defined by the international humanitarian law, it means that the attack should not always involve military power or the use of weapons. In other words, whenever there is a murder happened as a result of a power movement or operation aimed towards civilians. The clash is included in the terminology of attack;

- "Attack towards the civilians" does not mean that the attack is always committed on the whole population, but can be an attack on a certain group of civilians who has a certain political conviction;

- "Widespread" means that during the incident it has been proven that massive, frequent, large scale killing takes place, committed collectively with a serious result, namely, a large number of dead victims;

- "Systematic" means that a formation of idea or principle based on planned research or observation with a common procedure. In relation to the Grave Human Rights violation, the

definition of systematic may mean an activity which has a common pattern and consistent pattern, pattern here means related structure or design. Meanwhile consistent here means an idea indicated by unchangeable or related position, it can also mean a certain character formed and expressed repeatedly.

Considering that the definition of systematic covers 4 (four) elements as follow:

- A political aim, a plan for attack, an ideology, in its extensive meaning to destroy or to weaken a certain community;
- Commit a large scale crime towards a group of civilians or repeatedly and continuously conducted inhuman actions related to each other;
- A significant preparation and the significant uses of properties or facilities belong to public or an individual;
- A high-level political implication or military authority in defining and implementing a methodological plan;

Considering, that based on the Panel of Judges' considerations on the ICTR in the cases of Kayishema and Ruzindana, a widespread and systematic attack is:

- An attack that has a nature of an attack resulted in many victims, an attack becomes systematic if the attack has been committed based on a carefully thought plan (preconceived).

Considering, that in this case, based on the facts uncovered in the court, in almost the whole 13 regions in East Timor, violence, murders, abuses towards community had happened, burning down in a same and repeated pattern;

Considering, that violence, murders, abuses committed by Pro Integration group of troops has been a part of planning and strategy to win Pro Integration group in the popular consultation/ballot, as conforming with Government's policy to secure East Timor as a part of Indonesia;

Considering, that based on the testimonies of witness victims of Alfredo Sanchez, Victor Dos Santos, Santiago Dos Santos, Florindo de Jesus, and other witnesses before the court that the victims of the attack at Manuel Carascalao's house were civilians who took shelter because they were afraid of terror and intimidation in their hometowns from Pro Integration group.

Considering, that to sentence a Defendant in a Grave human rights violation, it must be proven that the Defendant has knowledge and sympathy on a policy that resulted in the crime, which is a basic element that differentiates him from an ordinary criminal so that the Defendant can be punished for action committed by someone else.

Considering, that as considered by the Panel of Judges that based on testimonies of the witnesses and the facts uncovered in the court, it is true that there has been a relation between the Defendant's speech at the big rally at the Governor office courtyard on April 17 with the violence committed by some of the rally participants consisted of Aitarak and Besi Merah Putih groups, who are the Defendant's subordinates or at least people who are under the Defendant's effective control.

Considering, that based on the witnesses' testimonies taken under oath and the Defendant's statement and related to the facts before the court, it is obvious that:

- On April 17, 1999 a Big Rally was held at Dili Governor office courtyard attended by thousand masses of participants from regencies in East Timor wearing attributes and their own symbols who all of them supported Pro Integration group, attended by among others Governor and Dili City Major. As said by a de charge witness Marcelino Martin Ximenes:

- The Irup at the Big Rally was Joao Da Silva Tavares as PPI Commander, delivered the ceremony's opening speech by saying that participants should win the integration process and reject the popular consultation/ballot. In the event, an inspection of the troops was conducted by the PPI Commander and Deputy Commander on a military vehicle;

- Besides the PPI Commander, the Defendant as PPI Deputy Commander delivered a speech which evoked emotion of the masses to kill Pro Independence group including Witness Manuel Carascalao. The speech was heard by witness Manuel Carascalao, Maria Carascalao and other victim witnesses from the radio. The Panel of Judges believe in their testimonies because before they gave testimonies, they have taken oath and are linked to other witnesses' testimonies, and the facts uncovered in the court, that according to witness Abilio Soares and the Defendant that the event was covered by mass media, such as the RRI and other private radio stations;

- The big rally resulted in violence, not only at Manuel Carascalao's house but also the attack on Leandro Isaac's house;

- Considering, that according to Witness Abilio Soares, which has been verified by the Defendant, a lot of rally participants carried weapons such as machetes and homemade firearms;

Considering, based on the witnesses' testimonies, particularly witness victim Alfredo Sanchez, Santiago Dos Santos, Florendo de Jesus who had witnessed the incident, the apparatuses come right after the attack was over, while according to Witness Manuel Carascalao he had reported that there was going to be an attack on his house to Dan Rem Tono Suratman, but did not get any response. So that the attack happened;

Considering, that based on the above facts, the Defendant has allowed his subordinates attacking Manuel Carascalao's house. Not only was the Defendant who ignored but also the military personnel, Dan Rem Tono Suratman, responsible civil officials including Governor and Dili City Major, and other security personnel who should have taken responsibility. The ignorance by all of them has indicated a common aspiration to support pro integration, their aim was to secure that East Timor remain a part of Indonesia. The consistent pattern of ignorance in several incidents in East Timor is sufficient to prove a systematic planning to win pro integration group, which resulted in attacks on civilians;

Considering, that based on the considerations above, according to the Panel of Judges the 5 and 6 items have been met, because they have been proven according to the law;

Considering, that based on the considerations above, seen from the relevancy and the connection between one to another, and related to the current theory, principles, norms (treaty norms and customary international norms), and the practices of international court on the

cases of crime against humanity, the Panel concluded that a charged crime (actus reus) has been legally and convincingly proven, in the form of the Defendant has participated in supporting action which results in as charged by the Ad Hoc Prosecuting Attorney.

Considering, that the Panel of Judges will deliberate on the Second Indictment:

Considering, that in the Second Indictment, the Defendant has been charged of committing a crime as ruled in Article 7 b, jis Article 9 h, Article 42 paragraph (2) a and b, and Article 37 Law No.26/2000 on Human Rights Court;

Considering, that according to the Panel of Judges, the Second Indictment are as follow:

1. A civil superordinate has a capability to take a criminal responsibility
2. Has subordinates, has authority to conduct an effective control, does not take any proper and correct control on his subordinates
3. Knows or deliberately ignores the information
4. Does not take any proper and necessary action in his authority, prevent, quell the action, hand over to the responsible officials for investigation, question, and prosecution;
5. The subordinate is committing or has just committed a Grave Human Rights violation
6. Crimes against humanity, in the form of widespread and systematic attack, is known that the attack is directed towards civilians in the form of killings;

Considering, that the Judge Panel will deliberate on the Ad 1 to Ad 6:

Considering, that matters of Ad 1 to Ad 6 have been deliberated by the Panel of Judges in deliberating the First Indictment, therefore all judicial consideration on those matters, the Panel of Judges will take all of those over and is regarded to have been deliberated in the Second Indictment;

Ad. 6. Crimes against humanity, in the form of widespread and systematic attack, is known that the attack is directed towards civilians in the form of killings;

Considering, that the Panel of Judges, referring to Ad 6 in the First Indictment and therefore to take over the deliberation in the law deliberation of the Second Indictment;

Considering, that based on the witnesses' and the defendant's statements and facts uncovered in the court, it has been proven that an attack committed by Pro Integration group who were Aitarak and BMP group on Pro Independence group or Anti Integration group, who were the refugees at Manuel Carascalao's house resulted in 3 people wounded;

Considering, that based on the testimony of witness victim Alfredo Sanchez, he has been wounded on his back, hand, armpit, chest caused by shooting and stabbing. Witness Victor Dos Santos has gotten stabbed injury on his hand, right ear and shot on his knee. Witness Florendo de Jesus has gotten hacked injury on his body, they were hospitalized at Wira Husada hospital for several days.

Considering, that therefore the matters in the second indictment have been met according to the law;

Considering, that based on the whole considerations described above, all items in the first and second indictment have been met therefore they have been legally and convincingly proven.

Considering, that since the defendant has been found legally and convincingly guilty of committing a criminal action as charged in the first indictment, has violated article 7 b jis article 9 a, article 42 paragraph (2) a and b article 37 Law No.26/2000 On Human Rights Court and the second indictment has violated (sic!) article 7 b jis article 9 h, article 42 paragraph (2) a and b article 37 Law No.26/2000 On Human Rights Court, therefore he should be sentenced equal to his deeds;

Considering, that before the Panel of Judges make further deliberation on the sentence to be ruled over the Defendant, the Pledoi of the Defendant's Lawyer Team and the Pledoi of the Defendant and the Replik of Prosecuting Attorney as well as the Duplik of the Defendant's Lawyer Team will be considered, as will be described briefly below;

Considering, that concerning the Pledoi of the Defendant's Lawyer Team whose part of the content has included the exception, the Panel of Judges has considered it in its intermediate decision therefore the intermediate decision the Panel of Judges has taken over and been considered to be deliberated in deliberating the pledoi of the Defendant's Lawyer Team therefore concerning the matter there is no reason, can be rejected and ignored;

Considering, that the Panel of Judges will consider the Defendant's Pledoi titled "Salahkah Saya Membela Merah Putih" and the Defendant's Lawyer Team's pledoi which main points stated as follow:

A. The defendant rejected all indictments and charges of the Prosecuting Attorney's who states that the defendant as Aitarak commandant and PPI Deputy Commander has been declared not effectively control or take any action to stop his subordinates who have committed Human Rights violation and does not bring the perpetrators to responsible officials to be processed according to the law and has ignored and provoked PPI members under his effective control so attacking Manuel Viegas Carascalao's house.

- Besides the above rejection, the Defendant's Lawyer Team has declared that factions of the Big Rally consisting of several groups who come from their own regions who have their own Commandants who have a responsibility on their subordinates, so that the responsibility cannot be charged to the Defendant;

- The Defendant as an Aitarak Commandant has requested all of his Aitarak followers, troops as well as symphatizers not to be involved in violations committed by individuals or masses before the April 17, 1999 incident;

- The position of the Defendant as PPI Deputy Commander is only a symbol so that it has been not easy to order or control someone because the people in the PPI are followers and symphatizers who want to demonstrate their existence and commitment to the Integration;

- PPI is an organization having no structure, no hierarchy, no chain of command, therefore no function of effective control;

- The matter of Command responsibility has not been met related to the Defendant's position as an Aitarak Commandant and PPI Deputy Commander because the existence of PPI and Aitarak is not the government's extension nor state's apparatus such as the Police or TNI or KNPI or AMPI during the incident, therefore it has been the responsibility of the upholder of law of KAMTIBMAS;

- The matter of a person who effectively takes action as a civil superordinate has not been met, because the assignment of the Defendant as an Aitarak Commandant and PPI Deputy Commander has not been based on assignment or decision based on the law or authentic certificate and besides that Aitarak and PPI have never recruited their members, followers, sympathizers from the community cannot be called as subordinates, therefore the Defendant cannot be qualified as a responsible civil superordinate;

- The Defendant does not see the clash at Manuel Viegas Carrascalao's house does not know whether the perpetrators have been Liquisa or BMP people, therefore the Defendant cannot be qualified to meet the matter of knowing or should have known that troops under his effective control are committing crimes against humanity;

- Not even a witness witnessed and directly heard the Defendant's speech which contains the provocation to kill Manuel Viegas Carrascalao, but only witness Drs. Basilio Dias Araujo who heard "kill kill" from the participants of the Big Rally;

- Because the Defendant does not plan the Big Rally on April 17, 1999 attended by thousands of masses and after the Big Rally is over, violence at Manuel Viegas Carrascalao's house happens, therefore the Defendant cannot be declared of guilty of "Crimes Towards Humanity in the Form of Widespread and Systematic Attack";

B. The Defendant rejected most of the facts which have become the basis for the Prosecuting Attorney to compose his indictment because it is not relevant to the evidences of witnesses testimonies taken under oath before the court, moreover, in their deliberation, the Prosecuting Attorney has conducted a false and exaggerated interpretation;

- Many witnesses have not been able to be presented before the court by the Prosecuting Attorney, and the witnesses' testimonies those read have been rejected by the Defendant's Lawyer Team;

- The Defendant's Lawyer Team and the Defendant objected and rejected the evidences and letter evidences presented before the court by the Ad Hoc Prosecuting Attorney;

Considering, that regarding the Pledoi of the Defendant's Lawyer Team whose part of the content has included exception, on this matter, the Panel of Judges has considered in the intermediate decision, therefore the intermediate decision has been taken over and is considered in deliberating the Pledoi of the Defendant's Lawyer Team, therefore the matter is no longer considered in this deliberation;

Considering, that according to the Panel of Judges, most of the arguments of the Defendant and the Defendant's Team Lawyer in his Pledoi have been considered by the Panel in the deliberation of the first indictment and second indictment, therefore the Panel has taken over the deliberation of those matters in this consideration;

Considering, that the Panel will consider the Pledoi of the Defendant, pledoi and duplik of the Defendant's Lawyer Team with considerations as follow:

On Ad.A

Considering, that what have been stated in the Defendant's and the Defendant's Lawyer Team's argument principally have been in contradiction with the facts in the court. According to the Panel, the Defendant is present at the Big Rally on April 17, 1999 and has taken part to make an agitated speech which has arisen the spirit of the PPI masses, and it is true that the Defendant has said "kill all CNRT leaders and Manuel Viegas Carrascalao's family". Even though the Defendant has denied and never said to kill all CNRT leaders and Carascalao family, but referring to the facts in the court, since the event has been broadcast on the RRI and Catholic radio, it is certain that a lot people have heard the event, and if the fact is related to the witnesses' testimonies among others the witness victim Manuel Viegas Carrascalao who has said before the court that, the witness has heard directly from the witness' radio in his car about the Defendant's speech to kill the whole Manuel Viegas Carrascalao's family, besides that, based on testimonies of witnesses Maria Christiana Carascalao and Santiago Dos Santos who both of them have taken under oath, even though their testimonies are read before the court, the Panel is convinced by the truthfulness of these two witnesses' testimonies.

Maria Christiana Carrascalao has said that she heard from the radio the Defendant's threatening words who has said to kill Mario Viegas Carrascalao, as well as witness Santiago Dos Santos who has said he heard live report of the Big Rally on the RRI radio in Dili. The witness has heard the Defendant delivering a speech and has said that all CNRT leaders and Manuel Viegas Carrascalao's family should be exterminated;

Considering, that many friends of witness Manuel Carrascalao, from both Pro Integration as well as Pro Independence who have informed that Manuel Carrascalao's house was going to be attacked and that he is going to be killed, because the Defendant's speech has been spread through the radio and heard by a lot of people;

Considering that according to the Panel, the defendant's speech has been responded by PPI masses who said "kill, kill", the masses' words have also been heard by Drs. Basilio Dias Araujo (sic!). The Defendant's speech has provoked masses armed with pistols, homemade weapons, machetes, spears, arrows and has become more furious;

Considering, that even though the Defendant has already known that the masses had been becoming more furious, and were ready to attack Manuel Viegas Carrascalao's house but the Defendant as PPI Deputy Commander and Aitarak Commandant has not taken control and tried to stop PPI masses consisted of masses of Aitarak, BMP, halilintar, MAHIDI, Laksaur, Ablai, Mahadomi, Sakasera, Alpha, Seka, and after the Big rally was over, during the convoy passing by, then the convoy attacks Manuel Viegas Carrascalao's house resulted in 12 (sic!) people dead and other victims wounded;

Considering, that according to the Panel, a Command structure is known in the PPI organization, because there are positions of Commander, Deputy Commander, Battalion Commandant, Platoon Commandant in East Timor territory. This matter shows a link of Command in the form of a link between Commandant and his subordinates has been well recognized in the PPI organization;

Considering, that the facts uncovered in the court the Defendant is a youth figure, a PPI figure, and a Pro Integration leader who is respected by his followers and is obeyed by his subordinates, and the Defendant's statement is always followed and executed by his subordinates, therefore if the defendant stopped and prevented the PPI masses, then, the order of the Defendant as PPI Deputy Commander and Aitarak Commandant would have been heard and obeyed, so that the incident at Manuel Viegas Carrascalao's house could be prevented;

Considering, that as a PPI Deputy Commander and an Aitarak Commandant, the Defendant is a civil Commandant who can be asked for his command responsibility for violation committed by his subordinates. That the masses committing violence at Manuel Viegas Carrascalao's and Leandro Isaac's houses are PPI masses and the Defendant is the Deputy Commander, and after the Defendant has finished his speech, hours later, the incident of attack on Manuel Viegas Carrascalao's and Leandro Isaac's houses happens;

Considering that PPI has been a FPKD military wing consisted of the combination of Militia groups, among others were Aitarak, BMP, MAHIDI, Laksaur, Ablai, Halilintar, Mahadomi, Sakasera, Alpha, Sekap, in which the Defendant's has strong influence therefore the Defendant's order and instruction have been effectively followed by his subordinates, so that the Defendant's responsibility as PP (sic!) Deputy Commander, as well as responsibilities of other Commandants can be requested;

On Ad.B.

Considering, that towards the rejection of the Defendant and the Defendant's Lawyer Team in Ad B, the Panel cannot accept it because the Ad Hoc Prosecuting Attorney, in making law consideration in his prosecution has been based on the facts in the court;

Considering that the objection of the Defendant's Lawyer Team has actually been discussed in the beginning of this trial session in the law consideration at the beginning of this judgement.

Considering, that the witnesses' testimonies read before the court, according to the Panel that even the reading of the testimonies does not violate the KUHAP, besides that the witnesses have been taken oath, the witnesses' testimonies are related to each other, so that the Panel is convinced the truth of the witnesses' testimonies;

Considering, that towards the Defendant's Pledoi titled "Salahkah Saya Membela Merah Putih", according to the Panel, it is not wrong to defend the Red White and struggle for East Timor to remain Integrated with Indonesia, that in this Consideration the Panel declared that it is a mistake if the ways to defend the Red White has been conducted through violent manners on innocent civilians and that has been a reality in East Timor;

Considering, that according to the Panel it is not wrong and can be justified the TNI's and Government's support on the PPI even though the support of the TNI and Government is to win the popular consultation/ballot that would be implemented in August 1999, but the Panel should also declare that it is wrong and is a crime for violence happened in East Timor territory resulted in victims of innocent civilians, dead or wounded, and the destruction of people's houses and belongings;

Considering, that the Panel will consider the objection and rejection of the Defendant's Lawyer Team on evidences of firearms and letters;

Considering, that the Panel can accept evidence materials and letters presented in this court, because they have been obtained through legal confiscation, particularly the evidence of letters has been legalized by the Ad Hoc Prosecuting Attorney, so that can be accepted as legal evidences in this court to support the verification effort by the Ad Hoc Prosecuting Attorney;

Considering, that based on these considerations, the Panel rejected the Pledoi of the Defendant and the Defendant's Lawyer Team and the Panel agrees with the indictments of the Ad Hoc Prosecuting Attorney.

Considering, that the Replik of Ad Hoc Prosecuting Attorney is in its main principle a statement which has been detailed in the indictment, therefore the Panel of Judges' consideration agrees with the considerations in the indictment letter of the Ad Hoc Prosecuting Attorney based on considerations about matters of crime charged in the First and Second Indictment.

Considering, that regarding the additional replik of Ad Hoc Prosecuting Attorney on the matter of typing mistakes the Panel of Judges agrees because supported by jurisprudence that that matter is still appropriate to be used in court practices because fostering a sense of justice compared to typing mistakes as long as not linked to the more substantive mistakes and does not cost anything to the Defendant in his defense.

Considering, that on the matter of application of provoked act retaliation (sic!) principle the Panel of Judges has considered it in considering the Defendant's exception therefore that it is the Panel of Judges' consideration that has been used as a consideration to reject the principle.

Considering, that regarding the replik of other Ad Hoc Prosecuting Attorney the Panel of Judges has considered it in considering the argument of the Defendant's Lawyer Team in its eksepsi so that on this matter the Panel of Judges has derived from reasons mentioned in the intermediate decision.

Considering, that regarding the duplik of the Defendant's Lawyer Team in principle refers to the consideration of the Pledoi of the Defendant's Lawyer Team or the content of its eksepsi which for that matter the Panel of Judges has considered in the intermediate decision therefore the content of the duplik which is linked to the content of the Panel of Judges' exception remains to be based on the intermediate decision which has been used as a basis of consideration to reject the exception or the Pledoi of the Defendant's Lawyer Team.

Considering, that therefore the Panel of Judges does not agree with the duplik of the Defendant's Lawyer team which is error in word writing (sic!) or the application of provoked act retaliation principle as considered in the intermediate decision, therefore the reason of the duplik in this matter the Panel of Judges has ignored because not relevant according to the law.

Considering, that regarding the reasons of the other duplik of the Defendant's Lawyer Team the Panel of Judges has considered in the considerations of criminal deeds therefore this matter is no longer necessary to be considered because the Panel of Judges is consistent with the consideration explained above which is the Defendant has been proven of committing

crime because his actions have met elements of all articles charged on him and the Defendant should be taken responsibility for the criminal incident.

Considering, that on the evidence materials:

- 1 (one) Getau firearm/G-3 No. FMP.172322;
- 1 (one) SKS firearm No. OH.2289;
- 1 (one) Mauser firearm Los No.;
- 1 (one) Homemade firearm;
- 1 (one) Homemade Pistol;
- TNI Directive Commander:
No 02/P/ix/1999 dated on September 6, 1999, concerning the Military Emergency Territorial Command of East Timor (Komando penguasa darurat militer wilayah Timor Timur);
- Decrees (Surat Keputusan):
 - i. - Skep/991/P/XII/1998 dated December 31, 1998 concerning the Discharge and Appointment within the Indonesian Army's Office (Pemberhentian dari dan Pengangkatan Dalam Jabatan Di Lingkungan Angkatan Bersenjata RI/Indonesian Army), for Maj. Gen. TNI I Gede Nyoman Asrana along with 99 personnel;
 - ii. - Skep/821/P/IX/1999 dated September 20, 1999 concerning the Use of Authority of the Military Emergency Territorial Command of East Timor (Penggunaan Wewenang Penguasa Darurat Militer Daerah Timor Timur);
- Letters of Order (Surat Perintah):
 - i. Sprin/757/IV/1999 dated April 15, 1999 concerning the Official Travel to East Timor (Perjalanan Dinas Tim Tim) for Marsda Tamtomo along with three personnel;
 - ii. Sprin/889/V/1999 dated May 10, 1999 concerning the Special Assignment to Assist the Independent Commission (Bertugas Khusus Membantu Pelaksanaan Komisi Independen) for Maj. Gen. Zacky Anwar Makarim along with two personnel;
 - iii. Sprin/1096/VI/1999 dated June 04, 1999 concerning the Order to Maj.Gen. Zacky Anwar Makarim along with two personnel as members of TP40KTT;
 - iv. Sprin/1660/VIII/1999 dated August 13, 1999 concerning Security Advisor (Sebagai Penasehat Keamanan) P3TT in Dilli, East Timor for Maj.Gen. TNI Zacky Anwar Makarim along with two personnel;
 - v. Sprin/1798/IX/1999 dated September 07, 1999 concerning the East Timor Territorial Command (Penguasa Daerah Militer Wilayah Tim tim).
- Telegrams:
 - i. TR/614/1999 dated June 17, 1999 concerning the Security Guarantee in East Timor;
 - ii. STR/675/5/1999 dated July 6, 1999 concerning Popular Consultation for East Timorese;
 - iii. STR/551/1999 dated September 5, 1999 concerning the Anticipation of Developing Situation in East Timor Territory.
- Reports of Situation (Laporan Situasi):
 - i. STR/560/1999 dated September 22, concerning the Report of Situation of the Fourth Week dated September 14 to 20, 1999;
 - ii. STR/17/2000 dated January 20, 1999 concerning the Report on the Indication of Worsening Security Situation in East Timor;
 - iii. R/33/1999 Lapsit dated October 11, 1999 concerning the Report of the Development of the Situation in East Timor on October 11, 1999.
- Others (Special Report / Laporan Khusus):
 - i. R/184/Lapsus/IV/1999 dated April 7, 1999 concerning the Clashes between Pro Integration and Anti Integration People in Liquica Regency;

- ii. R/02/X/1999/Lapsus dated October 11, 1999 concerning the Chronology of Incident on Gunshoot Contact between Interfet and TNI (Indonesian Army) and POLRI (Indonesian Police) Troops;
- iii. Suggestion from Pangdam IX/Udayana as Pangkoops TNI Nusara dated September 7, 1999;
- iv. STR/551/1999 dated September 5, 1999;
- v. STR/553/1999 dated September 6, 1999;
- vi. Letter of Order (Surat Perintah) from TNI Commander No.: Prin/1798/P/IX/1999 dated September 7, 1999;
- vii. STR/253/1999 dated April 13, 1999;
- viii. STR/550/1999 dated August 31, 1999;
- ix. STR/558/1999 dated September 3, 1999;
- x. Letter of Order No.: Prin-/1000/VII/1998 dated July 30, 1998;
- xi. TR/614/1999 dated June 17, 1999;
- xii. STR/172/1999 dated May 5, 1999;
- xiii. STR/223/1999 dated March 1999;
- xiv. Examination (not visum et repertum) provided by 2nd Lieutenant CKM dr. Maksum Pendelima;
- xv. Situation Report No.: R/ / Lapsit/IX/1999;
- xvi. Situation Report No.: R/ /IX/1999/Lapsit;
- xvii. Special Report No.: R/ /Lapsus/IX/1999 dated September 22, 1999;
- xviii. TR/909/P/1999 dated September 7, 1999;

which then in this judgment are called as evidence materials, which are mentioned as evidence materials or evidence letters presented before the court according to the Panel of Judges are returned to Ad Hoc Prosecuting Attorney to be used as evidences in other case.

Considering, that based on the whole considerations, the Panel of Judges has declared that the Defendant's action has been legally and convincingly proven as charged by Prosecuting Attorney in the First and Second Indictment.

Considering, that since the Defendant's action has been declared proven, then the Panel of Judges will sentence the Defendant on the degree of the Defendant's crime.

Considering, that before the Panel of Judges decides on the kinds of appropriate and fair punishment on the Defendant will be considered first the extenuating and the aggravating factors:

Extenuating factors:

1. The Defendant has been very cooperative during the trial and helped to assist the trial. The Defendant's attitude to fight for the Integration of East Timor with Indonesia should be honored for his loyalty to Indonesia
2. The attack on Manuel Viagas Carrascalao's house should not be blamed on him thoroughly, because other parties have been involved

Aggravating factors:

1. The image of Indonesian struggle for East Timor to remain integrated with Indonesia has been tainted due to this incident therefore it has caused the image of Indonesia to plunge before the international world.

2. Many civilians have been dead because of the resentment of the Defendant and his subordinates which have been channeled through inappropriate manner so that has violated the Human Rights of common people.

3. The Defendant's action with all of its excesses have received international condemnation about the bad image of Human Rights in Indonesia

5 (sic!). The Defendant has been sentenced before. That in his position as a PPI Deputy Commander and Aitarak Commandant, the Defendant should take any responsibility of any violent acts that occurs in East Timor territory committed by his subordinates and members of PPI and Aitarak

Considering, that since the Defendant has been found guilty, he should pay all court expenses.

Considering, that on the sentence given to the Defendant, which will be included completely in the court order later, according to the Panel of Judges it is fair enough, and wish that it can be lesson to learn for the Defendant and will not repeat it again in the future.

Considering, Law No.8/1981, Law No. 39/1999, Law No.26/2000 and Universal Declaration on Human Rights and other Rules related to this case.

TO JUDGE

- To Declare that the Defendant: EURICO GUTERRES, has legally and convincingly been proven of committing crime as charged in the first and second indictment, which is:

" A GRAVE HUMAN RIGHTS VIOLATION IN THE FORM OF CRIMES AGAINST HUMANITY"

- To Sentence the Defendant with 15 years imprisonment

- To state that the evidence materials as mentioned in the list of evidence materials and evidence letters presented before the court to be returned to the Ad Prosecuting Attorney to be used in other case;

- To Sentence the Defendant to pay court fee of Rp.5000,-. (five thousand rupiahs);

Decided on Monday, November 25, 2002 in the Deliberation Meeting of the Panel of Judges of the Central Jakarta Ad Hod Court consisted of: HERMAN HELLER HUTAPEA, SH, (as a Presiding Judge), ROKI PANJAITAN, SH., PROF. DR. KOMARIAH EMONG SAPARDJAJA, SH., KELELONG BUKIT, SH., RUDI M. RIZKI, SH.,LL.M., the panel of judges, the Judgment has declared on WEDNESDAY, November 27, 2002 in the Court open to the public by the Presiding Judge accompanied by the panel of judges and assisted by acting clerks NY. WIDIA ASTUTI, SH and AGASUWARGA attended by MUHAMAD YUSUF, SH,LL,M., the Ad Hoc Prosecuting Attorney, DIN NURDINAH, SH., the Acting

Ad Hoc Prosecuting Attorney, of the General Attorney Office of the Republic of Indonesia,
the Defendant and the Defendant's Lawyer Team

Panel of Judges Presiding Judge

DR. KOMARIAH EMONG S.,SH., HERMAN HELLER HUTAPEA, SH

ROKI PANJAITAN, SH.

RUDI M. RIZKI, SH.,LL.M.

KALELONG BUKIT,SH.,MA

Acting Clerks

Ny. WIDIA ASTUTI, SH.

AGASUWARGA