

Judgement

Defendant Timbul Silaen

Indonesian Ad Hoc Tribunal - Judgment of Timbul Silaen

AD HOC HUMAN RIGHTS TRIBUNAL AT
CENTRAL JAKARTA DISTRICT COURT
JALAN GAJAH MADA NO.17 JAKARTA

VERDICT

No. 02/PID.HAM/AD.Hoc/2002/PN.JKT.PST.

IN THE HUMAN RIGHTS TRIBUNAL CASE OF

DRS. G.M. TIMBUL SILAEN

PANEL OF JUSTICES:

H. ANDI SAMSAN NGANRO, S.H..... Chief Justice
RIDWAN MANSYUR, S.H..... Justice
H.M. KABUL SUPRIYADHIE, SH, M.Hum,..... Justice
HERU SUSANTO, SHJustice
AMIRUDDIN ABURAERA, SH.....Justice
MRS.CORGIANA J. SARAGIH, SH..... Substitute Court Clerk
MATIUS B. SITUTRU, SH..... Substitute Court Clerk

Jakarta, August 15, 2002

Situmorang, SH, Warsito Sanyoto, SH, Juniver Girsang, SH, Partahi Sihombing, SH, Roberto Hutagalung, SH, Mario J. Bernardo, SH, the Advocates and Attorneys from the Legal Counsel Team for Drs.G.M. Timbul Silaen, having its address at Jalan Martapura Central Jakarta, bearing Special Power of Attorney dated: 27 February 2002 and Power of Attorney dated 12 March 2002, to the Team from the POLRI Legal Development Body at Jl. Trunojoyo No.3 Kebayoran Baru South Jakarta;

The Ad Hoc Human Rights Tribunal:

Having read:

1. Legal Brief and Attachments on the case of Serious Human Rights Violations by the

Accused: Drs.G.M. TIMBUL SILAEN;

2. Decision of the Head of the Human Rights Court of Justice of Central Jakarta No: 02/PID.HAM/Ad.Hoc/2002/PN.Jkt.Pst., dated 21 February 2002, concerning the Impaneling of Justices to examine and try this case;
3. Decision of the Head of Panel of Justices No: 02/PID.HAM/Ad.Hoc/2002/PN.Jkt.Pst., dated 28 February 2002, concerning Determination of Trial Date;

Having heard:

1. The reading of the Charging Document by the Public Prosecutor, Case File No: 01/HAM/TIM-TIM/02/2002 dated 14 March 2002;
2. The reading of Preliminary Verdict by the Panel of Justices dated 28 March 2002 No: 02/PID.HAM/Ad.Hoc/2002/PN.Jkt.Pst which essentially states that the objection submitted by the Legal Counsel Team for the Accused Drs.G.M. TIMBUL SILAEN is overruled; and further that it is within the jurisdiction of the Ad Hoc Human Rights Court of Central Jakarta to try the case against the Accused;
3. The reading of the Ad Hoc Public Prosecutor's Charge (Requisitoir) on 25 July 2002 that essentially demands the Panel of Justices of the Central Jakarta Ad Hoc Human Rights Tribunal to rule:
 - 3.1 That the Accused Drs.G.M. TIMBUL SILAEN is found legally and positively guilty of the Criminal Offense of Serious Human Rights Violations under article 42 paragraph 2 items a and b jis article 7 item b, article 9 item a, article 37, of Law No.26 year 2000, in accordance with the First Charge and Second Charge of the Ad Hoc Public Prosecutor's Charging Document;
 - 3.2 That the Accused Drs.G.M. TIMBUL SILAEN is convicted and sentenced to 10 (ten) years and 6 (six) months imprisonment;
 - 3.3 That evidence in the form of the following documents:
 - 3.3.1 Operation Plan "HANOIN LOROSAE 1999" No.Pol.Ren.OPS/04/V/1999 concerning Control of Public Law and Order and Evacuation Procedures for non-Indonesian nationals and Indonesian nationals to exit East Timor in the Post Referendum period for the People of East Timor;
 - 3.3.2 Operation Plan "HANOIN LOROSAE II/1999" No.Pol.Ren.OPS/04/VIII/1999 concerning Control of Public Law and Order and Evacuation Procedures for non-Indonesian nationals and Indonesian nationals to exit East Timor in the Post Referendum period for the People of East Timor;Be returned to the Office of the Attorney General of the Republic of Indonesia as evidence for other cases;
 - 3.4 That the Accused is ordered to pay court costs to the amount of Rp.7,500 (seven thousand five hundred rupiahs);
4. The reading of a Personal Plea (Self Pledoi) by the Accused Drs.G.M. TIMBUL SILAEN that essentially states that the turmoil in East Timor should not result in criminal charges against the Accused, as the Accused is not the responsible party; on these grounds the Accused requests that he be freed from all charges;
5. The reading of the Plea by the Accused's Legal Counsel Team that essentially presents the view that the Accused DRS. G.M. TIMBUL SILAEN was not proved guilty as charged in the First Charge and the Second Charge; and therefore the Defending Team requests the Panel of Justices to rule:
 - 5.1 To free the Accused Drs.G.M. TIMBUL SILAEN of all charges (vrij spraak) or at least to release the Accused from all legal claims (Ontslag van alle rechtsvervolging);
 - 5.2 To restore the good name, respect and dignity of the Accused Drs.G.M. Timbul Silaen by requiring the Ad Hoc Public Prosecutor to post advertisements to this effect in several daily

news publications in the Jakarta Capital and East Timor, among others:

1. Kompas Daily;
2. Suara Pembaruan Daily;
3. The Jakarta Post;
4. Dilli Post;
- 5.3 To charge all case costs to the State;
6. The Public Prosecutor's Replication (Replik) that essentially maintains the original charges, and the Rejoinder (Duplik) by the Accused and the Defending Team that retains their defense;

In deliberating that according to the Ad Hoc Public Prosecutor's Charging Document dated 19 February 2002, Case File No.: 01/HAM/Timor-Timur/02/2002, the Accused is charged with the following serious human rights violations:

FIRST:

That the Accused Drs.G.M. TIMBUL SILAEN in addition to holding the office of the Police Chief of East Timor Region (KAPOLDA) in the period between June 1998 and September 1999, and the office of Commander of the Security Control Command (KODAL) in East Timor based on the New York Agreement (Tripartite) dated 5 May 1999, with the authority and responsibility to maintain security, public order, law enforcement and public service and guidance as well as provide operational instructions to the Polres and their ranks in his jurisdiction, however this authority and responsibility, specifically in public order (KAMTIBMAS) was not exercised properly; namely on 16 and 17 April 1999 and on 5 and 6 September 1999 situated in the residential compound of Pastor Rafael Dos Santos at Liquisa Kabupaten Liquisa, in the residence of Manuel Viegas Carrascalao at Jalan Antonio de Calvalho No.13, Dilli, Kabupaten Dilli, in the residence of Bishop Bello and in the Ave Maria Church compound at Suai Kabupaten Kovalima, all of which were located in East Timor Province, or at least in one location in the Liquisa, Dilli and Kovalima regions of East Timor Province that is within the legal jurisdiction of the Ad Hoc Human Rights Tribunal at the Central Jakarta District Court, the Accused as a superior (KAPOLDA and KODAL of East Timor), was criminally responsible for serious human rights violations, namely crimes against humanity in the form of killings committed as part of a broader or systematic attack in which the Accused was aware that the attack was directed at the civilian population and perpetrated by his subordinates who were effectively under his authority and control, as the Accused who oversaw the Dilli, Liquisa, and Kovalima Polres (District Police Stations) and their ranks, as well as the Aitarak group, the Besi Merah Putih (BMP) group and the Pam Swakarsa group under his control within KAMTIBMAS, did not exercise appropriate control over his subordinates, in that he knowingly or consciously disregarded information that clearly indicated that his subordinates were perpetrating or had just perpetrated serious human rights violations, and he did not take appropriate action within his jurisdiction to halt the perpetrations or surrender the perpetrators to the proper authorities to be examined, investigated and charged, and these acts the Accused committed in the following manner:

- The Accused in his capacity as KAPOLDA of East Timor and as KODAL in East Timor, in maintaining and upholding KAMTIBMAS (public peace and order) was assisted by his staff, and in the field was assisted among others by the Kapolres and their ranks throughout the East Timor region in accordance with the organization structure of the East Timor Polda as cited in SKEP POLRI. NO.POL.SKEP-14/XII/1993 dated 31 December 1993 concerning Principles of Organization and Procedures for POLRI Bodies at the Regional Level;
- The Accused as KAPOLDA of East Timor and as KODAL in East Timor knew and was

aware that he held authority and responsibility for KAMTIBMAS in the region of East Timor;

· That following the Indonesian Government's decision to hold a Referendum for the people of East Timor under KEPRES No.43 year 1999 dated 18 May 1999 concerning Team to secure implementation of the accord between the Indonesian Republic and Portugal on East Timor that was followed by the issuance of Presidential Instruction No.5 year 1999 concerning consolidation measures for the implementation of the accord between the Indonesian Republic and Portugal on East Timor, that was then set forth in the Decree By the Coordinating Minister for Political and Security Affairs (POLKAM) No.KEP-13/MENKO/POLKAM/6/1999 dated 2 June 1999 concerning Task Force of the Coordinating Minister for Political and Security Affairs of Indonesia as Team Leader for Security of the Implementation of the Accord between Indonesia and Portugal on East Timor to hold a Referendum for the people of East Timor to determine if East Timor should secede from the Republic of Indonesia. Security and public order began to deteriorate with altercations, fighting and hostilities breaking out between the pro-integration/autonomy community which among others included the Aitarak, Besi Merah Putih (BMP) and Pam Swakarsa masses, and the pro-independence community as a result of each side defending its interests;

· Henceforth the altercations, fighting and hostilities escalated, and on 6 April 1999 the pro-independence group led by Jacinto da Costa Pereira (Village Chief of Dato) attacked and threatened to kill the pro-integration/autonomy group in Maubara and took 2 (two) people hostage from the pro-integration/autonomy group;

As a result of the attack and threats to kill, as well as the hostage-taking, the pro-integration/autonomy masses (lead by Eurico Guterres and Manuel Sousa), armed with sharp weapons and homemade firearms proceeded to seek out the pro-independence masses and to take revenge.

· The actions of both the pro-independence group and the pro-integration/autonomy group were reported by the Liquisa Kapolres who was monitoring these events, to the Waka POLDA as the KAPOLDA was at the time away in Jakarta, and at the time the Waka POLDA instructed the Liquisa Polres Detective Unit to provide back-up in securing the incident;

· When the pro-integration/autonomy masses arrived in Liquisa which was under the jurisdiction of Liquisa Polres, the pro-integration/autonomy masses who were supported by some 100 (one hundred) TNI/POLRI personnel, among others:

1. Tome Diego (TNI member from Kodim Liquisa);
2. Antonio Gomes (TNI member from Koramil Maubara);
3. Isaac Dos Santos (TNI member from Koramil Maubara);
4. George Viegas (TNI member from Koramil Maubara);
5. Alvonso (POLRI member from Polres Liquisa);
6. Chiko (POLRI member from Polres Liquisa);

As they met head-on with the pro-independence masses, the pro-integration/autonomy masses fired in the direction of their opponents, causing fear among these latter, so that the some 200 (two hundred)-strong pro-independence masses fled and sought refuge at the residence of Pastor Rafael Dos Santos in the Liquisa Church compound. On arriving at the Liquisa Church compound, the pro-integration/autonomy masses asked Pastor Rafael Dos Santos to surrender Jacinto Da Costa Pereira who was a leader of the pro-independence group, along with the 2 (two) hostages from the pro-integration/autonomy group, to the pro-integration/autonomy group, but the request was denied by Pastor Rafael Dos Santos and the pro-independence masses. Instead, in reply the pro-independence fired shots in the direction of the pro-integration/autonomy masses, causing the pro-integration/autonomy masses to rush into the residence of Pastor Rafael Dos Santos in the Church compound and to attack the pro-independence mass without any effort to prevent or halt this act on the part of the security apparatus, specifically Liquisa Resort Police, or at least to attempt to remove the homemade

firearms and sharp weapons from either the pro-integration/autonomy group or the pro-independence group, and consequently a physical clash ensued between the pro-integration/autonomy group and the pro-independence group resulting in casualties among the civilian population sheltering and taking refuge in the Liquisa Church Complex, with the list of fatalities as follows:

1. Cesar Dos Santos
2. Agustino Dos Santos
3. Laurindo Dos Santos
4. Agustinho
5. Joanico
6. Manuel Lisbon
7. Victor da Costa
8. Alberto Oliveira
9. Amandio Cesar Dos Santos
10. Jacinto da Costa
11. Jacinto Concalvas
12. Fernando
13. Victor Manuel Lisbon
14. Mausinno
15. Agosto Mauzinho
16. Abiao Dos Santos
17. Abrao Dos Santos
18. Anuko Dos Santos

· On that day at approximately 14:00 hours local time (WITA), following the clash the Waka POLDA reported the incident to the KAPOLDA who had just arrived from Jakarta and at the time the KAPOLDA instructed Liquisa Kapolres to conduct an investigation as required by law toward the perpetrators from the pro-integration/autonomy group as well as the pro-independence group;

· On 17 April 1999 following the Pam Swakarsa parade held on the grounds of the Office of the Governor of East Timor, the pro-integration/autonomy group composed of the Autarak group, and the Besi Merah Putih (BMP) group, armed with sharp weapons and homemade firearms proceeded to the residence of Manuel Viegas Carrascalai on Jalan Antonio De Calvalho No.13 in Dilli and the residence of Leandro Isaac located in the vicinity of Jalan Antonio De Calvalho in the jurisdiction of the Dilli Police Resort that had been turned into a refuge for the civilian population from the pro-independence group numbering some 136 (one hundred thirty six) people who came from Dilli, Maubara, Liquisa, Turicai, Alas and Ainora;

· At the time, Manuel Viegas Carrascalao had visited the Dilli Polres Security Command Post to report the pro-integration/autonomy group's movements, and simultaneously to request protection and according to Manuel Viegas Carrascalao's report, the Dilli Polres Posko forwarded this report to the Waka POLDA by the KAPOLDA who was at the time in Jakarta, and the Waka POLDA issued instructions to carry out preventive action but these instructions were not followed by the Dilli Polres ranks, thus allowing the pro-integration/autonomy masses to carry on;

· Upon the arrival of the pro-integration/autonomy masses in the compound of Manuel Viegas Carrascalao's residence and the residence of Leandro Isaac, and knowing that the place had been turned into a refuge and shelter for the pro-independence group, the pro-integration/autonomy masses immediately clashed with the pro-independence group, resulting in a physical conflict between the pro-integration/autonomy group and the pro-independence group without there being any action taken to prevent or halt the incident by the security

apparatus, specifically the Dilli Police or at least the Dilli Police Resort as security apparatus made no attempt to disarm, or seize the firearms and sharp weapons wielded by each side, thus eventually causing damage to Manuel Viegas Carrascalao's house as a result of it being set on fire by the pro-integration/autonomy masses, and leading to 12 (twelve) fatalities, including Mario Manuel Carrascalao (Manelito);

- That further in the evening when the KAPOLDA had returned to East Timor from Jakarta, the Waka POLDA reported the incident of the clash by the pro-integration/autonomy group at the homes of Manuel Viegas Carrascalao and Leandro Isaac to the KAPOLDA and at the time the KAPOLDA merely issued an instruction to investigate both the pro-integration/autonomy group and the pro-independence group;

- On 5 September 1999 following the execution of the Referendum, the pro-integration/autonomy group which had been defeated at the polls suspected that UNAMET and the pro-independence group had cheated in counting the ballots with UNAMET shedding its neutrality during the polls, and the objections submitted by the pro-integration/autonomy group were not addressed by UNAMET and thus creating dissatisfaction on their part, and in venting their dissatisfaction the pro-integration/autonomy group which was armed with sharp weapons and homemade firearms attacked the pro-independence group that was comprised of civilians, who they knew were taking shelter and refuge at the Dilli Diocese in the jurisdiction of the Dilli Police Resort;

- This clash was reported by Kapolres Dilli and POLRI agents assigned in the field to the KAPOLDA using handy-talkies (HT) and at the time the KAPOLDA directed them to localize the incident but the Dilli Police and other security apparatus did not carry out such localization and did not even take actions to prevent or halt the attack by the pro-integration/autonomy masses against the pro-independence group or at least the Dilli Police Resort or other security apparatus did not attempt to disarm or seize the sharp weapons and homemade firearms wielded by the pro-integration/autonomy masses, resulting in damage to a building in the Dilli Diocese, which was set on fire by the pro-integration/autonomy masses, and leading to civilian fatalities, the victims being:

1. Jose Malton da Costa.

2. Jose Milton Vernandes.

- On 6 September 1999 at approximately 10:00 hours local time (WITA), the pro-integration/autonomy masses, armed with sharp weapons and homemade firearms proceeded to the compound of the Bishop Bello's residence in Dilli in the jurisdiction of the Dilli Police Resort where they knew that the pro-independence group comprising civilians were sheltering and taking refuge. Upon arrival at Bishop Bello's residence, the pro-integration/autonomy group who knew that a pro-independence group was taking refuge in Bishop Bello's residence immediately entered the compound of Bishop Bello's residence and attacked the civilians, the without any action to prevent or to halt the attack on the part of security apparatus, specifically the Dilli Resort Police or at least the Dilli Resort Police did not attempt to disarm or seize the sharp weapons and homemade firearms wielded by the pro-integration/autonomy masses.

- The clash in the residence of Bishop Bello was reported by Dilli Police agents in the field to the KAPOLDA using HTs, and at the time the KAPOLDA ordered them to prevent the clashes and ordered them to safeguard Bishop Bello and bring him to the East Timor Pold, but before these orders were carried out the clash had already taken place in the residence of Bishop Bello, resulting in the pro-integration/autonomy masses setting fire to the Bishop Bello's house and leading to the deaths of 13 (thirteen) victims whose identities are no longer known;

On that same day the pro-integration/autonomy masses led by Olivio Mandoza Moruk Als, armed with sharp weapons and homemade firearms continued their actions to the Ave Maria

Church in Suai Kovalima in the jurisdiction of the Kovalima Police Resort that they knew was sheltering and providing refuge to pro-independence masses comprised of the civilian population;

Upon arrival at this place and aware that the pro-independence group were taking shelter there, the pro-integration/autonomy group entered the Church compound and clashed with the civilian population from the pro-independence group and apparently there was some action to prevent or halt the conflict by the security apparatus, specifically the Kovalima Resort Police, and there were about 27 (twenty seven) fatalities, among others including:

1. Pastor Taesicius Dewanto.
2. Pastor Hilario Madeira.
3. Pastor Francisco Soares.

In accordance with the interment and autopsy report by the Medical Forensics section of University of Indonesia Faculty of Medicine (FK UI) No. TT.3002/SK-II/XI/1999.

These deeds by the accused are regulated and face penalties under article 42 paragraph (2) items a and b jis article 7 item b, article 9 item a, article 37 Law No.26 year 2000 concerning Human Rights Tribunals.

SECOND:

The Accused Drs.G.M. TIMBUL SILAEN as Chief of Police for East Timor Region (KAPOLDA) in the span of two months from June 1998 to September 1999 and in his capacity as Commander of the Security Control Command (KODAL) in East Timor under the New York Agreement (Tripartite) dated 5 May 1999, had the authority and responsibility to safeguard and maintain security and public order (KAMTIBMAS), enforce the law, and serve the public and provide guidance and operational instructions to the Polres and their ranks in his jurisdiction, but this authority and responsibility, specifically pertaining to KAMTIBMAS was not appropriately exercised, in which on 6 and 17 April 1999 and on 5 September 1999 or at least in the months of April and September of 1999 at the residential compound of Pastor Rafael Dos Santos in Liquisa kabupaten Liquisa, the residence of Manie Vigae Carrascalao at Jalan Antonio de Calvalho No.13 Dilli kabupaten Dilli, and the Dilli Diocese in Kabupaten Dilli, all of which were located in East Timor Province or at least at one place in the region of Liquisa, Dilli in East Timor Province that comes into the jurisdiction of the Ad Hoc Human Rights Court at the Central Jakarta District Court that is authorized to examine and rule on this case under KEPRES No.96 year 2001, dated 1 August 2001 concerning establishment of the Ad Hoc Human Rights Court at the Central Jakarta District Court, the Accused in his capacity as a superior (KAPOLDA) in East Timor and KODAL East Timor has committed serious Human Rights violations as a superior (KAPOLDA and KODAL East Timor) responsible for protecting and maintaining KAMTIBMAS in the East Timor region, is criminally responsible for serious human rights violations, through crimes against humanity in the form of assault carried out as part of a broader or systematic attack that the Accused knew was directly targeted at the civilian population, perpetrated by the subordinates under his effective control and rule, as the Accused as a superior overseeing Dilli Polres, Liquisa Polres and their ranks and the Aitarak group, the Besi Merah Putih (BMP) group, and Pam Swakarsa that were under his KAMTIBMAS jurisdiction, did not exercise appropriate control over his subordinates, that is he knowingly, or consciously disregarded information that clearly indicated that his subordinates were perpetrating, or had just perpetrated serious human rights violations and did not take appropriate and necessary actions to prevent or halt these perpetrations or to surrender the perpetrators to the authorities for examination, investigation and prosecution, which deed were conducted by the Accused in the following manner:

- The Accused in his capacity as KAPOLDA and as KODAL in East Timor in safeguarding

and maintaining KAMTIBMAS was assisted by his staff, and in the field was assisted among others by the Kapolres and their ranks in the region of East Timor in accordance with the East Timor Polda organization structure determined under SKEP POLRI No. POL.SKEP-14/XII/1993, dated 13 December 1993 concerning Organization and Procedures of POLRI Regional bodies;

- The Accused in his capacity as KAPOLDA and as KODAL knew and was aware of his KAMTIBMAS authority, obligations and responsibility in the region East Timor;
- Following the decision of the Indonesian Government to conduct a Referendum for the people of East Timor under KEPRES No.43 year 1999, dated 18 May 1999 concerning Security Implementation Team agreement between the Indonesian Republic and Portugal on East Timor that was followed by Presidential Instruction No.5 year 1999 concerning consolidation efforts for the implementation of the agreement between Indonesia and Portugal on East Timor that was then set forth through the decree issued by the Coordinating Minister for Political and Security Affairs (Menteri Koordinator POLKAM) of the Indonesian republic No. KEP-13/MENKO/POLKAM/6/1999, dated 2 June 1999 concerning a task force by the Coordinating Minister for Political and Security Affairs as the Security Implementation Team for the agreement between Indonesia and Portugal on East Timor through the policy to conduct a Referendum for the people of East Timor to decide if East Timor Province should or should not remain the territory of the Indonesian Republic, security and public order began to deteriorate with altercations, fighting and hostilities breaking out between the pro-integration/autonomy community which among others included the Aitarak, Besi Merah Putih (BMP) and Pam Swakarsa masses, and the pro-independence community as a result of each side defending its interests;

- Henceforth the altercations, fighting and hostilities escalated, and on 6 April 1999 the pro-independence group led by Jacinto da Costa Pereira (Village Chief of Dato) attacked and threatened to kill the pro-integration/autonomy group in Maubara and took 2 (two) people hostage from the pro-integration/autonomy group;

As a result of the attack and threats to kill, as well as the hostage-taking, the pro-integration/autonomy masses (lead by Eurico Guterres and Manuel Sousa), armed with sharp weapons and home-made firearms proceeded to seek out the pro-independence masses and to take revenge.

- The actions of both the pro-independence group and the pro-integration/autonomy group were reported by the Liquisa Kapolres who was monitoring these events, to the Waka POLDA as the KAPOLDA was at the time away in Jakarta, and at the time the Waka POLDA instructed the Liquisa Polres Detective Unit to provide back-up in securing the incident;

- When the pro-integration/autonomy masses arrived in Liquisa which was under the jurisdiction of Liquisa Polres, the pro-integration/autonomy masses who were supported by some 100 (one hundred) TNI/POLRI personnel, among others:

7. Tome Diego (TNI member from Kodim Liquisa);
8. Antonio Gomes (TNI member from Koramil Maubara);
9. Isaac Dos Santos (TNI member from Koramil Maubara);
10. George Viegas (TNI member from Koramil Maubara);
11. Alvonso (POLRI member from Polres Liquisa);
12. Chiko (POLRI member from Polres Liquisa);

As they met head-on with the pro-independence masses, the pro-integration/autonomy masses fired in the direction of their opponents, causing fear among these latter, so that the some 200 (two hundred)-strong pro-independence masses fled and sought refuge at the residence of Pastor Rafael Dos Santos in the Liquisa Church compound. On arriving at the Liquisa Church compound, the pro-integration/autonomy masses asked Pastor Rafael Dos Santos to surrender Jacinto Da Costa Pereira who was a leader of the pro-independence group, along with the 2

(two) hostages from the pro-integration/autonomy group, to the pro-integration/autonomy group, but the request was denied by Pastor Rafael Dos Santos and the pro-independence masses. Instead, in reply the pro-independence fired shots in the direction of the pro-integration/autonomy masses, causing the pro-integration/autonomy masses to rush into the residence of Pastor Rafael Dos Santos in the Church compound and to attack the pro-independence mass without any effort to prevent or halt this act on the part of the security apparatus, specifically Liquisa Resort Police, or at least to attempt to remove the homemade firearms and sharp weapons from either the pro-integration/autonomy group or the pro-independence group, and consequently a physical clash ensued between the pro-integration/autonomy group and the pro-independence group resulting in casualties among the civilian population sheltering and taking refuge in the Liquisa Church Complex, with the list of wounded as follows:

1. Jose Nunes
2. Joao Kuda
3. Lucas Dos Santos
4. Emilio Breto
5. Jose Menezes Nunes Serrao
6. Abilio dos Santos
7. Mateus Paulero

· On 17 April 1999 following the Pam Swakarsa parade held on the grounds of the Office of the Governor of East Timor, the pro-integration/autonomy group composed of the Autarak group, and the Besi Merah Putih (BMP) group, armed with sharp weapons and homemade firearms proceeded to the residence of Manuel Viegas Carrascalai on Jalan Antonio De Calvalho No.13 in Dilli and the residence of Leandro Isaac located in the vicinity of Jalan Antonio De Calvalho in the jurisdiction of the Dilli Police Resort that had been turned into a refuge for the civilian population from the pro-independence group numbering some 136 (one hundred thirty six) people who came from Dilli, Maubara, Liquisa, Turicai, Alas and Ainora;

· At the time, Manuel Viegas Carrascalao had visited the Dilli Polres Security Command Post to report the pro-integration/autonomy group's movements, and simultaneously to request protection and according to Manuel Viegas Carrascalao's report, the Dilli Polres Posko forwarded this report to the Waka POLDA by the KAPOLDA who was at the time in Jakarta, and the Waka POLDA issued instructions to carry out preventive action but these instructions were not followed by the Dilli Polres ranks, thus allowing the pro-integration/autonomy masses to carry on;

· Upon the arrival of the pro-integration/autonomy masses in the compound of Manuel Viegas Carrascalao's residence and the residence of Leandro Isaac, and knowing that the place had been turned into a refuge and shelter for the pro-independence group, the pro-integration/autonomy masses immediately clashed with the pro-independence group, resulting in a physical conflict between the pro-integration/autonomy group and the pro-independence group without there being any action taken to prevent or halt the incident by the security apparatus, specifically the Dilli Police or at least the Dilli Police Resort as security apparatus made no attempt to disarm, or seize the firearms and sharp weapons wielded by each side, thus eventually causing damage to Manuel Viegas Carrascalao's house as a result of it being set on fire by the pro-integration/autonomy masses, and leading to several wounded whose numbers and names are no longer identifiable;

· That further in the evening when the KAPOLDA had returned to East Timor from Jakarta, the Waka POLDA reported the incident of the clash by the pro-integration/autonomy group at the homes of Manuel Viegas Carrascalao and Leandro Isaac to the KAPOLDA and at the time the KAPOLDA merely issued an instruction to investigate both the pro-integration/autonomy group and the pro-independence group;

· On 5 September 1999 following the execution of the Referendum, the pro-integration/autonomy group which had been defeated at the polls suspected that UNAMET and the pro-independence group had cheated in counting the ballots with UNAMET shedding its neutrality during the polls, and the objections submitted by the pro-integration/autonomy group were not addressed by UNAMET and thus creating dissatisfaction on their part, and in venting their dissatisfaction the pro-integration/autonomy group which was armed with sharp weapons and homemade firearms attacked the pro-independence group that was comprised of civilians, who they knew were taking shelter and refuge at the Dilli Diocese in the jurisdiction of the Dilli Police Resort;

· At the time the attack on the Dilli Diocese took place the Dilli Kapolres reported the incident to the KAPOLDA and the KAPOLDA merely issued an instruction to continue prevention efforts with available personnel. As a result of the attack on the Dilli Diocese by the pro-integration/autonomy group the Dilli Diocese was set on fire by the pro-integration/autonomy group, resulting in casualties among the civilian population, the wounded including:

1. Maria Pereira (stabbed in the abdomen);
2. Joao Pereira (stabbed in the left and right thighs and shoulder);
3. Vicente A.G. De Sousa (wounded on the forehead);
4. Donato Soares (stabbed in the abdomen);
5. Nelio Mesquito da Costa (shot in the right cheek);

That the actions of the Accused are regulated and liable under article 42 paragraph (2) items a and b jis article 7 item b, article 9 item h, article 40 of Law No.26 2000 concerning Human Rights Tribunal.

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

1. Testimony of Witness: WIRANTO

Under oath, the witness essentially testified the following:

- That the witness is acquainted with the Accused and is not related to him;
- That at the time of the incidents the witness was holding the office of Defense Minister/Armed Forces Commander (Menhankam/Pangab) whose duties among others was to deliver political and strategic, and National Defence and Security recommendations to the President;
- That indeed the duties and responsibility of the Pangab as assistant to the President included the development and deployment of the armed forces and defense and security units in accordance with legislation and government policies;
- That Government in its Cabinet session of 27 January 1999 agreed to conduct a Referendum in East Timor that offered two options, Option I being Special Autonomy and Option II, Independence;
- That indeed under the Tri Partite agreement (New York Agreement, 5 May 1999) in the responsibility for the execution of the Referendum in East Timor, the Government of Indonesia was only involved in security matters;
- That the witness in his capacity as Menhankam/Pangab TNI ordered the transfer of KODAL of the Referendum Implementation in East Timor (Pangko Ops Nusra) to POLRI in which the Accused acted as KAPOLDA as of the issuance of KEPRES No.43 dated 18 May 1999, in accordance with the Tri Partite agreement under which only POLRI was responsible for the maintenance of law and order and security as requested by UN;
- That indeed Witness visited East Timor on 20.21 April 1999, 12 July 1999 together with the

entourage of Menko Polkam, 7 August 1999, 5 September 1999 and 11 September 1999;

- That indeed on 5 September 1999 Witness received a written report from his staff that security in the town of Dilli had deteriorated following the announcement of the Referendum results;

- That indeed as a result of the Referendum announcement chaos occurred and therefore on 5 September 1999 KODAL was transferred from the Accused as KAPOLDA of East Timor to the Nusra Commander/TNI in accordance with contingency plans such that on 5 September 1999, jurisdiction of KODAL was transferred from the Accused as East Timor KAPOLDA to Pangdam Nusra;

- That to Witness' testimony the Accused raised no objection;

2. Testimony of witness: ADAM RACHMAT DAMIRI

Under oath witness essentially testified as follows:

- That Witness is acquainted with the Accused but is not related to him;

- That Witness held the office of Commander IX Udayana from 15 June 1998 to 27 April 1999;

- That indeed Witness understood from the reports by Witness' subordinates that Option I and Option II were offered, but before Option I was concluded, Option II was held for the people of East Timor, such that the pro-independence group felt it was in the ascendancy and this fueled the anger of the pro-integration/autonomy group, leading to a conflict between the two sides;

- That Witness was aware that the transfer of KODAL from TNI to Police was effected on 5 May 1999 and that according this was to last until a Transitional Government was formed, but this plan was not executed as it should have been due to an unexpected situation arising, namely the date of the Referendum was moved up from 7 September 1999 originally to 4 September 1999, and with this move the pro-integration/autonomy group suffered a total defeat, and as such they felt they had been disentitled and this was conveyed by the pro-integration/autonomy group, and they had also delivered their aspirations to UNAMET and UN who had given serious response, and thus chaos ensued;

- That indeed on the morning of 5 September 1999 KODAL was officially transferred from Police to TNI at 12:30 local time (WITA);

- That indeed Witness received a report that an incident had taken place on 6 April 1999 at the residence of Pastor Rafael Dos Santos and there had been a clash between the pro-integration/autonomy group and the pro-independence group on 17 April 1999 at the residence of Manuel Viegas Carrascalao in Dili that led to many fatalities;

- That indeed witness knew from the Danrem's report that a conflict had taken place arising from the dissatisfaction of the pro-integration/autonomy group as a result of the fraud committed by UNAMET during the Referendum and that there was also a clash on 6 September 1999 at the residence of Bishop Bello;

- That indeed according to the Danrem's report the Accused in his capacity of KAPOLDA had attempted to prevent the riot from spreading;

- That indeed Witness understood that the incidents on 6 and 17 April 1999 and on 5 and 6 September 1999 occurred spontaneously in only 4 Kabupatens;

- That to Witness' testimony the Accused raised no objection;

3. Testimony of Witness: M. NOER MUIS

Under oath Witness essentially provided the following testimony:

- That Witness is acquainted with the Accused in an official capacity and is not related to him;

- That Witness held the office of Danrem 164 Wiradharma from 13 August 1999 to March 2000;

- That indeed at the time KODAL was in the hands of the Accused in his capacity as KAPOLDA of East Timor;
- That indeed the Tri Partite agreement adopted Option One and Option Two in which KODAL during the implementation of the Referendum on 30 August 1999 until the Transitional Government formed in East Timor would be in the hands of Police while TNI assisted in Police duties with the leave of UNAMET;
- That indeed on 5 September 1999 a clash occurred between the pro-integration/autonomy masses and the pro-independence masses, and Witness checked the crime scene and at the time Witness submitted a complaint to UNAMET and Witness also reported to Pangkoops about the riot in Dilli and his superior said that if that there was not enough personnel more should be sought;
- That Witness received a report of the clash in Suai Church between the pro-integration/autonomy group and the anti-integration/autonomy group and that there were 27 (twenty-seven) casualties;
- That indeed a State of Emergency was put in effect in East Timor on 6 September 1999 at 24:00 local time (WITA) because of the uncertain situation/chaos;
- That Witness was aware that the conflict involved the use of standard firearms, homemade firearms, and sharp weapons that resulted in fatalities according to the report of Dilli Dandim and the Accused in his capacity as KAPOLDA of East Timor following coordination with Witness in his capacity as Danrem 164 Wiradharma;
- That among the casualties of 5 September 1999 at the Dilli Diocese there were found about 11 (eleven) to 17 (seventeen) dead and 1 (one) TNI soldier from Kodim Dilli shot;
- That indeed on 5 and 6 September 1999 the personnel who went into the field at the time of the incident were Korem operational staff, Korem Intelligence staff, Korem Territorial staff, the Dilli Dandim and Danramil who then prepared a report for Witness after which Witness also entered the field and the Pangkoops Nusra directed Witness to safeguard the situation, prevent further casualties and reinforce forces if necessary;
- That most of Witness' testimony was corroborated by the Accused;

4. Testimony of Witness: LEO PARDEDE

After being sworn in, Witness essentially testified as follows:

- That Witness was acquainted with the Accused in an official capacity and was not related to him;
- That Witness in his capacity as Kapus KODAL Polda East Timor was assigned and authorized to assist the KAPOLDA in planning operations launched by East Timor Polda;
- That indeed the weapons disarmament by KPS was not executed optimally as the Portuguese had left thousands of weapons in East Timor;
- That at the incident of 6 April 1999 at the residence of Pastor Rafael Dos Santos in Liquisa, the Accused instructed Witness to bring in the Satserse to conduct examinations and investigation and to replace the Liquisa Kapolres as the latter had been tardy in taking action in the field;
- That indeed in accordance with the telegram from Adam Damiri as Pangkoops Nusra to the Accused, KODAL was transferred from East Timor Polda to Pangkoops Nusra, and following the transfer of KODAL the task of the Accused in his capacity as KAPOLDA was merely to evacuate refugees and take legal action against the perpetrators of the riot;
- That indeed Witness was aware that no POLRI personnel had committed a violation in the conflicts mentioned above;
- Witness' testimony was essentially corroborated by the Accused;

5. Testimony of Witness: JOSEP JOSUA SITOMPUL

Under oath essentially Witness testified as follows:

- That Witness was assigned to East Timor as Kadit Diklat from November 1996 to September 1999 specifically to act as Dansatgas HANOIN LOROSAE I from April to September 1999 with the basic task of safeguarding the Referendum from the campaign period to the completion of the Referendum, security, equipment and UN personnel in East Timor in accordance with the Tri Partite agreement;
- That indeed following the execution of the Referendum riots occurred between the two disputing sides, the pro-integration/autonomy group and the anti-integration/autonomy group, resulting in an exodus out of East Timor;
- That indeed on 17 April 1999 at the residence of Manuel Viegas Carrascalao there were fatalities and Witness was delegated to offer condolences for the death of the son of Manuel Viegas Carrascalao;
- That indeed on 5 September 1999 KODAL was transferred from East Timor Polda to Pangkoops Nusra and operation Cabut (Withdrawal) was launched that deployed East Timor Polda to safeguard the evacuation of refugees out of East Timor;
- That indeed on 6 September 1999 conflict broke out at the residence of Bishop Bello between the pro-integration/autonomy group and the pro-independence group that led to fatalities and Witness had attempted to prevent the conflict from spreading and the Accused ordered Witness to escort the band of refugees and to maximize the safety of refugees and the population both from the pro-integration/autonomy group and the anti-integration/autonomy group;
- Witness' testimony was essentially corroborated by the Accused;

6. Testimony of Witness: MUAFI SAHUDJI

Under oath Witness essentially testified as follows:

- That witness acted as Deputy Head of Polda East Timor from 1997 to 1999;
- That indeed the plan for operation HANOIN LOROSAE was the implementation of the Tri Partite agreement that was the realization of government policy to implement the Tri Partite agreement;
- That indeed a clash occurred on 17 April 1999 between the pro-integration/autonomy masses and the anti-integration/autonomy masses at the residence of Manuel Viegas Carrascalao and at the time the Accused (KAPOLDA) was not in Dilli and therefore Witness undertook the task of adding one SSK for reinforcement and Witness instructed the Kapolres to take lawful action against the perpetrators of the clash which resulted in more or less 12 (twelve) casualties;
- That on 5 September 1999 at the Dilli Diocese, KAPOLDA ordered the Police to localize the conflict so that it would not spread, to safeguard the population taking refuge in Polda and other locations with the limited strength and personnel available;
- That indeed the Accused replaced the Liquisa Kapolres following the incident of 6 April 1999 because the Liquisa Kapolri had been tardy in handling the riots in the field;
- That indeed the attack by the pro-integration/autonomy group on the Dilli Diocese on 5 September 1999 resulted in 3 (three) civilian fatalities while the incident of 6 September 1999 at the residence of Bishop Bello in Dilli there were 10 (ten) civilian casualties and the incident of 6 September 1999 at the Suae Ave Maria Church resulted in 8 (eight) casualties;
- That indeed not all regions of East Timor was controlled by POLRI (East Timor Polda) but was controlled by TNI (Korem) such that POLRI (East Timor Polda) could not operate normally;
- That indeed on 6 September 1999 communication between Polda, the Polres and the Polsek throughout the region was broken off;

- That indeed this incident was not predicted by Polda East Timor;
- Witness' testimony was essentially corroborated by the Accused;

7. Testimony of WITNESS: ADIOS SALOVA

Under oath Witness essentially testified as follows:

- That Witness in his capacity as Liquisa Kapolres from end of June 1998 to July 1999 was acquainted with the Accused and is not related to him;
- That indeed Witness oversaw Liquisa Polres comprising 145 personnel divided into 3 (three) Polsek;
- That indeed on 6 April 1999 a conflict broke out between the pro-integration/autonomy group and the pro-independence group at the house of Pastor Rafael Liquisa in the Liquisa Church compound;
- That Witness ordered 5 (five) of his men to conduct an investigation and headed to the scene of the incident where Witness met with Eurico Guterres and received a request to arrest Dato Village Head Jacinto and his men who were taking refuge in the home of Pastor Rafael and to bring them to the Police;
- That Witness still continued efforts to protect Rafael's house;
- That the constraint faced by Police in handling the conflict was due to the lack of personnel and unexpected conditions, as despite the back-up of POLDA with 100 (one hundred) security forces, the conflicting masses numbered about 5000 (five thousand men) and therefore they were outnumbered;
- That indeed the conflict could not be contained, with gunfire sounding, and Witness saw some 200 (two hundred) men from the pro-integration/autonomy group carry sharp weapons, stabbing weapons and homemade weapons, and consequently there was fighting and killing and Witness made an attempt to protect the refugees at the home of pastor Rafael;
- That indeed during the incident there were 5 (five) fatalities and 25 (twenty five) wounded and all were civilians;
- That indeed the conflict lasted 2 (two) to 3 (three) hours and Witness reported the incident to KAPOLDA (the Accused) and the KAPOLDA ordered Witness to arrest and examine the perpetrators of the conflict and therefore 11 (eleven) people were arrested by the investigative team from the POLDA team;
- That indeed Witness was replaced from his office as of 5 July 1999;
- Witness' testimony was essentially corroborated by the Accused;

8. Testimony of Witness: HULMAN GULTOM

Essentially testified under oath as follows:

- That Witness as Kapolres of Dilli from June 1998 to September 1999 among others was assigned to enforce law and order, provide guidance to the people and was also Dan Satgas Res Polres Dilli for Operation HANOIN LOROSAE in 1999;
- That the number of men at Polres Dilli numbered 240 (two hundred and forty);
- That Witness knew about the conflict taking place in the home of Manuel Viegas Carrascalao on 17 April 1999 from the report by Waka Polres Dilliin which at the time Manuel Viegas Carrascalao asked for protection from Witness as he feared he would be attacked and Witness safeguarded the house;
- That indeed on April 17, 1999 there was an event for the inauguration of Aitarak under the leadership of Eurico Guterres on the grounds of the office of the Dilli Governor, officiated by Joao Tavares, the leader of the pro-integration/autonomy, and Witness was ordered by the KAPOLDA (the Accused) to safeguard the event and Witness brought two companies or 200 (two hundred) men in addition to one company or 100 (one hundred) BKO Brimob men from POLDA;

- That further when the ceremony was concluded the participants formed a procession and passed by the house of Manuel Viegas Carrascalao with Police escorting the procession but a clash then ensued, with Police helpless to halt the attack on Manuel Viegas Carrascalao's house and consequently a clash was able to break out between the pro-integration/autonomy masses and the anti-integration/autonomy masses at the residence of Manuel Viegas Carrascalao, with shots fired, hackings and arson, resulting in the deaths of 12 (twelve) people and 2 (two) wounded, and previously the houses of residents in Balide Village were also destroyed and set on fire;
- That indeed this incident was reported to KAPOLDA and the Accused ordered Witness to secure the crime scene and to proceed against the suspects, and to protect the population by attempting to halt the acts and bringing the pro-independence people taking refuge to Mako Polres Dilli;
- That indeed there occurred an incident on 5 September 1999 at the Dilli Diocese, whereby on 4 September 1999 the situation in East Timor was in disarray and uncontrollable, with an attack launched by the pro-integration/autonomy group against the pro-independence group taking refuge in the residence of Bishop Bello, and on 5 September 1999 another incident took place in the Dilli Diocese resulting in 2 (two) dead and 1 (one) wounded), whereas the incident of 6 September 1999 at the residence of Bishop Bello led to 10 (ten) fatalities and several people wounded from the pro-independence group and the civilian population taking refuge in the residence of Bishop Bello;
- That Witness perceived that the conflict and confusion occurred as a result of the disappointment felt by the pro-integration/autonomy masses because UNAMET had dealt unfairly in the Referendum, with local committee workers for UNAMET only recruited from the pro-independence group, and the fraud committed at the ballots;
- That indeed at the time Witness secured the situation and the safety of Bishop Bello while other Police personnel concentrated on evacuating refugees and securing the people who were in disarray fleeing to seek refuge;
- That indeed on 7 September 1999 a Martial State of Emergency was effected in East Timor;
- That indeed evidence in the form of the document "Operations HANOIN LOROSAE 1999 and HANOIN LOROSAE II/1999" that was exhibited Witness knew pertained to operation plans prepared by East Timor POLDA and signed by the Accused to safeguard implementation of the Referendum in East Timor as execution of the Tri Partite agreement with troops reinforcement as the numbers of Police personnel assigned to East Timor were inadequate;
- That indeed the situation during the Referendum was secured by Police and Witness was aware that a UN special envoy, Jamseid Marker had visited Polda and conveyed his thanks for the Police's success in securing the Referendum;
- That indeed Police from Dilli Polres had acted according to KAPOLDA's instruction to secure and safeguard the process to their maximum ability without discriminating between the pro-integration/autonomy group and the anti-integration/autonomy group;
- That to Witness' knowledge, in the incidents of 17 April, 5 and 6 September 1999, the security apparatus experienced great difficulty in carrying out Police actions due to the chaotic situation with the masses outnumbering them despite the action of the Accused who mobilized the entire Police apparatus through HT use by air as the KAPOLDA patrolled and monitored the situation on a helicopter;
- Witness' testimony was essentially corroborated by the Accused;

9. Testimony of Witness: GATOT SUBYAKTORO

Under oath Witness essentially testified as follows:

- That Witness held the office of Kapolres of Kovalima from July 1998 to September 1999

with his main task being the maintenance of security and other KAMTIBMAS duties;

- That indeed Witness in addition to acting as Kapolres Kovalima was also acting as Dan Satgas Ops HANOIN LOROSAE 1999 and HANOIN LOROSAE II/1999 for the security of the implementation of the Referendum in East Timor, the protection of UN and UNAMET personnel, protection of UN and UNAMET strategic objects, foreigners and reporters in East Timor, whereas Operation HANOIN LOROSAE II/1999 executed the evacuation and protection of refugees;

- That Witness knew of the incidents of 5 and 6 September 1999, in which on 6 September 1999 Witness arrived at the Suae Church compound where intense gunfire was heard and there were many refugees outside the Church, and a clash broke out between the population at the Ave Maria complex (pro-independence) and the pro-integration/autonomy group because the pro-integration/autonomy group felt they had been wronged with the announcement on 4 September 1999 of Referendum results of the poll held on 3 September 1999 at the Ave Maria Church compound, angering the pro-integration/autonomy group and resulting in the ensuing confusion;

- That Witness was aware that the situation was very chaotic and therefore the KAPOLDA ordered the reinforcement of BKO troops from Brimob as the Kapolres lacked the manpower to escort the refugees out of East Timor, safeguard and protect UNAMET and UN personnel and the population that were seeking refuge;

- That the incidents of 5 and 6 September 1999 was no longer under control and Witness could not be informed of incidents in other places as all communication equipment such as HTs, telephones were out of order;

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

10. Testimony of Witness: CARLO BRIX TEWU

Under oath Witness testified as follows:

- That Witness was Secretary of Direktorat Reserse Polda Metro East Timor from 1998 to 1999, in addition he also acted as Satgas Tindak in the execution of Operations HANOIN LOROSAE 1999 and HANOIN LOROSAE II/1999, and his task was to provide security for the Referendum in East Timor for both the personnel and assets of UNAMET;

- That indeed HANOIN LOROSAE 1999 and HANOIN LOROSAE II/1999 acted on the Tri Partite agreement and were planned and launched at Polda East Timor and were successful in safeguarding the course of the Referendum and protecting foreigners, UNAMET and its assets in East Timor;

- That Witness knew of the conflict between the opposing groups at the Liquisa Church on 6 April 1999 and the incident at Jalan Antonio in Dilli on 17 April 1999 and had secured the crime scenes and processed the perpetrators as the clash had led to 2 (two) fatalities and several wounded from the civilian population;

- That Witness knew of the incidents of 5 and 6 September 1999 in which the situation was in chaos and uncertainty reigned, with clashes, killings and assault as well as Bishop Bello's house set on fire and at the time the situation deteriorated as all communication equipment were cut off;

- That indeed Witness and other Police personnel undertook the evacuation of refugees and safeguarded the population, regardless of the group they belonged to;

- Witness' testimony was essentially corroborated by the Accused;

11. Testimony of Witness: CHARLES MARPAUNG

Under oath Witness essentially testified as follows:

- That Witness was Kapolres of Baucau from July 1998 to September 1999;

- That indeed in the implementation of the Referendum, Witness constantly coordinated with

public figures in Baucau, particularly in socializing the Referendum program to the population, including establishing coordination with other agencies;

- That Polres Baucau comprised 6 (six) Polsek which were assisted by Kamra personnel numbering 60 (sixty) men spread among the Polsek and the Polres assisted in administrative Police duties;

- That indeed one week before the execution of the Referendum there was a massive movement of refugees from the pro-integration/autonomy group and the pro-independence group owing to information that the pro-independence group would win in the Referendum;

- That Witness only knew of the conflicts at the residence of Manuel Viegas Carrascalao on 17 April 1999 and at the Dilli Diocese, and at the residence of Bishop Bello on 6 September 1999, newspaper and radio reports as the incidents took place outside of the jurisdiction of Polres Baucau;

- That indeed following the Referendum nearly all agencies in Baucau had sought refuge except for Police, with most of the refugees comprising pro-integration/autonomy people whereas the pro-independence people had gone to the jungles and celebrated their victory in the jungles;

- Witness' testimony was essentially corroborated by the Accused;

12. Testimony of Witness: BUDI SUSILO

Under oath essentially Witness testified as follows:

- That Witness is acquainted with the Accused through his position and is not related to him;

- That Witness held the office of Kapolres of Bobonaro and doubled as Dan Satgas Res for Operation HANOIN LOROSAE 1999;

- That Witness was ordered by the Accused to execute HANOIN LOROSAE II/1999 and Witness reported to KAPOLDA (the Accused) on the execution of this task verbally, by telephone, HTs and through written reports;

- That due to the escalation of security in Maliana, Witness requested manpower assistance for BKO at Polres Bobonaro and KAPOLDA added to the manpower strength from Brimob, numbering one company and 50 (fifty) men from Polda Bali;

- That indeed on 30 August 1999 the Accused had visited Bobonaro to provide direction to Police personnel in Polsek Bobonaro for the security of the Referendum;

- That indeed there was a clash between the pro-integration/autonomy group and the pro-independence group before the UNAMET office which was brought under control by Witness and the Police and reported to the Accused, and on this clash the Accused issued instructions to secure the crime scene, isolate the crime scene and conduct investigations and arrest the perpetrators;

- That indeed the evidence in the form of the document on Operations HANOIN LOROSAE 1999 and HANOIN LOROSAE II/1999 exhibited in court was the operational plan prepared and cited by Polda East Timor for the execution of the Referendum in East Timor;

- Witness' testimony was essentially corroborated by the Accused;

13. Testimony of Witness: AMILIO BARETTO

Under oath Witness essentially testified as follows:

- That Witness only knew the Accused by name and was not personally acquainted with him;

- That Witness knew of the incident of the attack at the residence of Pastor Rafael in the Liquisa Church compound as Witness was one of the casualties of the 6 April 1999 incident;

- That Witness and his wife along with other refugees were at the residence of Pastor Rafael in the Church compound to seek refuge from 5 April 1999, at approximately 10:00 local time (WITA);

- That indeed at the time Witness observed that many people had sought refuge in the

residence of Pastor Rafael, numbering some 3000 (three thousand) including Jacinto da Costa who was one of the leaders of the pro-independence group and Witness saw many militia men outside the compound who were generally carrying homemade firearms, and sharp weapons such as swords and machetes;

- That indeed on 6 April 1999 Witness saw TNI, Brimob and Police personnel in the vicinity of the compound;
- That at 11:00 hours local time (WITA), Eurico Guterres and his companions met with Pastor Rafael and requested that Jacinto da Costa and CNRT leaders in the Pastor's house be surrendered to Police but the request was rejected by Pastor Rafael who said his home housed no leaders but common people;
- That indeed at around 13:00 hours local time (WITA), Witness and others inside the compound were attacked by the militias and gunfire was heard, resulting in 9 (nine) deaths from the pro-independence group, and several others wounded;
- That Witness saw that beside the militia members there were TNI personnel who joined in the attack who Witness recognized as Tomediego and Jose Ramos from Kodim Liquisa;
- That Witness was disappointed by the Police as the Police could not bring the situation under control in handling the incident, and Witness observed that the Police were outnumbered and consequently there were casualties;
- That Witness also observed Police/Security personnel seizing firearms and sharp weapons carried by the militias;
- That indeed Witness personally heard TNI member Tomegiego from Kodim Liquisa order the attack on the Liquisa Church compound and Witness observed some 200 (two hundred) men in Police uniforms standing on guard at the location;
- That indeed during the incident Witness suffered wounds on the head and had to be treated in hospital;
- Witness' testimony was essentially corroborated by the Accused;

14. Testimony of Witness: JOAO PEREIRA

Under oath Witness essentially testified as follows:

- That Witness was acquainted with the Accused but was not related to him and Witness was acquainted with the Accused because the Accused had been KAPOLDA of East Timor;
- That Witness knew of the attack on the residence of Pastor Rafael at the Liquisa Church compound on 6 April 1999 as Witness himself was present when he was seeking shelter and protection along with other refugees at that place;
- That to Witness' knowledge the attackers of the refugees sheltering at the residence of Pastor Rafael in the Liquisa Church compound were militia groups comprised of the Aitarak and Besi Merah Putih (BMP) groups from the pro-integration/autonomy side;
- That Witness saw the attackers use weapons such as homemade firearms, and sharp implements and machetes;
- That Witness was one of the victims who was hacked on the head with a sword 3 (three) times and on the left hand, by a militia man named Mingguana from Maubara;
- That indeed on 5 April 1999 at approximately 11:00 hours local time (WITA), Witness had intended to head to Dilli to purchase rice but was not able to do so as when Witness was in Liquisa Witness heard gunfire and observed that houses were being fired at, among others the house of Agustinus, and therefore the situation was unsafe; then Witness and his wife were in fear and dismissed their intention to visit Dilli and immediately headed to the residence of Pastor Rafael in the Liquisa Church compound to seek refuge;
- That upon his arrival at the residence of Pastor Rafael in the Liquisa Church compound, Witness saw that many people were already at the Pastor's home with the intention of seeking shelter and refuge, including Jacinto da Costa, the Head of Dato Village;

- That on 6 April 1999 since morning Witness observed that many militias had assembled in the grounds of Liquisa Kodim carrying firearms, both standard firearms and homemade, and sharp weapons, and Witness was aware of this because Witness could see from inside the compound the Kodim quarters which was located not far from the compound, or about 50 meters distance;
- That although the security apparatus observed that the pro-integration group was armed with various weapons they took no action against those carrying weapons;
- That indeed on 6 April 1999 in the morning at about 8:00 hours local time (WITA), Witness saw Eurico Guterres enter the Liquisa Church compound and speak to Pastor Rafael but Witness could not hear what they spoke of;
- That on 6 April 1999 at 13:00 hours local time (WITA) the militias armed with standard and homemade firearms and sharp weapons attacked the refugees who were sheltering at the residence of Pastor Rafael in the Liquisa Church compound;
- That indeed at the time the incident took place, the security apparatus took no action and indeed appeared to allow the incident to occur, nor did the security apparatus make an attempt to disarm the militias;
- That Witness was hacked on the head when he intended to slip out to save himself from the attack of the militias who had entered the Church compound and Witness was not the only person hurt, but many others were also wounded;
- That Witness then headed out to the Bupati of Liquisa to save himself and at the time Witness was helped by Eurico Gutiterres who brought Witness to the hospital for treatment;
- That indeed the police protected the refugees during the attack by the militias sheltering in Pastor Rafael's residence in the Liquisa Church compound and in Witness' view the police had conducted themselves well;
- That indeed to Witness' knowledge, the attack at Liquisa led to 9 (nine) deaths and some wounded;
- The Accused did not object to Witness' testimony;

15. Testimony of Witness: RADJAKARINA BRAHMANA

Under oath Witness testified as follows:

- That indeed Witness at the time was Sekwilda of East Timor (from 9 March 1993 to 6 September 1999) and is acquainted with the Accused who was KAPOLDA in East Timor;
- That indeed the duties and authority of the Sekwilda was to assist the Governor in the Administration of the region, in Guiding Organization and Personnel, and in internal coordination with Agency Heads and in external coordination with related agencies responsible to the Governor;
- That indeed in addition to acting as Sekwilda Witness was also a member of KPS (Commission for Peace and Stability) for the referendum in East Timor responsible to the Governor;
- That indeed KPS members were composed of Witness, Bupati of Dilli, pro-integration/autonomy groups (Aitarak and Besi Merah Putih), pro-independence groups (CNRT) and were headed by the Chairman of KOMNAS HAM;
- That indeed the duty of KPS was to seek peaceful settlement of conflicts between the pro-integration/autonomy group and the pro-independence group in coordination with related agencies;
- That indeed KPS did not conduct a sweepsearch of arms;
- That indeed KPS did not operate as expected as after the meeting that generated the peace accord both the pro-independence group and the pro-integration/autonomy group held on adamantly to their respective positions;
- That indeed in mid August of 1999 a Muspida meeting was held headed by the Governor

and attended by the Danrem, the Accused as KAPOLDA, the Kajati, and Witness as secretary, to discuss the smooth execution of the Referendum;

- That indeed Pam Swakarsa was born at the initiative of the people with the aim of generating the people's safety and security as since May 1999 CNRT had undertaken acts such as KTP (identity card) checks followed by threats, terror, intimidation against the pro-integration/autonomy group, including government employees (PNS);

- That indeed Pemda Tk.I and Pemda Tk.II in East Timor provided non routine assistance to the Pam Swakarsa groups from the pro-integration/autonomy group that was set aside from the Regional Budget (APBD) wherea assistance for the pro-independence group was never requested by the party concerned;

- That indeed on 17 April 1999 from 09:00 to 11:00 WITA a Pam Swakarsa ceremony was held that was attended by approximately 1000 (one thousand) members from Dilli, Liquisa and ither regions, and Governor Abilio Jose Osorio Soares was present, whereas the Accused as KAPOLDA was not present;

- That indeed participants in the ceremony carried sharp weapons such as machetes and spears, and homemade firearms, and Police at the time made no effort to seize these weapons;

- That indeed following the ceremony the participants returned home without police escort and when the procession passed by the residence of Manuel Viegas Carascalao there was an exchange of insults between the pro-integration/autonomy group and the pro-independence group inside the residence of Mael Viegas Carascalao that was followed by a clash resulting in 2 (two) fatalities and others wounded;

- That indeed Police had conducted an investigation on the perpetrators of the conflict in the residence of Manuel Viegas Carascalao and some of the cases have been brought to Court;

- That indeed UNAMET had conducted a campaign prior to the Referendum in which it told the people that if they chose autonomy they would only own one room in a house whereas if they chose independence they would own a whole house;

- That indeed Pemda Tk.I and Pemda Tk.II by way of Governor Abilio Jose Osorio Soares lodged a protest against the fraud committed by UNAMET during the execution of the Referendum in East Timor that was conveyed to Foreign Minister Ali Alatas;

- The Accused made no objection to Witness' testimony.

16. Testimony of Witness: ASEP KUSWANI

Under oath Witness essentially testified as follows:

- That indeed Witness was assigned to East Timor as Commander of Liquisa Kodim until the Red and White flag was lowered from East Timor;

- That indeed as Kodim Commander Witness' task was to execute operational activities toward territorial development and Witness was responsible to the Korem Commander who was Tono Suratman;

- That indeed Liquisa Kodim was assisted in its day-to-day tasks by Wanra (People's Resistance) recruited from the East Timor population without discriminating between the independence group and the pro-integration/autonomy group;

- That indeed under the Tri Partite agreement the KODAL for the execution of the Referendum in East Timor was in the hands of Police, in this case Kapolres Liquisa in coordination with Witness in his capacity as Commander of Kodim Liquisa;

- That indeed on 5 September 1999 at 19:30 local time (WITA) KODAL was transferred from Police to TNI in accordance with the telegram received by Witness from the Korem Commander;

- That indeed Witness knew Tome Diego as a member of Liquisa Kodim;

- That indeed on 5 April 1999 houses were set on fire and pro-integration/autonomy people were held hostage, and the wife of a member of Liquisa Polres by the pro-independence group

was hacked by the pro-independence group, and the group which had set the fires and held pro-integration/autonomy people hostages, led by Jacinto da Costa (Head of Dato Village) fled to the Liquisa Church;

- That indeed Witness during the 5 April 1999 incident freed the pro-integration/autonomy people held hostage by the pro-independence group;

- That indeed during the 5 April 1999 incident, at the request of Kapolres Liquisa one SSK of reinforcements from Polda East Timor was deployed;

- That indeed Witness was aware of the clash between the pro-integration/autonomy group and the pro-independence group on 6 April 1999 at the residence of Pastor Rafael Dos Santos in Liquisa that he observed from the Kodim office;

- That indeed on 6 April 1999 the pro-integration/autonomy group led by Lettu. Yohanes Rea requested Pastor Rafael to surrender Jacinto Da Costa (Dato Village head) to Police, but Pastor Rafael did not grant this request. Then gunfire was heard from the direction of the residence of Rafael where Jacinto Da Costa and the anti-integration/autonomy group were hiding in the Church compound at 13:00 local time (WITA), triggering the pro-integration/autonomy masses outside the Church compound to attack and enter the Church compound. The sound of gunfire was heard by Witness, who was in the Kodim Office.

Witness then ordered Kasdim and Pasi Intel to separate the pro-integration/autonomy masses and the anti-integration/autonomy masses and to rescue Pastor Rafael and Pastor Jose;

- That indeed on 6 April 1999 many of the masses were armed with sharp weapons. The security apparatus was faced with difficulty in seizing these weapons as the masses were some 300 (three hundred) people strong, whereas there were only 100 (one hundred) security personnel comprised of 60 (sixty) Policemen and 40 (forty) TNI personnel, and therefore an attempt to disarm them may have incurred unwanted consequences;

- That indeed in the 6 April 1999 incident there were 5 (five) fatalities and 25 (twenty five) injured from stab wounds, and Witness ordered Kasdim and Intel Police to treat the wounded and evacuate them to Dilli;

- That indeed the 6 April 1999 incident was unexpected and the efforts of the security apparatus and the Pastors who were respected by the people of East Timor could not overcome the conflict, and the Pastors were themselves threatened with death;

- That indeed the 6 April 1999 incident lasted for about 1 (one) hour) and ceased when the two conflicting sides, the pro-integration/autonomy group and the anti-integration/autonomy group were separated by security personnel.

- That indeed the involvement of the security apparatus in the 6 April 1999 incident comprised the separation of the pro-integration/autonomy group and the pro-independence group and saving civilians.

- That indeed the perpetrators of the 6 April 1999 clash have been arrested and brought to justice according to prevailing laws;

- That indeed the 6 April 1999 incident was part of a sequence occurring from 4 to 5 April 1999;

- That indeed the Police found some difficulty in investigating the incidents of 4,5 and 6 April, 1999, due to constraints in the number of personnel, the Limited facilities and infrastructure of Liquisa Polres, and the perpetrators having fled into the jungle;

- That indeed on 7 April 1999 the Accused together with the Danrem and Bishop Bello arrived in Liquisa to check and rehabilitate the crime scenes;

- That indeed some areas of Liquisa were very hard for TNI to enter owing to the Falintil guerrillas;

- The Accused did not object to Witness' testimony;

17. Testimony of Witness: NELIO MESQUITA DA COSTA REGO

Witness was summoned several times properly and according to prevailing regulations, however Witness never appeared in court, and therefore with the approval of the Panel of justices, Witness' testimony from the Examination Deposition (BAP) was read out in court. After first being sworn in, Witness provided examiners with the following testimony as recorded in the BAP:

- That indeed on 5 September 1999 an attack was launched by militias, which according to Witness belonged to the Aitarak group, against the Dilli Diocese;
- That indeed Witness knew of this as Witness was one of the victims of the attack;
- That indeed Witness was in the Dilli Diocese because Witness and his family had taken refuge in the Dillio Diocese in light of the situation in Dilli on 2 September 1999. Witness and his family constantly heard gunfire, although Witness did not know who fired the shots;
- That indeed on 5 September 1999 when Witness and his family were having the noon meal with other refugees in the Dilli Diocese, Witness heard a series of gunfire that caused Witness and other refugees to seek shelter to save themselves;
- That Witness then heard shots hitting the window, causing it to shatter, and Witness and other refugees' fear increased, and finally Witness and his brother and 2 (two) other refugees hid in the attic of the house by entering through an open ceiling;
- That when in the attic and hiding near the open ceiling Witness saw many militias and apparatus below fully armed, causing Witness to run to the rear on the roof, and hide in a small building behind the Dilli Diocese;
- That when the situation had abated, Witness exited the small building and headed to the BPD Office to save himself;
- That before reaching the BPD Office Witness was captured by armed militias, who then shot Witness in the right cheek, left wrist and knee, and Witness pretended to fall dead at the scene;
- That indeed before the armed militias left Witness, a passing Brimob kijang vehicle stopped and brought Witness to Dilli Polres and then Witness was taken to the hospital for treatment;
- That indeed after receiving treatment Witness departed for the jungle to go into hiding and return to Dilli when the situation abated;
- That indeed Witness knew that the security apparatus, either TNI, Brimob, or Police were always together with the armed militias but Witness did not know if the security apparatus joined in the attack or fired shots;
- That indeed in that incident the whereabouts of 8 (eight) members of Witness' family that had taken refuge in Dilli Diocese were unknown (they had disappeared);
- To Witness' testimony, the Accused objected;

18. Testimony of Witness: JOAO BERNANDINO SOARES

Witness was summoned several times properly and according to prevailing regulations, however Witness never appeared in court, and therefore with the approval of the Panel of justices, Witness' testimony from the Examination Deposition (BAP) was read out in court. After first being sworn in, Witness provided examiners with the following testimony as recorded in the BAP:

- That indeed Witness and his family on 5 September 1999 had taken refuge in the Dilli Diocese, as Witness and his family felt unsafe in their home as a result of hearing gunfire and witnessing shootings in front of Witness' house;
- That indeed on that day at approximately 11:00 local time (WITA) Witness and his family arrived at the Dilli Diocese and at the time Witness observed a large number of fully armed militias and ABRI personnel inside the Dilli Diocese and therefore Witness and his family immediately hid in the Pastor's room but did not remain long after a window was shot causing the pane to shatter;

- That indeed following the shots 4 (four) fully armed security apparatus (ABRI) and militias entered the room in which Witness and his family were hiding and proceeded to beat Witness and his family, hitting Witness on the left and right sides of his head, and his father was hit on the crown;
- That indeed Witness and his family were then ordered to go outside and outside there was a silver Hardtop vehicle carrying 10 (ten) ABRI members and militias who were each fully armed;
- That indeed when Witness came near the Hardtop vehicle his father was beaten up and stabbed in the stomach with a bayonet causing Witness' father to fall down;
- That indeed Witness helped his father and carried him in the direction of the Dilli Diocese, but then Witness saw that another Hardtop vehicle was there surrounded by some 500 (five hundred) people comprising militias and security apparatus;
- That indeed Witness was hit by the apparatus and militias with wooden and iron clubs and rifle butts, and Witness and his family were brought to the port post and at the port Witness and his family were beaten up again with samurai swords and rifle butts and then they were brought to Wira Husada hospital for treatment and 7 (seven) days hospitalization;
- That indeed Witness received treatment, and Captain Pake, a TNI member, accosted Witness carrying a machete and forced Witness to surrender money to the amount of Rp.150,000, which Witness under duress handed over to Captain Pake;
- That indeed as a result of this incident, Witness' cousin named Nilton Fernando died and many other refugees died as well, whose name and numbers Witness did not know;
- That indeed Witness came to the Dilli Diocese to seek refuge, but Witness saw that Dilli Diocese had been set on fire by the militias;
- To Witness' testimony, the Accused objected;

19. Testimony of Witness: MARIA PEREIRA SOARES

Witness was summoned several times properly and according to prevailing regulations, however Witness never appeared in court, and therefore with the approval of the Panel of justices, Witness' testimony from the Examination Deposition (BAP) was read out in court. After first being sworn in, Witness provided examiners with the following testimony as recorded in the BAP:

- That indeed on 5 September 1999 Witness and her husband (Nonato Soares), a member of Kodim with the rank of Serka and 5 (five) of their children departed for Kodim to seek refuge;
- That indeed they were seeking refuge because on 4 September 1999, Witness' house was stoned by a group of militias clad in black along with members of Dilli Kodim whose names Witness did not know, but whom she knew were members of Kodim;
- That indeed when Witness and her family arrived at the pier, Witness heard gunfire and not long after, fully armed militias and TNI and Police members entered the Dilli Diocese and one Kodim member named Matheus Hera said to Witness' husband, "why have you come here, aren't you Bishop Bello's right hand", and after he spoke, Witness' husband was stabbed by one of Matheus Hera's band whom Witness did not recognize;
- That indeed Witness' saw that there were about 8 (eight) dead victims at the Dilli Diocese, including one of Witness' nephews named Jose Milton da Vosta, while the other victims Witness did not recognize;
- That indeed Witness was informed that Dilli Diocese had been targeted for an attack and arson and the Dilli Diocese housed the ballot boxes;
- That indeed the attack on the Dilli Diocese was perpetrated by militias together with security apparatus from TNI, Brimob and Police;
- To Witness' testimony, the Accused objected;

20. Testimony of Witness: MARCELINO MARTINS XIMENES

Witness was summoned several times properly and according to prevailing regulations, however Witness never appeared in court, and therefore with the approval of the Panel of justices, Witness' testimony from the Examination Deposition (BAP) was read out in court. After first being sworn in, Witness provided examiners with the following testimony as recorded in the BAP:

- That indeed Witness was a member of Aitarak as Dan Kie C assigned to the vicinity of Bishop Bello's residence with the main task of securing the neighborhood from the threat posed by Falintil and CNRT groups;
- That indeed Witness knew of the incident of 5 September 1999 at the Dilli Diocese, he knew of this at approximately 10:30 local time (WITA) on 5 September 1999, when one of his men named Dominggus Brites reported that the Dilli Diocese office had been set on fire;
- That indeed acting on this report, Witness immediately departed for the Dilli Diocese and at approximately 11:00 local time (WITA) Witness arrived at the Dilli Diocese;
- That indeed Witness and his men focused on rescuing the population inside the Dilli Diocese, and at the time Witness and his men evacuated some 200 (two hundred) people from inside the Dilli Diocese who were then brought by Witness and his men to the Kodim office for safeguarding;
- That indeed to Witness' knowledge, the Dilli Diocese was set on fire because the Dilli Diocese had been turned into a refuge for pro-independence people fleeing from the pro-integration group;
- To Witness' testimony, the Accused objected;

In considering that A De Charge Witnesses were presented in court by the Accused's Legal Counsel team, as follows:

1. Witness: Drs. KOESPARMONO IRSAN

Under oath, Witness essentially provided the following testimony:

- Witness in his capacity as member of Komnas HAM was assigned to East Timor 4 times between 1 March 1998 to September 1999 on a fact-finding mission of actual events in East Timor and since integration with Indonesia groups were found calling themselves the pro-integration/autonomy group and the pro-independence group;
- That as of 21 April 1998, East Timor Komnas HAM was changed to the Commission for Peace and Stability (KPS) tasked with efforts toward establishing peace between the disputing groups, namely the pro-independence and the pro-integration/autonomy groups;
- That in the period when Witness acted as coordinator, KPS had carried out cantonment and disarmament 4 times, specifically in Dilli and Bacau, by impounding homemade firearms, M-16 organic arms, and various sharp weapons, however it could be said that cantonment and disarmament were only successfully conducted toward the pro-integration/autonomy group, whereas toward the pro-independence group this was not possible;
- That Police were faced with difficulties in exercising their duties as in 1999 in order to take any action Police as part of ABRI had to coordinate with ABRI and criminal perpetrators fled to UNAMET places and were protected by UNAMET so that UNAMET became as a country within a country;
- That Police apparatus faced dilemmatic difficulties in resolving conflict in East Timor as they were clashes between two groups respectively comprised of the East Timor people;
- That indeed Witness received information of fraud at the polls for the Referendum, with UN helicopters landing in Er Merah and exchanging ballot boxes;
- That indeed Police had not disregarded the clashes but were delayed in reaching the crime scenes owing to lack of personnel and equipment and waiting for reinforcements to control

the situation;

· To Witness' testimony, the Accused made no objection;

2. Witness: JOKO SUGIANTO, S.H.

Under oath Witness essentially testified as follows:

· That indeed Witness in his capacity as Deputy Chairman of Central Komnas HAM along with other Komnas HAM members, namely Koesparmono Irsan and BN Marbun visited East Timor to revive the Timor Lorosae Independent Human Rights commission, as in the view of Komnas HAM in February 1999 numerous issues arose between the pro-integration/autonomy group and the pro-independence group;

· That indeed Witness was in East Timor from 17 April 1999 to 2 September 1999, but intermittently, as at certain intervals Witness had to return to Jakarta;

· That indeed at the time Witness was in East Timor Komnas HAM was restored as KPS (Commission for Peace and Stability) tasked to establish peace between the pro-integration/autonomy group and the pro-independence group, the implementation of cantonment and disarmament toward the successful execution of the Referendum in East Timor;

· That indeed on 17 April 1999 Witness who was at Hotel Mahkota observed that pro-integration/autonomy masses were holding a rally in a procession of trucks and carrying organic arms, homemade firearms and sharp weapons, that had been part of a group that had just concluded a roll-call parade at the Governor's office that was followed by the burning of the Radio East Timor Broadcasting Station, and at the time the security apparatus did not take any action to seize the organic arms, homemade firearms and sharp weapons and fatalities emerged;

· That indeed on 18 April 1999 Witness visited the residences of Manuel Viegas Carrascalao and Leandro Isaac, who had requested Witness to provide Police protection, which was followed by the Accused as East Timor KAPOLDA providing protection;

· That indeed on 19 April 1999 located at East Timor Mapolda, CNRT from the pro-independence group represented by Manuel Viegas Carrascalao and Leandro Isaac, and the pro-integration/autonomy group represented by Eurico Guterres and facilitated by Witness and the Accused, were requested to settle their differences peacefully, which proposal was accepted by both disputing parties and was followed up with Witness drafting a peace agreement;

· That indeed on 20 April 1999, the peace agreement was signed by the pro independence group and the pro-integration/autonomy group with Witness Wiranto present in his capacity of High Commander of ABRI, along with Bishop Bello and Muspida;

· That indeed Witness put the request to Justice Minister Muladi that the peace agreement signed on 20 April 1999 by Manuel Viegas Carrascalao and Leandro Isaac from CNRT (the pro-independence group) and Eurico Guterres from the pro-integration/autonomy group should also be signed by Xanana Gusmao at the Justice Department in Jakarta;

· That indeed Komnas HAM was coordinator of KPS whose members comprised the Bupati of Dilli, the Aitarak and Besi Merah Putih groups from the pro-integration/autonomy group and CNRT from the pro-independence group;

· That indeed KPS, which was established on 1 August 1999 failed to conduct cantonment and disarmament throughout the regions of East Timor during the very brief period nearing the Referendum of 30 August 1999;

· That indeed UNAMET did not inform KPS of the change in schedule of the announcement of Referendum results in East Timor, from 7 September 1999 to 4 September 1999;

· That indeed the announcement of the Referendum results on 4 September 1999 resulted in clashes between the pro-integration group and the pro-independence group, which

information Witness received from the P3 TT Task Force;

- That indeed Witness heard gunfire at the KPS office when Witness was about to leave East Timor for Kupang on 2 September 1999;
- To Witness' testimony, the Accused made no objections;

3. Witness: BENJAMIN MANGKUDILAGA, S.H.

Under oath Witness essentially testified as follows:

- That indeed Witness was assigned to East Timor from 17 April 1999 to 1 September 1999 in his capacity as member of Komnas HAM and KPS. Witness' task was to establish peace between the pro-integration/autonomy group and the pro-independence group, implement cantonment and disarmament, and hear the population's reports through cross-checks made in the field, toward the successful execution of the Referendum in East Timor;
- That it was true that on April 1999, a peace agreement was signed by pro-independence group and pro-integration/autonomy group, which was attended by Wiranto as the Commander of ABRI, Archbishop Bello and Regional Leader Council (Muspida);
- That it was true than Komnas HAM as the coordinator of KPS with members consisting of the Regent of Dili, pro-integration/autonomy group (Aitarak and Besi Merah Putih) and pro-independence group (CNRT) conducted cantonization and an armistice on both pro-integration/ autonomy group and pro-independence group in facing the Referendum in East Timor;
- That it was true that KPS had failed to conduct an armistice in all East Timor, whereas the implementation of cantonization only succeeded on pro-integration/autonomy;
- That it was true that when witness conducted a visit to the region with the Commander of Manatuto POLRES for socialization of Referendum, on the road, witness found members of Falintil group wearing full, looted Mobile Brigade (Brimob) fatigue, lead by Roy Robot. That witness saw Roy Robot wearing looted fatigue of Special Force Command (Kopassus) and held witness and the party hostage. However, witness managed to ensure Roy Robot that the result of the meeting with Roy Robot, who wanted freedom for East Timor, would be delivered to KPS in Dili;
- That it was true that every report on the event of clash between pro-integration/autonomy group and pro-independence group was responded by the Defendant as the Commander of East Timor Regional Police (KAPOLDA) using limited personnel and minimum equipment and vehicles over a wide and difficult area;
- That it was true that clash between pro-integration/autonomy group and pro-independence group could not be handled due to the extent of conflict area and the limitation of personnel and equipment;
- The Defendant did not raise any objections on the testimony of the said witness.

4. Witness : ARMINDO SOARES MARIANO

Under oath, the witness gave a testimony with the following main points:

- That it was true that the witness had been assigned in East Timor from 1997 to 1999 as the Chairperson of East Timor Provincial DPRD;
- That it was true that when leaving East Timor, Portuguese left around 27.000 weapons in East Timor, which spurred civil war in East Timor;
- That it was true that with the existence of 2nd Option of Freedom, pro-independence group started to conduct actions to demand referendum, that TNI withdrawn from East Timor and conducted provocations that degraded Indonesia in the eye of International society;
- That it was true that the idea of Referendum implementation in East Timor was given by the Government of RI without prior consultation to East Timor Provincial DPRD as the representative of East Timor people;
- That it was true that on the implementation of Referendum on August 30, 1999 in East

Timor, KPS who were involved by UNAMET in the referendum was prohibited from entering the polling stations by UNAMET as they were considered as Indonesia citizens, whereas according to New York Agreement, KPS was to be involved in all proceedings of Referendum, including to enter polling stations;

- That it was true that local UNAMET staffs on the implementation of Referendum were recruited from pro-independence group only;
- That it was true that the witness did not have any knowledge over the attack conducted by pro-integration/autonomy group against pro-independence group who evacuated and sheltered in the residence of Pastor Rafael in Liquisa Church complex on April 6, 1999, as well as over the attack on the residence of Manuel Viega Carrascalao on April 17, 1999, attack on the Diocese of Dili on September 5, 1999 and attack on the Ave Maria Church complex in Suai and the residence of Archbishop Bello on September 6, 1999;
- That it was true that the Defendant as the Commander of East Timor Regional Police (KAPOLDA) had conducted his duty well and to the maximum for the security of the implementation of Referendum, protecting Archbishop Bello, accommodating refugees in the Headquarter of East Timor Regional Police (MAPOLDA) and evacuating refugees;
- The Defendant did not raise any objections on the testimony of the said witness.

5. Witness : Drs. AGUS TARMIDZI

Under oath, the witness gave a testimony with the following main points:

- That it was true that during the Referendum in East Timor, the witness was asked to lead P3 TT task force;
- That it was true that the duty of P3 TT task force was as a liaison between the Government of Indonesia and UNAMET, and that the task force coordinated with the TNI/POLRI apparatus;
- That it was true based on the memory of the witness that there were murders on the pro-integration/autonomy group committed by pro-independence group and that the witness asked the Defendant to handle the matter and that the Defendant had handled it well;
- That it was true that Jamseed Marker as a UN envoy came to Polda and expressed his gratitude to the Defendant because the Defendant had managed to secure the Referendum;
- That it was true that the recruiting of local staffs was according to the decisions of UNAMET and that UNAMET refused to recruit staffs from pro-integration group and only from pro-independence group;
- That it was true that the witness proposed to UNAMET that vote counting should be conducted in each district and not in Dili, which was rejected by UNAMET;
- That it was true that the witness had only seen TPS and vote counting location from afar and was not allowed to approach by UNAMET and that it was pursuant to the New York Agreement;
- That it was true that the witness as the leader of task force did not specifically coordinated with UNAMET on the anticipation on the result of the Referendum, that whomever lost would create a chaos;
- That it was true that the existence of P3 TT task force was known by the East Timor people since it was socialized, and the information on the Referendum was given by P3 TT task force to the people;
- That it was true that in New York Agreement, POLRI security apparatus was responsible for the security of Referendum;
- That it was true that the witness did not know for a fact the reason of UN General Secretary for postponing the Referendum and that the witness only received reports from task force and UNAMET that there were violations conducted by pro-integration/autonomy group and pro-independence group;
- The Defendant did not raise any objections on the testimony of the said witness.

6. Witness: ALBERT KUHON

Under oath, the witness gave a testimony with the following main points:

- That it was true that the witness' profession was a journalist and at that time the witness was working for SCTV station;
- That it was true that the witness was in Dili in mid-August 1999 to broadcast live the campaign in East Timor. At that time, the situation was almost volatile and gunshots were heard almost everyday;
- That it was true that when covering the news the witness met and interviewed the Defendant at the POLDA Headquarter on the situation, and the Defendant stated that the situation was under control, and at that time, the Defendant suggested both groups to restrain themselves;
- That it was true that on September 5, 1999, the witness stopped by at the POLDA Headquarter, as the witness knew there were many civilian refugees, since the Referendum of September 4, 1999, there had been sporadic evacuation;
- That it was true according to the knowledge of the witness that the refugees who came to the POLDA Headquarter were based on the refugees' own initiative, and that there were emergency tents erected at the POLDA Headquarter to shelter the refugees;
- That it was true that when the witness conducted a meeting with the commander of Falintil, its members carried arms, both long barreled (modern) arms and short barreled, and the fatigues worn were combat fatigues;
- That it was true that the witness obtain information that Archbishop Bello had died, somewhere on September 5 or....., 1999 and then the witness directly went to the residence of Archbishop Bellow which were burning, where the witness met and interviewed Archbishop Bello who were out of the residence and calming the refugee. At that time, there were Major Tewu and Yosef Sitompul, both Police officers from Polda, at the residence of Archbishop Bello;
- That it was true according to the knowledge of the witness that Archbishop Bello was guarded/secured by Police officer (Carlo Tewu) at the POLDA Headquarter and then was flown to Baucau;
- That it was true that when the residence of Archbishop Bello was burning, the witness saw security apparatus from Brimob took water from the sea to extinguish the fire at the residence of Archbishop Bello;
- That it was true according to the memory of the witness that when the witness came to the residence of Archbishop Bello and then the Archbishop was secured to the POLDA Headquarter, the witness saw an old nun guarded by Police apparatus to the POLDA Headquarter;
- That it was true that witness last met with the Defendant when Archbishop Bello was taken to Regional Police (POLDA), the witness came along with the purpose to interview Archbishop Bello. However, the archbishop was already flown to Baucau by Police security apparatus;
- That it was true according to the memory of the witness that during the voting of the Referendum, the security situation of East Timor was quite conducive;
- The Defendant did not raise any objections on the testimony of the said witness.

7. Witness: LUISA GOUVEIA LEITE

Under oath, the witness gave a testimony with the following main points:

- That it was true that the witness was an office staff of the Governor of East Timor and now is working at the Office of the Governor of East Nusa Tenggara in Kupang;
- That it was true that the witness had sent a letter to the General Attorney of the Republic of Indonesia with carbon copies to the President of the Republic of Indonesia, Vice-Commander of Regional Police, Coordinating Minister of Politics and Security and the Defendant on February 8, 2001;

- That it was true that witness wrote the letter because the witness saw what happened in East Timor at that time and that the purpose of sending the letter to the General Attorney was that because the witness and the people of East Timor were protected by Police apparatus;
- The Defendant did not raise any objections on the testimony of the said witness.

8. Witness: FAISAL TANJUNG

Under oath, the witness gave a testimony with the following main points:

- That at the time of Referendum in East Timor, the witness held the position of Coordinating Minister of Politics and Security (Menko Polkam) and as the Security Head of the Referendum Agreement;
- That in the tri-party agreement on May 5, 1999, the Police was responsible for the security of the proceeding of the Referendum, UNAMET personnel, including possession, and assisted KPS in disarmament of the two conflicting groups;
- That the function of TNI in the Referendum was to assist the Police apparatus;
- That based on the result of inspection by the Minister of Defense and Security, Commander of ABRI, the President enacted a Military Emergency status on East Timor since September 6, 1999;
- That at the time when the Referendum was conducted, the witness had never heard any complaint from UNAMET, on the contrary, the witness received reports that UNAMET conducted frauds;
- That the announcement of the Referendum was supposed to be on September 7, 1999, but the witness received news from the Minister of Foreign Affairs Ali Alatas that the announcement was moved forward to September 4, 1999 based on the request of UNAMET;
- That according to the knowledge of the witness, the Police apparatus had conducted their duties well in terms of security of the Referendum, and the Police had done their maximum effort in handling the conflict from the two groups, which were the pro-integration/autonomy group and the pro-independence group, and the arms collected were quite large, some of them self-made and some of them were from the Indonesian party;
- That the witness knew that special autonomy for East Timor did not go on well and that there was a letter from the Prime Minister of Australia, John Howard, which offended the Government of Indonesia and resulted on the Second Option, which was Independence. In addition, that President B.J. Habibie made a disposition addressed to the Minister of Foreign Affairs, Minister of Internal Affairs, Commander of ABRI and Coordinating Minister of Politics and Security, which main point was that if East Timor was a burden to Indonesia, then it was natural that it was decided to be separated in the General Assembly of MPR. The second option (independence) was an initiative of the former President B.J. Habibie and it was formalized/discussed in Politics and Security Cabinet Meeting.
- That the person who was responsible for the lack of POLRI personnel on the field was the Minister of Defense and Security, Commander of ABRI;
- That the witness, upon receiving a report from the Minister of Foreign Affairs Ali Alatas on the result of the Referendum to be moved forward from September 7 to September 4, 1999, ordered Task Force to monitor the field;
- That the Defendant as KAPOLDA had reported the security planning in East Timor in an expose;
- The Defendant did not raise any objections on the testimony of the said witness.

9. Witness : ALI ALATAS

Under oath, the witness gave a testimony with the following main points:

- That at the time of the Referendum in East Timor, the witness held the position of Minister of Foreign Affairs of the Republic of Indonesia;
- That, at that time, President B.J. Habibie said that if the people of East Timor still wanted independence, that he would propose to the General Assembly of MPR to release East Timor

from the Integrated Nation of the Republic of Indonesia. After being discussed and approved by the Cabinet meeting, the Minister of Foreign Affairs was assigned to deliver this proposal to the General Secretary of UN and Portugal.

- That the negotiation finished on May 5, 1999 on which 3 (three) agreements were signed with attachment of proposal of wide autonomy and its framework. In the 3 (three) agreements, the Referendum was elaborated;
- That the reasoning of B.J. Habibie in conducting the proposal of Referendum was because Indonesia was in crisis and East Timor was a burden for Indonesia due to the harassment, and it was better to release East Timor;
- That for the security of Referendum, Indonesia proposed that Indonesia and not a foreign force that handled East Timor, and it was proposed by the related ministers and not the witness, since the witness was only to report it to the General Secretary of the UN;
- That the responsibility of the security of Referendum was on the hand of Polri, but the overall responsibility was on the hand of the Government of the Republic of Indonesia;
- That there were International pressure and a letter from the Prime Minister of Australia which stated that the people of East Timor would not accept special autonomy, so that the former President B.J. Habibie gave Second Option, and that in the Politics and Security meeting, based on the disposition from President B.J. Habibie, all matters pertaining to the Referendum had to be finished before the General Assembly of MPR;
- That when UNAMET conducted campaign to the people of East Timor to influence them into choosing independence, the witness submitted a protest and UNAMET promised not to repeat its action;
- That the essence of the East Timor problem was the conflict between pro-integration/autonomy group and pro-independence group, however it was not accepted by the International society;
- That the Defendant as KAPOLDA was only implementing policy from the Central as well as security of the Referendum and the social order, and that the witness could understand the mind of the Defendant, on which the witness respected the success of the Defendant's tasks during his term in East Timor;
- The Defendant did not raise any objections on the testimony of the said witness.

Considering that during the trial, the following expert witnesses have been summoned and their testimonies heard:

1. Witness' Testimony: Dr. INDRIA SAMEGO

Under oath, the witness gave a testimony based on his expertise with the following main points:

- That the freedom to give opinion was part of the Human Rights and in the Tri-party agreement the Police was the enforcer of law in terms of legal order whereas security and stability were all the responsibility of the Central Government;
- That legal order was normative, of which, based on Tri-party, legal order and security of the Referendum was the responsibility of the Police, whereas the Field Command was the Government of Indonesia;
- That with the existence of the telegram of the Operation Commander of Nusra then the security responsibility was delegated to the Operation Commander of Nusra, whereas legal order was the responsibility of the Police;
- That the East Timor province had special matters that received different attention from other regions due to the past events;
- That politically speaking, the security responsibility pre and post Referendum of East Timor could not be delegated to KAPOLDA since the East Timor riot was a long chain reaction which were connected one another so that it must be accounted for by the country through the former President Soeharto and B.J. Habibie;

· The Defendant did not raise any objections on the testimony of the said witness.

2. Witness' Testimony: Prof. DR. HIKMAHANTO JUWANA, S.H.

Under oath, the witness gave a testimony based on his expertise with the following main points:

· That the witness was an expert in International Public Law which was related to State Structure and International Organization;

· That for any person suspected of committing international crime, the universal jurisdiction was enacted, which means the said perpetrator could be prosecuted/convicted in any institution, both in National Human Rights court and in International court;

· That in international crime, the perpetrators could be charged in several stages, first as the masterminds or initiators, second in the capacity of executors, third, they were considered as responsible for the subordinates who conducted human rights crime, but as superiors they did not take any preventive or punitive action;

· That in the responsibility of a commanding officer, there should be a relation between the superior and the subordinates, and the said subordinate must have committed gross human rights violations. And that it should be proven in court the existence of gross human rights violations conducted by the subordinates and there must be an effective relationship between the superior and the subordinate, for instance, if a subordinate attacked a village, the commanding officer/superior must be held accountable, thus it must first be proven whether there was any of the subordinate of the commanding officer who had committed gross human rights violations;

· That the orders of a superior were divided into two types, which were De Facto and De Jure, in which in the international context, the accountability of two upper stages and two lower stages were not recognized;

· That those that could be held accountable on the superior were: first, those under effective command or direct supervisors of the said subordinate. Second, if the first element was proven, then the next element was whether the commanding officer knew or he gained knowledge on the possible existence or the existence of gross human rights violations conducted by his subordinates. Third, there must be actions from the commanding officer; if he knew about the violation then he must conduct a preventive action. If he knew after the violation had taken place, the commanding officer must take a punitive action on the perpetrator of the gross human rights violations and it should be a commanding officer who had effective relationship and was able to give punishment;

· That what was meant by attack was an active action of those who conducted planning, thinking and up to the execution stage and there should be official decision from the authority, since if the accountability was demanded to the authority, the authority would say that they were conducting a state decision;

· That clashes against civilian residents was, for instance, if an organization came to attack a civilian village, then the leader of the said organization could be held accountable;

· That the inability to secure was meant, if the security apparatus (Police) had conducted Protap, but, since the chaos had taken place, the police apparatus could no longer handle the situation, and whomever who had taken maximum actions and could no longer contain the situation, then those persons could not be prosecuted as perpetrators of gross human rights violations;

· The Defendant did not raise any objections on the testimony of the said witness.

3. Witness' Testimony: DR. DODI HARYADI

Under oath, the witness gave a testimony based on his expertise with the following main points:

· That the witness was an expert on mass psychology;

· That since 1975 there were conflicting groups in East Timor, which was once a Military

Operation Region (MOR), of where there was mass chaos where the mass chaos was considered to be mass behavior which had particular characteristics and there was no longer individual pattern of mind, thus the dominant egoistical element of behavior happened which resulted in purposeless brutality;

- That the latent situation needed a long process and the use public figures was every effective to be used in a conflict;

- That on the event of the brutal mass behavior in East Timor due to the loss of the Referendum had been the trigger of conflict due to frustration, which was called collective memory, and that this could happen to any losing party, since one of the two groups had dissatisfaction towards the Referendum;

- The Defendant did not raise any objections on the testimony of the said witness.

Considering that during the trial the testimony from the Defendant was also heard, which main points were the followings:

- That the Defendant was assigned as East Timor KAPOLDA from June 30, 1999 to the end of September 1999, of which subsidiaries were 13 (thirteen) Resort Police (POLRES), 45 (forty-five) Section Police (POLSEK) which were distributed in all area of East Timor with the total personnel of more or less 2400 (two thousand four hundred) personnel;

- That it was true that the structure of POLDA in all regions of the Republic of Indonesia was the same in which KAPOLDA and Waka POLDA (Vice-commander of Polda) were of the same level, the differentiation was that POLDA type A was lead by a Major General, POLDA type B by a Brigadier General and POLDA type C by a Colonel;

- That it was true that the equipment and gear in forms of facility, means and infrastructure owned by East Timor Polda was very limited and minimum, and that the Defendant had also requested for additional equipment, facility, means and infrastructure support from the Central Government, for this instance, the Ministry of Defense and Security, Commander of ABRI (the Police was still incorporated to ABRI), however, it was never fulfilled whereas the arms owned by East Timor POLDA were not adequate for the specification of a region such as East Timor; there were only 100 (one hundred) pieces of arms and the others were only batons;

- That it was true that on April 6, 1999, when he was in Jakarta, the Defendant was ordered by Commander of Indonesian Police (KAPOLRI) to prepare for Police Action Exhibition. When he returned to the airport, the Head of Central Field Command Operation East Timor POLDA reported to the Defendant of the event that just took place in Liquisa. The Defendant requested a written report from the Liquisa Commander of Resort Police (KAPOLRES) that the Defendant with Archbishop Bello visited the crime scene of Pastor Rafael's residence, on which event there were 5 (five) people who died, and evacuation of victims to a proper place, and the nuns at Pastor Rafael's residence were secured to East Timor Polda. The event were a clash between pro-integration/autonomy group and the pro-independence group with the target of the clash was the residence of Pastor Rafael Dos Santos;

- That it was true that the Defendant requested a written accountability report from Liquisa KAPOLRES, Adios Salova, and there was no police officer who was involved in the said riot and the Defendant ordered the Secretary of Investigation Directorate (Dir Serse) of East Timor POLDA, Carlo Brix Tewu, to conduct investigation and examination on the case;

- That the Defendant changed the Liquisa KAPOLRES, Adios Salova, with combat Brimob who were quicker to anticipate the worsening and violent situation and condition;

- That it was true that the Defendant did not know the proceeding of Grand Meeting at the East Timor Governor courtyard on April 17, 1999, since the Defendant was in Jakarta, and that the Defendant obtained the information after there were participants of the Rally who went out of the march and conducted arson at the residence of Leandro Isaac, which was then continued with an attack to the residence of Manuel Viegas Carrascalao;

- That on April 17, 1999, after the Defendant received report that there was a clash at the

residence of Manuel Viegas Carrascalao, right when the Defendant came back from Jakarta, the Defendant went directly to the crime scene to secure the scene and met with Archbishop Bello, and that Archbishop Bello ordered the Defendant to speak to Manuel Viegas Carrascalao and Leandro Issac, which, in the end, Manuel and Leandro said they wanted to be secured at POLDA Headquarter;

- That from the result of the investigation of the event, 10 (ten) people were held and suspected as the masterminds of the attack and conducted arrest on these suspects;

- That it was true that prior to the New York Agreement, the equipment and personnel of East Timor POLDA was not adequate, so that the Defendant proposed in writing to the Commander of POLRI/KAPOLRI (the evidence letter had been burned) and that the KAPOLRI answer was to utilize the existing equipment;

- That the duty and responsibility of Field Command of security of Referendum in East Timor ended up to the announcement of Referendum result, which was on September 4, 1999, and on that date in the late afternoon the riot accompanied with shooting happened in all regions of East Timor, particularly in Dili;

- That since it was already predicted that whomever lose, there would riot, the Defendant had prepared HANOIN LOROSAE II/1999 operation, specifically to evacuate the refugee, where the Operation Commander (Pankoops) Nusra took over the responsibility of security since he possessed the capability to move Air, Land and Sea forces, whereas the Defendant did not have such capability;

- That towards the Referendum (August 30, 1999) on the contingency plan made by ABRI, since there was a prediction that whomever lost there would be chaos, the responsibility of the Defendant after September 5, 1999 was only related to evacuation of the refugee, whereas the security was the responsibility of the Commander;

- That it was true after September 4, 1999, the Defendant took the initiative to make some form of operation, which was defined after the transfer of Field Command security in East Timor, which was on September 5, 1999, 00.00 East Indonesia Time, which was in the plan of HANOIN LOROSAE II/1999 operation, which main duty was to conduct evacuation of the people from East Timor region to more secure areas, so that the Defendant and the Police apparatus were no longer focused to the matters of security and social order;

- That when a clash between pro-integration/autonomy group and pro-independence happened on September 5, 1999, the Defendant gave the order to stop the clash between the two fighting groups and evacuated the refugee while conducting a monitoring from a helicopter;

- That when the responsibility of Field Command security was transferred to Operation Commander of Nusra on September 7, 1999, East Timor was under a Military Emergency status;

- That during and before the referendum, the Defendant often visited POLSEK and gave briefings for them to conduct their duties and handle all possibilities;

- That the Defendant had contacted Xanana Gusmao at Cipinang so that the pro-independence group was willing to sign the peace agreement made;

- That the Defendant had successfully secured the Referendum, the personnel of UNAMET, foreign citizens, journalist and all assets needed to be secured, as well as safe Archbishop Bello and his family, received a letter of gratitude for being neutral and for saving Manuel Viegas Carrascalao and his family, and a letter from Leandro Isaac which main point was to express gratitude for the assistance and help for them;

- That it was true that the Defendant, beforehand, had conducted an expose in front of KAPOLRI at POLRI Headquarters in Jakarta on the planning of HANOIN LOROSAE operation and that KAPOLRI reported the plan to the Commander of ABRI;

- That it was true that the Defendant had conducted his duty as KAPOLDA in a maximum way for the people of East Timor, whereas disarming of armed groups Falintil and other were

not the duty of the Defendant and the Police;

· That it was true that Defendant was also only responsible for the Brimob personnel who were sent Under Operation Command to East Timor by Polri Headquarter, whereas prior to the Tri-party agreement, there were TNI members sent Under Operation Command to East Timor who were returned to the Central on the order of the Minister of Defense and Security, Commander of ABRI;

Considering that during the trial, the following evidences were brought forward:

1. The document of Operation Plan of "HANOIN LOROSAE 1999", No. Pol. Ren. OPS/04/V/1999 on the situation control of Social Security and Order, (KAMTIBMAS) and the security evacuation of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People;
2. The document of Operation Plan of "HANOIN LOROSAE II/1999" No. Pol. Ren. OPS/04/VIII/1999 on the situation control of KAMTIBMAS and the security of evacuation of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People;

On the said evidence, the Defendant expressed his acknowledgement since they were made and signed by the Defendant.

Considering that during the trial, the following evidence letters were brought forward by the Defendant/Legal Advisor Team of the Defendant, which were:

1. A letter from Archbishop of Dili Diocese, Mgr. Carlos Filipe Ximenes Bello, SDB, addressed to Brigadier General Timbul Silaen, dated July 10, 2002, which, among other things, contained gratitude on all assistance of Drs. G.M. TIMBUL SILAEN while on duty in East Timor as KAPOLDA;
2. A letter from Manuel Viegas Carrascalao to Brigadier General TIMBUL SILAEN, dated October 6, 2000, which, among other things, contained gratitude on the protection of Brigadier General Police Drs. G.M. TIMBUL SILAEN as the East Timor KAPOLDA who had been neutral;
3. A statement letter made and signed by MANUEL VIEGAS CARRASCALAO, dated June 18, 2002;
4. A private letter from Leandro Isaac to Brigadier General TIMBUL SILAEN, dated June 23, 2002, which, among other things, contained gratitude on the service and sacrifice of Drs. G.M. TIMBUL SILAEN for Leandro Isaac at Mahkota Hotel, Dili;
5. A statement letter made and signed by Pastor Jose Antonio da Costa, Vicaris Generalis of Dili Diocese, dated July 13, 2002;
6. A statement letter made by the Commander of Police Force (KAPOLRI) of the Republic of Indonesia, signed by Caretaker Deputy of KAPOLRI Operational Division, Drs. DEWA K.G. ASTIKA, dated June 16, 2002, explaining that on April 5 and 17, 1999, Brigadier General Police Drs. G.M. TIMBUL SILAEN (former East Timor KAPOLDA) participated in Operational Exhibition (on April 5, 1999) and KAPOLRI Briefing on the Preparation of 1999 General Election (on April 16, 1999);
7. A telegram from East Timor KAPOLDA to Operation Commander of TNI NUSRA OPERATION dated September 6, 1999;

Considering that based on the testimonial of the witnesses, the testimonial of the Defendant and evidences and evidence letters, after correlating those particulars, the following legal facts could be assembled:

1. that it was true that the Defendant held the position as the East Timor KAPOLDA from June 30, 1999 until the end of September 1999, previously as Vice Commander of POLDA (Waka POLDA) of Central Sulawesi;
2. That East Timor Polda had 13 (thirteen) Resort Police (POLRES) as subsidiaries and each POLRES had 5 (five) Section Police (POLSEK) as subsidiaries, so the total was 45 (forty five)

POLSEK;

3. That it was true that East Timor Polda had received an Under Operation Command troops from Jakarta, which consisted of Brimob, Sabara (600 personnel) pursuant to HANOIN LOROSAE Operation, the said assistance was a back up from POLRI Head Quarter;
4. That it was true that on January 27, 1999, the government in cabinet meeting decided to conduct Referendum in East Timor with two Option, which were Option I Special Autonomy, and Option II Independence;
5. That the advent of Option II ideas from government was based on the reasoning that the problem with East Timor could be dealt to an end if the Special Autonomy Option was rejected by the people of East Timor;
6. That in the Tri-party Agreement (New York Agreement) signed on May 5, 1999, by the UN, the Government of Indonesia and the Government of Portugal, the Government of Indonesia was not involved as the committee of the Referendum, but the security tasks were delegated to the Government of Indonesia;
7. That based on Presidential Decree (KEPPRES) No. 43 of 1999 dated May 18, 1999, the President appointed the Coordinating Minister of Politics and Security, FAISAL TANJUNG, as the Chairperson of Security Team of Referendum RI and Portugal on the implementation of Referendum in East Timor, so that it would proceed honestly and fair. He must conduct coordination and actions with international institutions in order to make the implementation of Referendum in East Timor successful. For the implementation of security on the field, P3 TT task force was formed by Presidential Instruction (INPRES) NO. 5 of 1999;
8. That the said Security Team on the Implementation of Agreement of RI and Portugal, chaired by Coordinating Minister of Politics and Security, FAISAL TANJUNG, and its members were Minister of Foreign Affair, Minister of Internal Affairs, Minister of Justice, Minister of Defense and Security/Commander of ABRI, Minister of State Secretary, Commander of POLRI and State Intelligence Coordination Body;
9. That, pursuant to New York Agreement, the control of security and legal order of the people in terms of the implementation of Referendum in East Timor became the responsibility of POLRI;
10. That, even when POLRI was stated in New York Agreement as the party responsible for the security in East Timor for the implementation of Referendum in East Timor, however, at that time (1999), POLRI was de facto part of ABRI in addition to TNI;
11. That for the implementation of security and legal enforcement for the implementation of Referendum, East Timor KAPOLDA had made an operation plan known as operation plan HANOIN LOROSAE 1999; and, in addition to that, East Timor POLDA had also issued a security plan for the refugees, also known as operation plan HANOIN LOROSAE II;
12. That on April 6, 1999, around 13.00 East Indonesia Time, an attack committed by pro-integration/autonomy group against pro-independence group located in the residence of Pastor Rafael Dos Santos, at the Church of Liquisa complex, occurred, and from this incident, several people became victims, with 5 (five) to 9 (nine) people died and several injured, all civilians;
13. That after the transfer of Field Command from East Timor KAPOLDA to TNI, the security control responsibility transferred. Kapolda was still morally responsible for the handling of refugees, and security and political stability became the responsibility of Central Government. In this case, the security in general (S. general) became the responsibility of the State, whereas the security (S. specific) in terms of legal order became the responsibility of the Police;
14. That on April 6, 1999 incident, the Defendant was in Jakarta to fulfill an order from Kapolri, of which the Defendant departed on April 4, 1999 and returned to East Timor on April 6, 1999, arriving at the airport at around 14.00 East Indonesia Time;

15. That, after the Defendant received the report on the riot incident in Liquisa from Central Commander (Kapus) of Filed Command , Leo Pardede and report from Liquisa KAPOLRES, on April 7, 1999, the Defendant as Kapolda, together with Kapus Field Command ops, Commander of Military Resort, and Archbishop Bello visited the crime scene;
16. That on the April 6, 1999 incident in Liquisa, the Defendant had ordered KAPOLRES and Secretary of Investigation Directorate of East Timor POLDA, Carlo Brix Tewu, to conduct investigation/examination on the said incident;
17. That from the investigation result of the April 6, 1999 incident, 5 (five) suspected perpetrators were found and an arrest was made on the 5 (five) suspects at East Timor POLDA Headquarter on the order of the Defendant;
18. That around 2 (two) months afterwards, the Defendant took the action to replace Liquisa KAPOLRES, Adios Salova, with personnel from Combat Brimob with the reasoning of to anticipate future situation with quick and responsive personnel;
19. That the April 17, 1999 incident, which was an attack conducted by pro-integration group against pro-independence group with the target the resident of Manuel Viegas Carrascalao and the residence of Leandro Issac, was known to the Defendant from reports from Vice-Commander of POLDA (Waka POLDA) when the Defendant was at Comoro Airport (Dili), on which the Waka POLDA himself was going to Jakarta for official duty based on order of KAPOLRI;
20. That after receiving the report from Waka POLDA on the April 17, 1999 incident, the Defendant went directly to the crime scene to visit and check the situation and condition. The victims were not found, there were only broken glasses, spots of blood and there was also police line to secure the crime scene;
21. That before the April 17, 1999 incident, at around 19.00 until 11.00 East Indonesia Time, a ceremony or a grand meeting was conducted by Pam Swakarsa (Security Militia), at the courtyard of the East Timor Governor Office, attended by around 1000 (on thousand) members and attended by the Governor as an invited guest, but not by KAPOLDA, since, at that time, the Defendant was in Jakarta;
22. That in the said ceremony/grand meeting on April 17, 1999 at the courtyard of the East Timor Governor Office, the KAPOLRES of Dili, Hulman Gultom, had received an order from the Defendant to conduct security through Waka POLDA, Muafi Sahudji;
23. That after the ceremony, a group of the participants conducted a rally which passed the residence of Manuel Viegas Carrascalao, in which there were pro-independence people, thus the resident was attacked by the rallying group, hence the April 17, 1999 incident, which resulted in 12 (twelve) deaths, one of them was the son of Manuel Viegas Carrascalao;
24. That on the April 17, 1999 incident, the Defendant had instructed the Secretary of Investigation Directorate of East Timor POLDA, Carlo Brix Tewu, to conduct investigation/examination and to arrest the perpetrator as soon as possible;
25. That from the result of the investigation/examination conducted by the Secretary of Investigation Directorate of East Timor POLDA, 10 (ten) suspected perpetrator were arrested at East Timor POLDA Headquarter;
26. That, pursuant to the Tri-party agreement, the duty and responsibility of Field Command of security of Referendum in East Timor ended on September 30, 1999. However, in reality, the Defendant conducted the duties of Field Command of security of Referendum in East Timor until the announcement of Referendum Result, which was on September 4, 1999. At that time, the situation in Dili was uncertain and the scared residents sheltered/evacuated to more secure places, such as the Diocese of Dili, Hosana Church, POLDA Headquarter and the residence of Archbishop Bello;
27. That on September 5, 1999 at 00.00 East Indonesia Time, there had been transfer of security Filed Command from East Timor POLDA to ABRI/TNI, in which the matter was

taken over by Commanding Operation Officer Nusra, Major General Adam Rachmat Damiri;
28. That September 5, 1999 was marked by chains of widening chaos and arson, where pro-integration people were looking for pro-independence people, besides the evacuation of the refugees. The pro-integration/ autonomy mass who suffered the loss expressed their dissatisfaction by arming themselves with sharp weapons and arms, burning and attacking pro-independence mass consisting of civilian residents sheltering and evacuating to Diocese of Dili and conducted arson towards building in the Diocese of Dili, which resulted in 2 (two) death among the civilians and several injuries;

29. That on September 6, 1999 around 10.00 East Indonesia Time, pro-integration/autonomy mass, armed with weapons (standard arms, self-made arms and sharp weapons) attacked the pro-independence group, in which there were also some girls and elderly, who sheltered at the residence of Archbishop Bello. It was also on the same day that an attack on the Ave Maria Church Complex in Suai, Kovalima, where the pro-independence group evacuated, occurred, which resulted in 27 (twenty seven) death among the civilians;

30. That on September 5 and 6, 1999, POLDA Dili and police apparatus had acted to prevent and secure Archbishop Bello and foreign personnel, evacuate the refugees and the head quarter of UNAMET. However, the existing personnel and facilities were unable to handle the chaos and the condition, in addition to which, all communication links were broken; Considering that now is the time for the Assembly to consider whether, with the legal facts revealed in the court, the Defendant has been proven to have conducted a gross human rights violation as charged to him;

Considering that pursuant to the prosecution paper of the Ad Hoc General Attorney, compiled cumulatively, the Defendant is charged with gross human rights violations, which are:

F I R S T

Violating article 42 paragraph (2) letter a and b jis article 7 letter b, article 9 letter a, article 37 Law no. 26 of 2000 on Human Rights Court;

S E C O N D

Violating article 42 paragraph (2) letter a and b jis article 7 letter b, article 9 letter h, article 40 of Law No. 26 of 2000 on Human Rights Court;

Considering that the Assembly will first consider the first charge;

Article 42 paragraph 2 states that:

"A superior, both police and civilian, has the criminal accountability on the gross human right violations conducted by his/her subordinated under his/her power and effective control, since the said superior does not conduct proper and correct control, which are:

- a. The said superior knows or knowingly ignores any information that explicitly shows that his/her subordinate is conducting or has conducted a gross human right violation; and
- b. That said superior does not take any proper and necessary action within his/her jurisdiction to prevent or stop the said conduct or to surrender the perpetrator to the authorized officers for investigation, examination and prosecution.'

Article 7 letter b stipulates:

"Crime against humanity"

Article 9 letter a stipulates:

"Murder"

Article 37 stipulates:

"on criminal sanctions"

Considering that from the first charge, the elements necessary to be proven are as follows:

1. The superior is a Police;
2. There is a gross human rights violation conducted by his subordinate under his effective power and control;
3. The said superior does not conduct any proper and correct control on his subordinate,

which are:

- The superior knows or knowingly ignores any information that explicitly shows that his subordinate is conducting or has conducted a gross human rights violation; and
- The superior does not take any proper or necessary action within his jurisdiction to prevent or stop the said conduct or to surrender the perpetrator to the authorized officers for investigation, examination and prosecution;

4. Crime against humanity;

5. Murder;

Considering that first the Assembly will consider the charges of Article 7 letter b jis article 9 letter a as auxiliary articles to article 42 paragraph 2 letter a and b of Law No. 26 of 2000.

Article 7 letter b stipulates: Gross human rights violation includes:

a.

b. crime against humanity

Considering that on the discussion of article 7 letter b, the Assembly will not conduct an extensive discussion since this matter will be considered attentively in the verification that is related to the gross human rights violation in article 42 paragraph 2 letter a and b Law No. 26 of 2000.

Whereas in article 9 letter a, it is stipulated that "murder" is one form of crime against humanity.

According to the elucidation of article 9 letter a, that what is meant by "murder" is as written in article 340 of Criminal Code (KUHP).

Article 430 of Criminal Code states as follows:

"Any person who deliberately and with prior planning loses the life of another person"

Considering that a person can be said to have committed a deliberate act pursuant to the elucidation of the maker of Law which is also followed by doctrine and jurisprudence, that is, if the perpetrator wants the action he/she conducts and is aware of the consequences of the action.

Whereas to state the existence of "prior planning" (met voorbedachten rade), a certain time period, whether it is short or long, is needed to think quietly to prepare the way and to calculate the consequences of the action.

Considering that from the legal facts revealed in the trial it was apparent and proven that the perpetrators of the attack had committed murder conducted "deliberately" and "with prior planning" against their victims at the crime scenes, which are at Liquisa Complex on April 6, 1999, of more or less 9 (nine) victims, at the residence of Manuel Viegas Carrascalao on April 17, 1999 of more or less 12 (twelve) victims, one of the was the son of Manuel Viegas Carrascalao, and at the Diocese of Dili of more or less 2 (two) victims and at the Ave Maria Church Complex, Suai, Kovalima and at the residence of Archbishop Bello, on September 5 and 6, 1999 respectively of more or less 27 (twenty seven) victims;

That the conclusion of the Assembly stated above is based on the judgment of the following legal facts:

a. The perpetrators of the attack who were integrated in pro-integration/ autonomy group, conducted the attack using weapons, both sharp weapons, standard arms and self-made arms, thus it can be concluded that the perpetrator understood and were aware that their conduct could cause death to other people (victims);

b. The perpetrators had enough time to think quietly to prepare for the tools and ways to be taken and count the consequences of their actions;

c. Even though visum et repertum was not conducted on the victims to find out the cause of death of the victims from the forensics point of view, in the practice of the International Court on Crime Against Humanity, the death of the victim need not to be proven by visum et repertum, only need to be proven on the facts based on the testimonials of the witnesses, and

in this case, the witnesses had stated the existence of several victims of the incidents a quo; Considering that, as stated above, one of the form of crime against humanity is "murder", whereas the element of murder has now been proven, the Assembly will now consider the charges on gross human rights violations stipulated in Article 42 paragraph 2 letter a and b as follows:

Ad 1. The element of a Police superior

Considering that what meant by "Police superior" is a police who because of his position based on his appointment letter supervise several units of police;

Considering that with guidelines to the above definition and related to the general legal fact revealed during the trial, the Defendant Drs. G.M. TIMBUL SILAEN was appointed by a decision letter as the Commander of Regional Police (KAPOLDA) of East Timor from June 30 1998 to the end of September 1999, who supervised 13 POLRES, 45 POLSEK and 2400 (two thousand four hundred) personnel distributed in POLDA, POLRES and POLSEK;

Considering that with the above, the element of a Police superior has been fulfilled;

Ad 2. The Element of the existence of gross human rights violations conducted by his subsidiaries under his power and effective control

Considering that what meant as gross human rights violation as stipulated by article 7 of Law No. 26 of 2000 includes genocide crime and crime against humanity;

Whereas according to the elucidation of article 7, "genocide crime and crime against humanity" is pursuant to the "Rome Statute of the International Criminal Court" (article 6 and article 7).

Considering that since Law No. 26 of 2000 on the Human Right Court does not give any clear definition except for article 9, which stipulates that crime against humanity as referred to in article 7 letter b is one of the action conducted as part of a widening and systematic attack, which is know to be directed to civilians, in the form of:

a. Murder;

b. Eradication;

c. Slavery;

d. Eviction or mass departure of residence by force;

e. Confiscation of independence or other form of physical freedom in an arbitrary way which violates (the principles) of basic provisions of international law;

f. Torture;

g. Rape, sexual slavery, prostitution by force, pregnancy by force, sterilization by force or other forms of similar sexual violence;

h. Persecution against a certain group or society based on similar political view, race, nation, ethnics, culture, religion, sex or other reasons acknowledged universally as something prohibited by international law;

i. Enforced disappearance; or

j. Apartheid crime;

Considering that both Law No. 26 of 2000, which adopted article 6 and 7 or the Rome Statute of the International Criminal Court, and the UN Charter in article 6 c on the definition of crime against humanity, have similarity, which emphasizes on the violent conducts towards civilians;

Considering that before considering element Ad. 2 mentioned above, it should be considered previously whether or not any gross human rights violation had occurred in East Timor as charged by the Ad Hoc General Attorney in his indictment paper;

Considering that the Ad Hoc General Attorney in his legal indictment paper on pages 128 and 129 stated that the attack on the residence of Pastor Rafael at Liquisa Church complex on April 6, 1999, and the attack on the residence of Manuel Viegas Carrascalao on April 17, 1999 and the attack on the Diocese of Dili at the Ave Maria Church Complex, Suai, Kovalima

and the residence of Archbishop Bello on September 5 and 6, 1999, respectively, all of which resulted in victims among civilians, were considered as gross human rights violations; Considering that, conversely, the Legal Advisor Team of the Defendant in their pleading on page 128 concluded that, providing there were no detailed evidence with 2 (two) legal substantiations which proved that there were victims of murder on the attack on April 6 and 17, 1999, the Legal Advisor Team of the Defendant rejected the speculation that the victims were those of gross human rights violations. However, according to the Legal Advisor Team of the Defendant, there was still possibility that the victims were those of criminal conduct, but there was no substantive evidence that proved that victims were of gross human rights violations.

Considering that to determine the existence of gross human rights violations on the above incidents, the Assembly thinks that it depends on the answer on the question, whether or not the attack conducted was part of a widespread or systematic attack aimed to civilians, in the forms of murder and/or torture.

Considering that on the definition of widespread or systematic attack, the law does not give any clear definition, the Assembly will refer to International Court practices as well as international law terminology;

Considering that the definition of widespread attack according to Arne Willy Dahl (Advocate General Judge), of Norway, is on directed against a multiplicity of victims. Moreover, there are some opinions that the definition of widespread attack refers to the number of victims (massive), scale of crime and the regional spread (geographical), and in crime against humanity, the said conduct, although conducted individually, is the result of a collection action (M. Charief Bassioni, Crime Against Humanity in the International Law). Whereas the definition of systematic attack could be seen from the following perspectives:

1. The word systematic comes from the syllable system. The working definition of system has always contains the following definitions:

- Purposive behavior the system is objective oriented;
- Wholism - the whole is more than the sum of all a large parts;
- Openness - the system interacts with a large system, namely its environment;
- Transformation - the working of the parts creates something of value;
- Interrelatedness - the various parts must fit together;
- Control mechanism - there is a unifying force that holds the system together;

(Prof. DR. Muladi, S.H. - the Various Dimensions of Human Rights Court, Training Material of National Criminal Law and Criminology ASPEHUPIKI, in coordination with Law Faculty of Surabaya University, Surabaya, January 14, 2002);

2. The definition of systematic attack is related to a policy or a plan, which founded or set the existence of the said criminal act. The definition of policy does not always mean in writing but can also be a repetitive action that becomes a pattern followed by state apparatus;

3. The definition of systematic attack is an attack conducted pursuant to a preconceived policy or plan - Arne Willy Dahl, Judge Advocate General Norway.

Considering that with reference to the above mentioned definition and related to the legal facts revealed from testimonials of witnesses, testimonial of the Defendant and other effort of evidence, the Assembly concludes that the incidents on April 6 and 17, 1999 and on September 5 and 6, 1999 are considered to be gross human rights violations with the following reasons:

1. The attack resulted in victims (massive number of victim), both mortality and injuries, which consisted of children, women and elderly, who were civilians and the arson happened, among other thing on the buildings at the Diocese and several houses of the civilians;
2. The said victims resulted from attack on several places, which were: the incident on Liquisa Church complex on April 6, 1999, 9 (nine) deaths and several injuries, the incident on the

residence of Manuel Viegas Carrascalao on April 17, 1999, 12 (twelve) deaths and 25 (twenty five) injuries, the incident on the residence of Archbishop Bello on September 5, 1999, 2 (two) deaths and several injuries, and the incident on Ave Maria Church on September 6, 1999, 27 (twenty seven) deaths and several injuries;

3. The said incidents happened in several places in the region of East Timor, which were directed to a certain group that was being large in number and concentrated in certain places, which was the pro-independence group and civilians, where the time and condition of one incident to the others had strong relationship and connections;

4. That the said incidents were conducted systematically, which was apparent from how organized the attacking group from pro-integration/ autonomy group, using standard and self-made arms and sharp weapons, who were consciously conducted murder and torture which resulted in death and injury, which were intended for the victimized party, and the existence of adequate time period for the said group to gather into hundreds and even thousands of members;

5. That the said group was organized was proven from the existence of the leader of the groups, even the leaders of the sub groups (Aitarak group, Besi Merah Putih/BMP group and Pam Swakarsa/Civil Militia) which was united in pro-integration/autonomy group, and there was a de facto relation from the person giving the order or the inspiration through organized terror;

Considering that insofar as to the opinion of the Legal Advisor Team of the Defendant, who stated that to prove the existence of murder and torture victims, a clear effort to prove both the cause of death and the identity and the body of the victims (vide pleading notes page 123), the Assembly thought that in the context of establishing gross human right violations, to prove the existence of a number of victims - especially if the incident had happened for a long time and at several places - according to the international court practices in several tribunal (The Nuremberg Tribunal and ICTR), and also applied to the substantiation of this case, it should not be proven as perceived by the Legal Advisor Team. Conversely, the facts described from valid evidences from the attack that a number of civilian victims existed are enough;

Considering that, at present, the problem is whether the gross human right violations, which had been proven as considered above, were truly conducted by the subordinates of the Defendant who were under his effective control;

Considering that prior to answer the above mention problem, the Assembly would at first discussed the next elements, since in the following elements, it was also mentioned that the subordinates were conducting or have conducted gross human rights violations:

Ad. 3 The element that the Superior does not conduct proper and correct control on his subordinates, which are:

- The superior knows or knowingly ignores information that explicitly shows that his subordinates are conducting or have conducted gross human rights violations; and
- The superior does not take any proper and necessary action within his jurisdiction to prevent or punish the said conduct, or to surrender the perpetrator to the authorized official for investigations, examination and prosecution;

Considering that insofar as to the element of "superior", the Assembly believes it does not need any further consideration since this element has been considered previously, and what meant as superior here is the Defendant, Drs. G.M. TIMBUL SILAEN as the East Timor KAPOLDA;

Considering that to determine whether the Defendant did not conduct any proper and correct control on his subordinates would depend on the answers of the following questions:

a. Whether it was true that the Defendant as a superior knew or knowingly ignored any information that explicitly showed that his subordinates were conducting or had conducted gross human right violations; and

b. Whether it was true that the Defendant as a superior did not take any proper and necessary action within his jurisdiction to prevent or to stop the said conduct, or to surrender the perpetrator to the authorized officials for investigation, examination and prosecution; Considering that from the legal facts revealed in the court, it was proven that the Defendant knew the occurrence of a gross human rights violation at the Liquisa Church complex on April 6, 1999 from the report of witness Leo Pardede as Central Commander of Field Command East Timor and the report of Liquisa KAPOLRES. However, the involvement of police as the perpetrator, both Liquisa KAPOLRES as the direct subordinate as well as the subordinates of Liquisa KAPOLRES was not proven;

Considering that, even though the Ad Hoc General Attorney in his indictment stated the existence of police members, who were Alfonso and Chiko (member of POLRI from POLRES Liquisa), who participated in the attack on the people sheltering at Liquisa Church complex, and based on the legal facts revealed in this court from the testimonials of material witness whose testimonials in the Official Investigation Report were read in the trial (vide witness Nelio Mesquita da Costa Rego and witness Maria Pereira Soares), that it was true that there were POLRI and TNI members who were involved in the pro-integration/autonomy group, there was not enough evidence to state that the conduct was part of the order and systematic planning of the superior of the said perpetrators, so that the conduct was private responsibility of the said persons;

Considering that in addition to that point, based on the legal facts revealed in the court, there was no evidence that showed any policy from the Defendant as a superior, both orally or in writing, to his subordination to conduct the attack;

Considering that the same applies for the incident of gross human rights violation at the residence of Manuel Viegas Carrascalao on April 17, 1999. Based on legal facts revealed in court, the Defendant knew the incident from the report of Vice-Commander East Timor POLDA - Muafi Sahudji, at Comoro airport, Dili. Subsequently, the Defendant together with the Commander of Military Resort and Archbishop Bello visited the crime scene and afterwards ordered his subordinates, both the Secretary of Investigation Directorate of East Timor POLDA - Carlo Brix Tewu, and to Liquisa KAPOLRES to conduct investigation, examination and to capture and arrest the perpetrators;

Considering that on the incident of gross human rights violation at the Diocese Dili and the residence of Archbishop Bello on September 5 and 6, 1999, based on the facts revealed in the court, the condition was getting more anarchic so that the function and duty of the Police could no longer perform the Social Security and Order task normally. Moreover, at that time, the security control of command (KODAL/Field Command) had been transferred to TNI, so the duty of POLDA was focused on Operation HANOIN LOROSAE, which to evacuate the refugees and other rescue actions. Thus, the responsibility of Social Security and Order (specific Security) could no longer be burdened fully to the East Timor POLDA, but it had become the responsibility of the state (general Security). (Vide explanation of expert DR. Indria Samego);

Considering that even though it was stated above that the Defendant had known and received the information, but since according to the above discussion, no subordinate of the Defendant was proven to have committed gross human rights violations, and that the Defendant did not ignore the information, the problem now is whether the Defendant deserves to be held criminally accountable (gross criminal human rights) on the incidents of gross human rights violations in East Timor;

Considering that what is meant by accountability in this case is accountability as a superior or a commander, when in juridical point of view there is no definition of a command/commander in Indonesia other than the custom in the TNI, whereas according to the doctrine, command means power based on law to give order and to manage units of soldiers under his/her

command or that the terminology of command is also used for:

- a. Unit;
- b. Order to march or order;
- c. Name for special unit of TNI Army;

In ICTR (International Court Tribunal for Rwanda) on the decision of Akayesu paragraph 458 (four hundred fifty eight) there were many views on the necessary mens rea for command accountability, according to one view, it came from legal superior and the permanent obligation that the superior was criminally accountable for every action conducted by his/her subordinate without having to prove the criminal intention of the superior;

Considering that in term of accountability the commander, there must be a relationship between the superior and the subordinate who conducted violations, and that gross human rights violations conducted by the subordinate must have an effective relationship between the superior and the subordinate; for example if one subordinate attacked a village then the commander must held accountable (vide expert witness Prof. DR. Hikmahanto Juwana, S.H.); According to P.L.T. Sihombing, S.H, L.L.M (Command Accountability) "command unit is implemented through chain of command, that is, hierarchical channel starting from the highest command to the lowest command. Whereas policy decision and order coming from the upper command and elaborated by command units hierarchically up to the executor level, the execution decision could only be taken by officials whose positions are within the chain of command track";

Considering that based on the above explanation, then the gross human rights violations occurred in East Timor were not proven to be conducted by the subordinates of the Defendant, and thus it is irrelevant to consider the element of "the superior does not take any proper and necessary action within his jurisdiction to prevent or stop the said conduct or to surrender the perpetrator to the authorized officials for investigation, examination and prosecution";

Considering that since the gross human rights violations were not proven as being conducted by the subordinates of the Defendant, related to the principle of superior accountability, the Assembly concludes that the Defendant does not deserve to be burdened by criminal accountability of gross human rights crime on the conducts which were not proven to be of his subordinates' doing;

Considering that thus, the second and the third elements were not fulfilled;

Considering that since the said two main elements were not proven, the Defendant, who is charged with criminal action of gross human rights violations, vide article 42 paragraph 2 letter a and b jis article 7 letter b, article 9 letter a, article 37 of Law No. 26 of 2000 on Human Rights Court, must be declared as unproven according to the law;

Considering that, based on the reasoning elaborated above, the Defendant must be released from the first charge (vrijspraak);

Considering that since the indictment of Ad Hoc General Attorney is cumulative in nature, then, in the process, the Assembly will consider the second charge, which has the following main elements:

1. The superior is a Police;
2. There is a gross human rights violation conducted by his subordinate under his effective power and control;
3. The said superior does not conduct any proper and correct control on his subordinate, which are:

- The superior knows or knowingly ignores any information that explicitly shows that his subordinate is conducting or has conducted a gross human rights violation; and

- The superior does not take any proper or necessary action within his jurisdiction to prevent or stop the said conduct or to surrender the perpetrator to the authorized officers for investigation, examination and prosecution;

4. Crime against humanity;
5. Torture on a certain group or etc...;

Considering that first the Assembly will consider the charges of Article 7 letter b jis article 9 letter a as auxiliary articles to article 42 paragraph 2 letter a and b of Law No. 26 of 2000.

Article 7 letter b stipulates: Gross human rights violation includes:

c.

d. crime against humanity

Considering that on the discussion of article 7 letter b, since it was already been considered in the first charge above, the Assembly will mutatis dan mutandis take over and used it as the consideration of the discussion on article 7 letter b on the second charge;

Whereas article 9 letter h stated that one form of crime against humanity is "torture against a certain group";

Considering that based on the legal facts revealed in the court, it was factual and proven that the perpetrator of the attack, who were united in pro-integration groups, among others was Aitarak mass, by using organic arms, self-made arms and sharp weapons in forms of sabers and machetes, had deliberately conducted torture on the victims at scene of crimes, which were Liquisa Church Complex on April 6, 1999, the resident of Manuel Viegas Carrascalao on April 17, 1999, as well as the Diocese of Dili and Ave Maria Church complex at Suai, Kovalima, and the residence of Archbishop Bello on September 5 and 6, 1999, respectively; That from the attack on those places above, injured victims of more or less 5 (five) victims at the residence of Pastor Rafael, Liquisa Church complex, more or less 2 (two) victims at the residence of Manuel Viegas Carrascalao, more or less 5 (five) victims at the Diocese of Dili and more or less 8 (eight) victims at Ave Maria Church complex, Suai, Kovalima, and the residence of Archbishop Bello;

Considering that, as stated above, one form of crime against humanity is "torture", whereas the element of torture has now been proven, thus the Assembly will now consider the charges of gross human rights violations stipulated in article 42 paragraph 2 letter a and b, Law No. 26, of 2000.

Considering that since the discussion of main elements of article 42 paragraph 2 letter a and b Law No. 26 of 2000 has been considered in the above first charge, the Assembly will no conduct any discussion on the said elements in this second charge, but will mutadis mutandis take over to be consideration in this second charge;

Considering that since the two main elements from article 42 paragraph 2 letter a and b were not proven, the Defendant charge with criminal act of gross human rights violations, vide article 42 paragraph 2 letter a and b jis article 7 letter b, article 9 letter h, article 40 of Law no. 26 of 2000 on the Human Rights Court, must be declared unproven according to the law;

Considering that before the Assembly comes into the legal conclusion, it is not presumptuous that the Assembly states the following points:

1. The Defendant as East Timor KAPOLDA had tried to conduct the legal order function and to anticipate the possibilities by implementing Operation HANOIN LOROSAE, in the East Timor, which was known as an ongoing conflict area. The responsibility of general territorial security (general Security) was conducted by TNI and Central Government, moreover, after the transfer of field command, the East Timor POLDA was under the Operation Commander of Ops Nusra. If the whole blame should be charged to POLRI, we must ask whether POLRI was in the position to autonomously deal all the mass incidents (compare Prof. DR. Satjipto Rahardjo - Civilian Police in Social Changes in Indonesia - Kompas book publisher, 2002, page 50);

2. East Timor POLDA had conducted a non-partisan protection so it was proven to be a neutral institution for the Tri-party agreement, UNAMET, East Timorese figures and pro-independence group, who, during the incident of riots in East Timor, used the Headquarter of

POLDA as one of the shelter besides church complex and residences of Pastors;

3. From the material witnesses of victims (Joao Pereira and Emilo Baretto), a de charge witness, Luisa Gouveia Leite and expert witnesses (DR. Indria Samego, Prof. Hikmahanto Juwana and DR. Dori Haryadi) and several letter received by the Defendant from the East Timorese figures, and event from some of the victims such as Manuel Viegas Carrascalao, Archbishop Bello, Leandro Isaac, as the guiding evidence that the Defendant had conducted the duties and obligations mandated to him even though he had to face many challenges and obstacles as KAPOLDA;

Considering that, therefore, the Defendant must also be released from the second charge;

Considering that, based on the above considerations, the Assembly comes into the legal conclusion that the Defendant is not validly proven to be guilty of committing criminal act of gross human rights violations charges, both the first and the second charge;

Considering that, therefore, the Defendant must be released from all charges (vrijspraak).

Considering that the Assembly is fully aware on the role and function of criminal court, that is, not only to punish people who are proven to have conducted criminal actions, but must also protect and restore the reputation and dignity of those declared to de innocent from any criminal actions;

Considering that, in this case, pursuant to the applicable legislation, the Defendant must be restored of his rights, both in his capability, position and his value and dignity;

Considering that, for the evidence the forms of documents of:

1. Operation Plan of "HANOIN LOROSAE 1999", No. Pol. Ren. OPS/04/V/1999 on the situation control of Social Security and Order, (KAMTIBMAS) and the security of EVACUATION of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People;

2. Operation Plan of "HANOIN LOROSAE II/1999" No. Pol. Ren. OPS/04/VIII/1999 on the situation control of KAMTIBMAS and the security of EVACUATION of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People; should be attached in the case file;

Considering that since the Defendant is released from all charges, then the cost of the trial shall be burdened to the state;

Attending to Law no. 39 of 1999 jo article 10 of Law No. 26 of 2000 jo article 191 paragraph 1, article 199 paragraph 1 of Criminal Code of Procedure jo article 14 paragraph 1 of Government Regulation No. 27 of 1983 and other legal regulations related to this case;

SENTENCING:

· Declaring that the Defendant, Drs. G.M. TIMBUL SILAEN is found not legally proven and beyond any reasonable doubt to be guilty of committing criminal action of gross human rights violations charged in the first and the second charge;

· Releasing the Defendant from the said charges;

· Restoring the rights of the Defendant in terms of capability, position, value and dignity;

· Declaring that evidences in the from of documents of:

a. The document of Operation Plan of "HANOIN LOROSAE 1999", No. Pol. Ren. OPS/04/V/1999 on the situation control of Social Security and Order, (KAMTIBMAS) and the security evacuation of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People;

b. The document of Operation Plan of "HANOIN LOROSAE II/1999" No. Pol. Ren. OPS/04/VIII/1999 on the situation control of KAMTIBMAS and the security of evacuation of Foreign citizens and Indonesian citizens out of East Timor after the Referendum of East Timor People;

shall be attached to the case file

· Charging the cost of the trial to the state.

Thus, it is decided in the deliberation meeting of the Assembly of Judges of Ad Hoc Human Rights Court at Court of First Instance in Central Jakarta, on Monday, August 12, 2002, by us: H.ANDI SAMSAN NGANRO, S.H., as the Chairperson of the Assembly, RIDWAN MANSYUR, S.H., H.M. KABUL SUPRIYADHIE, S.H., M. Hum, HERU SUSANTO, S.H., AMIRUDDIN ABURAERA, S.H., as Assembly Members, respectively. The decision is announced on Thursday, August 15, 2002 in a trial open for public, by the Chairperson of the Assembly attended by all Assembly Members, assisted by Mrs. CORIANA J. SARAGIH, S.H. and MATIUS B. SITURU, S.H. as Substitute Court Register, and attended by JAMES PARDEDE, S.H., Drs. SYAEFUDDIN, S.H., Ad Hoc General Attorney, and the Defendant, who is attended by his Legal Advisor Team.

Member of Judges Chairperson of Judges

1. RIDWAN MANSYUR, S.H H. ANDI SAMSAN NGANRO, S.H.
2. H.M. KABUL SUPRIYADHIE, S.H., M.Hum.
3. HERU SUSANTO, S.H.
4. AMIRUDDIN ABURAERA, S.H.

Substitute Court Register

1. Mrs. CORIANA J. SARAGIH, S.H.
2. MATIUS B. SITURU, S.H.