Judgment

Defendant Letkol Inf. Soedjarwo

Indonesian Ad Hoc Tribunal
Judgment of Letkol Inf. Soedjarwo
Ad Hoc Court on Human Rights
Central Jakarta State court
Jalan Gadjah Mada no. 17 Jakarta

VERDICT
No. 08/Pid.HAM/Ad.Hoc/2002/PN.JKT.PST

in the case of

Human Rights Criminal Case on the Defendant
LETKOL INF. SOEDJARWO

Panel of Judges:
H. ANDI SAMSAN NGANRO, S.H…… Chair Judge
BINSAR GULTOM, S.H., S.E…… Member of the Panel
H.M. KABUL SUPRIYADHIE, S.H. M. Hum…… Member of the Panel
HERU SUSANTO, S.H., M. Hum…… Member of the Panel
AMIRUDDIN ABURAERA, S.H…… Member of the Panel
PIPIH RESTIVIANI, S.H……. Court Reporter
GANDA HENDRAWAN, S.H……. Court Reporter

Jakarta, December, 27, 2002
VERDICT
No. 08/Pid.HAM/Ad.Hoc/2002/PN.JKT.PST
FOR JUST UNDER THE ONE TRUE GOD
The Panel of Judges of the Ad Hoc Court on Human Rights at the Central Jakarta State Court who assessed and held the trial for the criminal case on Human Rights Violation of the first degree in acara Pemeriksaan Biasa, gave a Verdict as follows, in the case of the Defendant:
Name : Letkol Inf. SOEDJARWO
Place of birth : Cirebon
Age/date of birth : 42 years old/December 25, 1958
Sex : Male
Nationality : Indonesian
Religion : Islam
Address : KODIM 1624 East Flores
Occupation : TNI AD (ex DANDIM 1627 Dili)
Education : AKABRI class 1981
The Defendant was not detained.
The Defendant was accompanied by TNI's Advocating Team on Human Rights, who was

made of: Kolonel CHK A.B. Setiawan, S.H., Letkol Laut Bambang Soedarko, S.H., Lektol Laut M.D. Purnomo, S.H., Lekol CHK Hurhajizah M., S.H., Letkol CHK Apang Sopandi, S.H., Lekol CHK Djodi Suranto, S.H., Mayor Laut Adnan Madjid, S.H., M.Hum., Mayor Sus S. Damanik, S.H., Mayor Laut Sigit Wahyu W., S.H., M.Hum,. Mayor CHK. M. Simamora, S.H., Mayor Sus Bambang Eko Suaharyanto, S.H., Mayor CHK Subagyo Santosa, S.H., Mayor CHK Widarsono, S.H., Kapten CHK Z. Effendi, S.H., Kapten Sus Bambang Widarto, S.H., Kapten CHK Subagjo, S.H., Kapten Laut Hari Aji Subianto, S.H., Kapten Sus Daswanto, S.H., Lettu CHAK Marliah S.H. based on Surat Kuasa Khusus dated June 24, 2002. Other than that, the Defendant was also accompanied by a Legal Defense Team made of: DR. Chandra Motik Yusuf Jemat, S.H., Bob Nainggolan S.H., Yan Juanda Saputra, S.H., Erman Umar, S.H., Amir Karyatin, S.H., Agus Takabobir, S.H., Rahyono Abikusno, S.H., LLM, M. Kapitra Ampera, S.H., S. Farnain, S.H., Indra, S.H., Joao Meco, S.H., based on Surat Kuasa Khusus dated June 25, 2002. All held an office on Jalan Denpasar Raya Blok C 17 No. 41-41 South Jakarta.

The Ad Hoc Court on Human Rights:
Upon reading:
1. The letter of transfer of case for gross violation against Human Rights along with its appendices on the Defendant: Letkol Inf. SOEDJARWO;
2. The surat penetapan of the Head of the State/Human Rights Court of Central Java No. 08/Pid.HAM/Ad.Hoc/2002PN.JKT.PST. dated June 3, 2002 on the appointment of the Panel of Judges who assessed and held the trial for this case;
3. The surat penetapan of the Chair Judge No. 08/Pid.HAM/Ad.Hoc/2002/PN.JKT.PST dated June 14, 2002 on the date of the trial;
Upon hearing:
1. The letter of indictment from the Ad Hoc General Prosecutor, Case Registration Number: 06/HAM/Timtim/05/2002 dated June 25, 2002;
2. The Temporary Ruling of the Panel of Judges dated July 12, 2002 number: 08/Pid.HAM/Ad.Hoc/2002/PN.JKT.PST that in essence stated that the Defendant SOEDJARWO's Legal Defense Team's objection was overruled and further stated that the Ad Hoc Court on Human Rights of Central Jakarta has the jurisdiction to put trial the Defendant's case;
3. The requisition from the Ad Hoc General Prosecutor on November 20, 2002 that in essence demanded the Panel of Judges of the Ad Hoc Court on Human Rights of Central Jakarta to deliver a verdict that:
1.1. states that the Defendant SOEDJARWO is legally and beyond reasonable doubt guilty of the crime of gross violation against Human Rights as stated in article 7 letter (b) jis article 9 letter (a), article 42 verse 1 letter (a) and (b), article 37 UU No. 26 year 2000 on the Court of Human Rights;
2.2. sentences the Defendant to jail for 10 years;
3.3. states that the evidence in the form of copied letters be made evidence for other cases;
4.4. sentences the Defendant to pay the case cost in the amount of Rp. 7,000.00 (seven thousand rupiahs)
4. The Defendant SOEDJARWO's self pledoi that in essence states that as a professional soldier all he did was serving his country, which was actualized in the form of saving the society and vital objects that were of the interest of the people. Further more the Defendant plead with all due respect to be released of all charges and legal indictments.
5. The pledoi from the Defendant's Legal Defense Team that in essence held the conviction that the Defendant SOEDJARWO was not proven guilty by law, legally and beyond reasonable doubt , to have committed the crime as stated in the Ad Hoc General Prosecutor's

indictment. Therefore the Legal Defense Team pleaded the Panel of Judges to deliver a verdict that:
5.1. releases the Defendant of all charges;
5.2. restore the Defendant's rights in terms of his capability, position, and dignity;
5.3. place the burden of case cost to the state
6. The Ad Hoc General Prosecutor's replik that in essence stated that they stood by their original legal charges, which was revealed to the court on November 27, 2002; and the Defendant's Legal Defense Team's duplik stating that they stood by their defense;

Considering that in accordance to the Ad Hoc General Prosecutor's letter of indictment dated June 25, 2002, Case Registration Number: 06/HAM/Timtim/05/2002, the Defendant was charged of committing a gross violation against Human Rights as follows:

PRIMARY:
That the Defendant: SOEDJARWO as the Military District 1627 Dili Command on September 3, 5, and 6, 1999 or at the very least in the month of September 1999 at the Diocese office of Dili East Timor and the residence complex of Archbishop Belo or at other places within the boundaries of Dili East Timor or at the very least at other places that by article 2 of the Decree of the President of the Republic of Indonesia number 96 year 2001 on August 1 gives the jurisdiction to the Ad Hoc Court on Human Rights at the State Court of Central Java to put to trial and deliver a verdict to the Defendant mentioned above, the Defendant as a Military Command or a person who effectively acted as a Military Command can be held accountable for the crime within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control whereupon the crime is a result of his lack of control over his troop where the Defendant as the Military Command, who has the duty to ensure the security and order of the people, and he did not take the proper and necessary actions that fell within his jurisdiction to prevent and halt such acts, hence there occurred a gross violation against Human Rights in the form of murder as a part of an effort to launch a widespread and systematic attack directed to the civilians, when as the Military Command or based on the situation he should have been well aware of his troops were committing or had just committed a gross violation of Human Rights which was the killing of civilians who were a group of mass of pro-independence group who took refuge and shelter at the Diocese office of Dili and the attack of the Archbishop Belo's residence complex, and did not take the necessary actions that fell within his jurisdiction to prevent and halt such acts or to surrender the perpetrators who committed such acts to the officials with the authority to execute inquiry, investigation and prosecution.
The acts mentioned above were committed in ways to follow:
· That from September 3, 1999 to September 5, 1999 at the Archdiocese Dili, mass of people gathered to take refuge and the number kept increasing until reaching approximately 5.000 people;
· On Monday September 4, 1999 at around 14.00 WITA, the announcement of the result of the referendum in Dili East Timor which resulted in the victory of the pro-independent group has created pain in the pro-integration group and since the pro-integration group suspected some unfairness in the form of fortification of the referendum ballots, where the referendum itself was held by UNAMET in cooperation with LEKTORAL who was consisted mainly of the members of the pro-independence group and upon finding out that there were referendum ballots scattered along the street and the yard in the location of the Diocese office of Dili and in the location of the Archbishop Belo's residence, the pro-integration group launched an assault using fire power and sharp objects such as swords and knives to the pro-independence

group who took refuge at the Diocese office of Dili and resulted in casualties of the civilians, namely Nelio Masquita Da Consta Rego, Nonato Soares, Joao Bernandino Soares and Vicente A. G. De Sousa. The assault on the people who took refuge at the Diocese office of Dili was also followed by arson of the Diocese office which was then burned to the ground;
· On Monday September 6, 1999 at around 11.00 WITA the pro-integration group, which was consisted of some members of militia and some members of TNI wearing militia outfit, came to the residence of the Archbishop Belo and forced the refugees from the pro-independence group who took shelter at the Archbishop's home to come out of the house. The pro-independence group came out and gathered at the Mother Mary Park in front of the Archbishop's house and soon after an "ATTACK" cry was heard whereupon the pro-integration group consisted of the militant members and some members of TNI wearing militia outfit launched an attack by firing at the pro-independence group refugee, which resulted in the death of a civilian named NUNU while a child of 10 years old named LILI suffered gun wound in her left eye;
· That the Defendant as the Military Command should have prevented and halted the actions of the TNI members who participated in the attack of the Diocese office of Dili and of the Archbishop Belo's residence, but he did not do so;
· After the incident mentioned above, the Defendant as the Military Command should have surrendered the TNI members who participated in the gross violation of Human Rights, which was the attack of the Diocese office of Dili and of the Archbishop Belo's residence that resulted in fatalities and injuries, but he did not do so;
· By his course of actions, the Defendant is charged with a crime under article 7 letter (b) jis article 9 letter (a), article 42 verse 1 letters (a) and (b), article 37 UU No. 26 year 2000 on the Court of Human Rights;

SUBSIDIARY:
That the Defendant: SOEDJARWO as the Military District 1627 Dili Command on September 5, 1999 or at the very least in the month of September 1999 at the Diocese office of Dili East Timor and the residence complex of Archbishop Belo or at other places that by article 2 of the Decree of the President of the Republic of Indonesia number 96 year 2001 on August 1 gives the jurisdiction to the Ad Hoc Court on Human Rights at the State Court of Central Java to put to trial and deliver a verdict to the Defendant mentioned above, the Defendant as a Military Command or a person who effectively acted as a Military Command can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control, or under his effective power and control, and that such crime is a result of his inability to apply the necessary control over his troop, whereupon the Defendant as the Military Command or someone with such capacity knew or should have known that the troop under his command was committing or just committed and gross violation against Human Rights. The necessary control over the troop was evidently not taken by the Defendant mentioned above, in ways to follow:
· That on September 5, 1999 at the time or soon after the result of the referendum was announced, the pro-integration group was angry at at the pro-independence group;
· That on Monday September 6, 1999 at around 09.15 WITA, there occurred destruction and arson of the Archbishop Belo's residence committed by the militia, TNI troops, and POLRI along with the pro-integration group on the base that the Archbishop Belo's residence was used as a refuge by the pro-independence group and a suspicion that a ballot box was hidden there. The assault was carried out by throwing Molotov bombs and set the Archbishop Belo's hose on fire;
· The Defendant should have foreseen the chaos and clashes between the civilians in East

Timor who had opposite views on the issue of integration with NKRI (The United Republic of Indonesia) who at the time were in Dili, especially after the announcement of the result of the referendum;
· At the time KODIM 1627 Dili was on duty to assist POLRI in providing security for the UNAMET personnel and foreign reporters at the Mahkota Hotel, which was also under attack, hence the security enforcement on duty had to take cover from the cross fire from the two groups who clashed with each other since the announcement of the result of the referendum. While at that time, KOREM with all its utilities and organization structures was still in its original state. Furthermore, its power had never been undermined, for the Tri Partite never gave a mandate to withdraw or decrease the military power from East Timor and the mandate was only to decrease the authority of the Government of R.I., hence TNI and POLRI should have still carried out their responsibility over the security and peacekeeping so that the referendum could be carried out fairly and peacefully in an atmosphere free from intimidation, violence, interference, and such clashes that occurred among the mass of civilians who gathered at the port (between the pro-independence and the pro-integration group);
· That upon seeing the large number of pro-integration group, the pro-independence group ran to the Diocese office of Dili to take refuge. The pro-integration mass kept pushing themselves inside the Diocese office of Dili and committed arson and destruction, all the while the Defendant did not deliver a maximum effort to secure the Diocese area, hence resulted in casualties-some fatal-among the civilians;
The Defendant's course of actions is charged with a crime under article 7 letter (b) jis article 9 letter (h), article 42 verse 1 letter (a) and (b), article 40 UU No. 26 year 2000 on the Court of Human Rights;
To avoid verbosity in this verdict, the Panel of Judges does not include all the testimonies from the witnesses as fully as it is in the dossier, but rather the Panel only picks and takes the essence of the testimonies which are relevant to the Ad Hoc General Prosecutor's charges as follows:
1. Testimonies from witnesses in court:
1.1. Witness DRS. MATEUS MAYA:
Under oath delivered his testimony, which in essence is as follows:
· That the witness held the position as Mayor of Dili since December 1996 until September 4 1999 and the witness answered to the Bupati KDH. Tk. II Dili;
· That the witness was aware of the fact that the pro-independence group originally moved underground and formed a shadow government and since the reform era their movement surfaced. As a reaction to that movement, the pro-integration formed their own groups called TPDK, BRTT, and Aitarak;
· That the witness was well aware of the pam swakarsa that was formed based on the law which was then formed in every area that has the jurisdiction to maintain the security of its own village;
· That the witness as a government official felt that since the first option and the Tri Partite agreement, the society's security and order was declining in Dili due to the existence of the shadow government of CNRT;
· That the witness was knew about the chaos at the Diocese office of Dili on September 5, 1999 and at the Archbishop Belo's residence on September 6, 1999, which resulted in fatalities and injuries from the television;
· That the witness also heard that there were 45 people who were rescued at the time of riot at the Archbishop Belo's residence by members of Aitarak and security apparatus;
· That the witness knew there were no members of the TNI or POLRI who were involved in the riots both at the Diocese office of Dili and at the Archbishop Belo's residence;
· The witness' account in essence is verified by the Defedant;

1.2. Witness LEO PARDEDE
Under oath delivered his testimony, which in essence is as follows:
· That the witness was at one time served in duty as the Kapus Kodal Ops at the Mapolda of East Timor since 1997 until September 1999;
· That the witness was aware that date of the announcement on the result of the referendum was expedited from September 7, 1999 to September 4, 1999 on the grounds to prevent leakage and protest;
· That the witness knew that before the result was announced on September 4, 1999, people had started to take refuge ;
· That the witness was aware of the event that occurred at the Diocese office of Dili on September 5, 1999 and at the Archbishop Belo's residence on September 6, 1999;
· That to the extent of the witness' knowledge, the riot that occurred at the Diocese of Dili resulted in casualties-some fatal-among the civilians, while the riot that occurred at the Archbishop Belo's residence there were no fatalities, but a child got hurt;
· That was aware that during the riot at the Archbishop Belo's residence, the security apparatus from TNI/POLRI prioritized the evacuation of the Archbishop to a safer place;
· The Defendant verified the witness' accounts;

1.3. Witness EURICO GUTTERES
Under oath delivered his testimony, which in essence is as follows:
· That the witness was not aware of the reasons behind the expedition of the announcement on the result of the referendum from September 7, 1999 to September 4, 1999;
· That the witness claimed that in all the riots occurred in East Timor, the security apparatus (from) TNI/POLRI always gave their maximum effort to break (the fight) and secure the situation;
· That the witness knew that the efforts of the security apparatus to secure the situation at the scene of the incidents which minimized the number of casualties;
· That the witness was not aware, nor saw, nor gained any information that there were members of TNI/POLRI who were involved in the assault at the Diocese of Dili and the Archbishop Belo's residence;
· The Defendant verified the witness' accounts in essence;

1.4. Witness YOSEPH YOSUA SITOMPUL:
Under oath delivered his testimony, which in essence is as follows:
· That the witness was aware of the announcement on the result of the referendum on September 4, 1999, which was originally scheduled to be released on September 7, 1999;
· That the witness was aware of the incident at the Diocese of Dili, which was near the Mahkota Hotel, the witness ordered Kapolres of Dili Hulman Gultom to deploy the Shabara and Brimob teams to secure and guard the scene of the incident;
· The witness knew that there were some TNI personnel at the location of the incident and the witness gave the order to quarantine the location so that the people could not enter the location of the Diocese of Dili;
· That the witness was aware that the incident at the Archbishop Belo's residence had resulted in fire;
· That the witness claimed that from the reports of his personnel and the community members, there was not any member of TNI/POLRI involved in the attack of the Diocese of Dili or of the Archbishop Belo's residence;
· The Defendant verified the witness' accounts;

1.5. Witness MARCELINO MATHIUS XIEMENS
Under oath delivered his testimony, which in essence is as follows:
· That at the time of the riot at the Diocese of Dili, the witness with Serka Elizario, a member of Kodim Dili helped Nonato Lobo who was wounded in the head by a sharp object and was chased by a mob;
· That the witness was one of the members of Aitarak who helped the security apparatus from TNI/POLRI to evacuate the refugees to the shelters;
· That the witness upon arriving at the Diocese of Dili saw that the security apparatus from TNI/POLRI separating (the fighting parties) and evacuating the refugees;
· That the witness saw that the Command of KODIM Dili and his people rescuing the citizens by using some military trucks to evacuate the refugees from the Diocese of Dili to the Governor's office;
· The Defendant verified the witness' accounts;

1.6. Witness MAKARAU
Under oath delivered his testimony, which in essence is as follows:
· That the witness was aware that on September 4, 1999 after the announcement on the result of the referendum, the city of Dili was reduced to a ghost town; there were many people who took refuge in designated places and try to get out of East Timor
· That the witness was aware that the distance between the Diocese of Dili and the Mahkota Hotel was approximately 20 meters separated by a street; the Defendant was on guard at the Mahkota Hotel since the location was used as UNAMET headquarters;
· That during incident at the Diocese of Dili on September 5, 1999, there a number of casualties-some fatal-although the witness does not know the exact number;
· That the witness was aware of the incident at the Diocese of Dili since the Diocese was not far from the port. When he was monitoring the port, the witness was looking at the Diocese of Dili that was still quite at the time, with few people and a car parking there; suddenly cars came from the west and the east and then people came down from the cars wearing red and white head bands; they went directly inside the Diocese of Dili. Upon seeing the event, the witness contacted the Posko Hanoin Lorosae. Not long after, security apparatus from Brimob went to the scene of the incident, followed by personnel from TNI/Kodim Dili and together they quarantined the area, separated the clashing groups and evacuated the refugees;
· That the witness saw that the Archbishop Belo was rescued by the security apparatus from TNI/Polri and was evacuated to Mapolda;
· The Defendant verified the witness' accounts;

1.7. Witness VICTORINO AROYO DOS SANTOS:
· That it is true that the witness was once a Village Chief and was acquainted with the Defendant;
· That it is true that the witness was aware that the announcement on the result of the referendum was expedited to September 4, 1999 from the original plan of September 7, 1999;
· That it is true that the witness heard of the incident that occurred at the Diocese of Dili on September 5, 1999;
· That it is true that the witness was aware of the burnings in the area of East Timor which was resulted from the alleged fraud in the process of the referendum by UNAMET;
· That it is true that the witness was aware of the term "militia" from the label that was given by Australia and UNAMET;
· The Defendant verified the witness' accounts;

1.8. Witness Drs. DOMINGGUS M. SOARES, S.H., M.Si:
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant who held the position as DANDIM 1627 Dili;
· That it is true that the Pam Swakarsa was formed by the initiative of PEMDA and was funded by PEMDA from the APBD, whose duty was to guard the security and order of the community of Dili and the surrounding areas;
· That it is true that the witness knew from the mass media that there had been riots and assault at the Diocese of Dili and at the Archbishop Belo's residence and the witness knew and heard that the fire that set up on the Archbishop Belo's residence originated from inside the house;
· That it is true that the witness was aware that the announcement on the result of the referendum was expedited to September 4, 1999 from the original plan of September 7, 1999, but the witness did not know the reason behind it;
· The Defendant verified the witness' accounts;

1.9. Witness ELIZARIO D.P.:
Under oath delivered his testimony, which in essence is as follows:
· It is true that the witness was acquainted with the Defendant since the witness at one time served at KODIM 1627 Dili as as BA Intel while the Defendant served as DANDIM 1627 Dili;
· That it is true that on September 6, 1999 at around 11.00 WITA at the time when the witness was at Makodim, he heard from Kasdim that a mass riot had occurred at the Archbishop Belo's residence. Not long afterwards, Kodim's patrol car with approximately 15 personnel drove out from Makodim to the scene of the incident;
· That it is true that the witness was aware that there were three vehicles set on fire due to the incident at the Archbishop Belo's residence and the witness was also aware that the Defendant was at the Mahkota Hotel that was approximate 200 meters from the scene of the incident;
· That it is true that the witness knew and saw the Defendant at Makodim during the riot at the Archbishop Belo's residence;
· That it is true that the witness was aware that the announcement on the result of the referendum was supposedly released on September 7, 1999, but was then expedited to September 4, 1999;
· That is true that the witness was aware that the Defendant always accepted people who came from protection to take refuge at Makodim Dili;
· The Defendant verified the witness' accounts;

1.10. Witness JOSE MATOS DE AROYO:
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant since the witness served as the Babinsa at Kaikoli Village, West Dili, and on September 5, 1999 at approximately 15.00 WITA had accommodated 20 people who sought refuge, coming from the Diocese of Dili;
· That it is true that the witness heard on the morning of September 5, 1999, there had been a clash between the two groups of pro-integration and pro-independence that made the people took flight to the hills to seek refuge and the witness at one point managed to communicate by HT with the Danramil although the connection was breaking up, while the communication with the Defendant was without a problem;
· That it is true that the witness was aware of the chaos that was resulted from the expedition of the announcement on the result of the referendum to September 4, 1999 from the original plan of September 7, 1999;

· That it is true that the witness stated that there had never been any policy from the government, TNI, nor the Defendant to launch an attack nor to show enmity to the pro-independence group;
· The Defendant verified the witness' accounts;

1.11. Witness AGUSTO DA COSTA:
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant who acted as his superior when the witness served at Makodim 1627 Dili in the year 1999;
· That it is true that the witness knew and heard that there were casualties-some fatal-due to the incident at the Diocese of Dili although the witness did not know the exact number;
· That it is true that the witness knew that the Defendant gave the order to secure the Diocese of Dili and to prevent the mass from rentering the Diocese of Dili and also to secure the Mahkota Hotel;
· The Defendant verified the witness' accounts;

1.12. Witness ADOLFO TILMAN:
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant who was his superior when the witness served at Makodim 1627 Dili, East Timor, from the year 1996 to September 17, 1999;
· That it is true that the witness was aware of the incident at the Diocese of Dili on September 5, 1999 whereupon the witness was ordered by the Defendant to secure the refugees at the Port of Dili and Makodim;
· That the witness was aware of the riot at the Archbishop Belo's residence and of the fact that the withdrawal of the guarding troop from the mentioned residence was due to the service on Monday September 6, 1999 whereupon before the event, the witness with two platoons of the BTT Yon 521 troop had guarded the Archbishop Belo's residence;
· That it is true that after the Archbishop Belo's requested Captain Hartono to pull out the troop due to the service to be held at the Archbishop Belo's residence on Monday September 6, 1999 at 07.00 WITA, the request was reported to the Defendant afterwards;
· That it is true that the witness was aware of the report from the Captain Hartono to the Defendant on the Archbishop Belo's request to pull out the troops whereupon the Defendant gave out the order to carry out the Archbishop's request;
· The Defendant verified the witness' accounts;

1.13. Witness PASCOAL MAIA
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant for the witness was at one time served at Kodim 1627 Dili as a Bintara Angkutan;
· That it is true that on September 5, 1999 at around 14.00 WITA the witness heard from Kasdim that there had been a clash of the mass at the Diocese of Dili whereupon the witness was ordered by Kasdim to prepare one Kijang patrol vehicle;
· That it is true that the Defendant received troops from the Battalion Territorial 521 in the amount of two platoons (60 personnel) whereupon the troops were led by Captain Hartono bound to the Archbishop Belo's residence on September 5, 1999 at 17.00 WITA;
· That it is true that at around 06.0 WITA on September 6, 1999 the troops brought by Captain Hartono amounting to two platoons to the Archbishop Belo's residence was pulled out to Makodim;
· That it is true that at around 11.00 WITA at around September 6, 1999 the witness was

ordered by Kasdim to prepare a Kijang patrol vehicle to be used to carry some troops to the Archbishop Belo's residence due to a riot that occurred whereupon the vehicle was used to carry 15-personnel troop from Kodim;
· That it is true that the witness was aware and saw that there were many people who took refuge at the Archbishop's Belo's residence scattering out of the house crying for help;
· That it is true that the witness was aware that what happened both at the Diocese of Dili and the Archbishop Belo's residence were clashes and the witness heard there was gunfire from firearms;
· The Defendant verified the witness' accounts;

1.14. Witness CAPTAIN HARTONO:
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant since the witness once served as the Pasi Ops Kodim 1627 Dili in the year 1999;
· That it is true that approximately at 11.00 WITA the witness heard from the community members that at Dili Diocese there was a clash and afterwards the witness reported to the Defendant;
· That it is true that the Defendant at approximately 15.00 WITA on September 5, 1999 gave an order to the witness to guard the Archbishop Belo's residence to prevent similar incident that had occurred at the Diocese of Dili;
· That it is true that the Defendant requested backups to Korem whereupon backup troops came consisted of two platoons (60 personnel) bearing arms;
· That it is true that the troops were brought to the Archbishop Belo's residence to guard the location;
· That it is true that the witness then pulled out the troops and headed back to the tactical command the Makodim upon the Archbishop Belo's request due to the service to be held there;
· That after, when the witness was resting at the Makodim, at 11.15 WITA the witness received an order from the Defendant via HT to move quickly to the Archbishop Belo's residence to secure the Archbishop due to a riot that broke up at the location;
· That it is true that the witness knew that announcement on the result of the referendum was originally going to be held on September 7, 1999 but was then expedited to September 4, 1999 and that the result of the referendum had caused many people seeking refuge;
· That it is true that when the witness came to the Archbishop Belo's residence at approximately 11.00 WITA on September 6, 1999, a riot had broken up between the pro-integration and the pro-independence groups;
· The Defendant verified the witness' accounts;

1.15. Witness MAJOR SALMAN MANAFE
Under oath delivered his testimony, which in essence is as follows:
· That it is true that the witness was acquainted with the Defendant during the time the Defendant served as DANDIM 1627 Dili while the witness served as Kasdim;
· That it is true that at approximately 14.00 WITA on September 5, 1999 the Defendant received a report from the Pasi Intel that an incident had occurred at the Diocese of Dili, whereupon the Defendant gathered up his people and ordered the witness as Kasdim to standby at the Makodim;
· That it is true that to anticipate the re-occurrence (of the incident), the guarding of the Archbishop Belo's residence was executed based on the grounds that religiously the Diocese of Dili and the Archbishop were considered to be the representative of Catholic people to convey their opinions;
· That hence the Defendant made the decision to anticipate a possible riot at the Archbishop

Belo's residence and prepared two platoons (60 personnel) taken from the BTT posts;
· That it is true that throughout the night when the troops stood on guard at the Archbishop's residence, the situation was safe and quite and there were no indications to suspect otherwise;
· That it is true that afterwards the troops was pulled out from the Archbishop's residence upon the Archbishop Belo's request due to a service to be held there; the troops were returned to Makodim and then to their own posts;
· That it is true that after the troops were pulled out from the Archbishop's residence, at approximately 11.300 WITA the witness heard the news from the Babinsa and post BTT that a riot between the masses broke up at the Archbishop Belo's residence;
· The Defendant verified the witness' accounts;

2. Testimonies from witnessed who were not present in court were read to the court (as included in the dossier):
2.1. NELIO MESQUITA DA COSTA REGO
2.2. MARIA PEREIRA SOARES
2.3. VICENTE A. G. DE SOUSA
2.4. JOAO BERNANDINO SOARES
2.5. NONATO SOARES
2.6. Mgr. CARLOS FILIPE XIEMENS BELO
All of the witnesses' accounts that were read to the court were in essence denied by the Defendant;

3. Expert Witness DR. A. S. S. TAMBUNAN, S.H.:
The witness was not present at the court and his accounts were read to the court, which in essence is as follows:
· That in defining the responsibility of a commander in TNI, one should refer to the military doctrine where a commander holds full responsibility of the actions of the members of the troops under his leadership. This doctrine speaks of the military responsibility that includes, among others, directions for the commander's troops. Therefore, a commander can not shift the blame to the people under his command for the failure in the military operations carried out by his troops;
· An action can be carried out based on orders from the superior officers, referring to the military regulation;
· If a personnel carried out the superior officer's orders, then based on article 11 sub (d) of the Government's Regulation No.24 year 1949 on the Army's Disciplinary Rules, then it is the officer that gave the order who is fully responsible for the conduct of the mission. The responsibility mentioned is in terms of military responsibility and not legal responsibilities, be it criminal or private;
· If the military personnel made errors in carrying out the orders of the superior officer, then the legal responsibility lies on the aforementioned personnel, while the superior officer holds the military responsibility;
· The Defendant verified the witness' accounts;

4. Accounts from the Defendant Letkol Inf. SOEDJARWO:
In front of the court, the Defendant delivered his accounts which in essence is as follows:
· That it is true that the Defendant served as DANDIM 1627 Dili based on the Surat Keputusan Pangdam Udayana, based on Skep KASAD from August 9, 1999 to December 20, 1999;
· That it is true that when the Defendant held the office of DANDIM 1627, he supervised 4 Koramils with 381 personnel which were stationed at the Makodim and the 4 Koramils

themselves;
· That it is true that while the Defendant served as DANDIM 1627 Dili, two incidents occurred in Dili, namely the incident at the Diocese of Dili on September 5, 1999 and the incident at the Archbishop Belo's residence on September 6, 1999;
· That it is true that as DANDIM 1627 Dili, the Defendant carried out the Target Operasi Cabut II whose mission is as follows:
1. To secure and guard the UN and UNAMET personnel along with the state's vital installations;
2. To evacuate safely the civilians and foreign citizens;
3. To provide assistance to POLRI upon request;
· That since the Diocese of Dili and the Archbishop Belo's residence did not serve as the refugees' evacuation points, the guard was concentrated at other places according to the Target Operasi Cabut II;
· That it is true that on the morning of September 5, 1999 , the Defendant conducted a flag ceremony and gave instructions to his personnel that the PANGAB was coming from Jakarta, that the Defendant was going to pick him up at the Comoro Airport, and ordered his personnel to standby;
· That when the Defendant received a report from his personnel, the Pasi Intel, via HT, that a riot had broken out at the Diocese Dili, the Defendant promptly gathered the Staff Officers and gave instructions to the Kasdim to remain at the Makodam and monitor its members to stay put. Afterwards, the Defendant left with his assistant, Peltu Adolf Tilman and a driver using a military vehicle to the site of the incident;
· That it is true that because of the incident, the suffered 3 casualties whom one of them is the ex Kodim member who became a village leader named Nonato, while the other tow were Nonato's wife and child, all of whom was rescued and taken to the hospital by Kodim personnel;
· That it is true that the Defendant had taken the initiative to deploy troops to guard the Archbishop Belo's residence, led by Captain Inf. Hartono;
· That it is true that at the time the troops were guarding the location, they noticed absolutely no signs that would indicate that a possible incident could happen at the Archbishop Belo's residence;
· That it is true that the Archbishop Belo requested Captain Inf. Hartono to pull out the troops in the morning of September 6, 1999 due to the service to be held there at 07.00 WITA;
· That request was expected to be permanent in nature, and not temporary, since the Archbishop Belo never requested the troops to return to his residence after the service was over;
· That Captain Inf. Hartono afterwards reported the request to the Defendant;
· That the Defendant decided to accept the request on the grounds to follow:
1. There were absolutely no indications that a riot or any of the kind would break out at the Archbishop Belo's residence;
2. That the Archbishop Belo was a person that cold be considered extremely influential and charismatic, that it was difficult to object to his request;
3. There were already security posts set up at the distance of approximately 300 meters, 200 meters, and 150 meters at the villages of Bidao Lesi Dere, Bidao Armabad, and the Archbishop Belo's former residence;
· That it is true that the Defendant nevertheless still conducted a security anticipation plan after the troops were pulled out of the Archbishop Belo's residence, by activating the security posts near the Archbishop Belo's residence;
· That when the Defendant received the report from his personnel that a clash had occurred at the Archbishop Belo's residence, the Defendant promptly took the necessary actions to secure

the situation by taking his personnel and immediately went to the site of the incident. Upon arriving, the Defendant quickly gave instructions to his members to take security measures;
· That afterwards the incident at the Archbishop Belo's residence was successfully put out while the Archbishop was rescued and taken to Polda;
· That in the event, a fatal casualty was founded, a little child. But later on, it was determined that the caused of death was a sickness suffered by the child;

Considering that evidence had been brought to the court as included in the list of evidence;
Considering that before the Panel of Judges systemized the legal facts discovered in court, be that from the witnesses' accounts, the Defendant's accounts, and other forms of evidence brought to the court, the Panel deemed it necessary to deliver a respond to the Defendant's Legal Defense team's formal objections, which are in essence included three items:
1. The objection of the Defendant's Legal Defense team on the witnesses' accounts that were read to the court from the dossier;
2. The use of the teleconference media;
3. The Defendant's trial that lasted for over 180 days;

Ad. 1. Objection on the accounts that were read to the court from the dossier
Taking into account that on the objection of the Defendant's Legal Defense team on the accounts of the witnesses, all of whom were citizens of the state of Timor Leste, which were read to the court from the dossier; Nelio Mesquita Da Costa Rego, Maria Pereira Soares, Vicente A. G. De Sousa, Joao Bernandino Soares, Nonato Soares, and Mgr. Carlo Filipe Ximenes Belo (the Archbishop Belo), the Panel of Judges decided to overrule, referring to article 162 verse 1 KUHAP, "…a witness may not be requested to be present in court due to extreme distance of the place of trial from his/her residence or for other reasons that involve the state's interest, whereupon his/her accounts shall be read to the court";
Taking into account that even though the accounts of the witnesses had been read to the court by the Ad Hoc General Prosecutor, the Panel of Judges would only assess the truth of the accounts from the witness Mgr. Carlos Filipe Ximenes Belo (the Archbishop Belo) as long as there is some relevance (between his accounts) with the accounts of the witnesses who delivered their testimonies under oath in court that are (considered to be) acceptable, especially regarding the withdrawal of the TNI troops from the Archbishop Belo's residence on September 6, 1999 at around 06.00 WITA to the Makodim;
Taking into account that the Panel of Judges would analyze the Archbishop Belo's accounts that were read to the court, in relevance to the accounts of the a de charge witnesses such as Elizario D.P., Captain Hartono, Peltu Adolfo Tilman, Major Salman Manafe, related to the accounts of the Defendant Letkol Inf. SOEDJARWO, especially on the withdrawal of the TNI troops;
Taking into account that after the Panel of Judges examined closely the accounts of the a de charge witnesses and of the Defendant, in relation with the accounts of the Archbishop Belo which were read from the BAP (pre-trial statement), a fact was discovered that according to Archbishop Belo's accounts, on September 6, 1999 at around 06.00 WITA, after the Archbishop Belo requested the TNI personnel to monitor/protect the refugees in his residence who were going to the beach to urinate, in less than 15 minutes the two trucks carrying the 60 TNI personnel headed back (to the headquarters?) and disappeared while the Archbishop himself never said anything about there was going to be a service held at his residence at approximately 07.00 WITA;
Taking into account that the truth of (the concept that) it was Archbishop Bello's suggestion to pull out the TNI troops as pertained in the accounts of the witness Captain Hartono, who was supported by the witness Adolfo Tilman, was questionable due to the fact that by the

occurrence of the attacks upon the Diocese of Dili as well as the residence of Archbishop Belo it was impendent that the Archbishop Belo would be greatly in need of security protection from the TNI;
Taking into account the analysis on the accounts of the aforementioned witness, the Panel of Judges decided that the accounts of the witness Archbishop Belo on the withdrawal of the TNI troops from his residence were acceptable and can be regarded as a legal fact in the trial

Ad. 2. The use of the teleconference media;
Taking into account that even though the Panel of Judges had already given its ruling in court on December 3, 2002 concerning the use of the teleconference media, it was only appropriate to restate the ruling itself, which was;
That the Panel of Judges, upon receiving the certainty on the use of the teleconference media to take the accounts from the key witnesses and the victims from East Timor, where non of these accounts had ever been delivered to the court, including the accounts from the Archbishop Belo, and even though the litigation of the case had been carried out, where the Ad Hoc General Prosecutor had delivered the charges and so forth, and even though the Panel of Judges had set the date of the reading of the verdict which is on December 3, 2002, the Panel of Judges deemed it necessary to reopen the litigation by allowing the process of taking the accounts of the witnesses and victims through the use of teleconference media in order to seek the material truth;
Taking into account that the Panel of Judges' decision to reopen the litigation was not without a base, since by the article 182 verse (2) KUHAP, such process is allowed;
Taking into account that even though the use of a teleconference media was not regulated in KUHAP since at the time of the writing of the criminal code there were no such tool as the teleconference media in Indonesia's judiciary practices, but since it was deemed that technological advancement can and should support the legal process in finding the material truth in certain situation and cases, then the media can be used as means of telecommunication across great distances in the court. Furthermore, the use of a teleconference media has been conducted before in Indonesia's judiciary practices.
Taking into account the Defendant's Legal Defense team's objection on the Panel's competence to extend their jurisdiction for conducting a long distance court outside the boundaries of the State of Indonesia, the Panel believed that it was still within their jurisdiction to do so since the locus and tempus (place and time) of the gross violation of Human Rights which took place in East Timor at that time occurred within the boundaries of the State of Indonesia (NKRI), under the Keputusan Presiden No. 53 year 2001 which was renewed by the Keputusan Presiden No. 96 year 2001 on the Court on Human Rights for the cases of East Timor 1999 and Tanjung Priok 1984;
Taking into account that in response to the Defendant's Legal Defense team's opinion that the use of the teleconference media should only be conducted with the approval of the Supreme Court, the Panel held the stance that since the litigation process was entirely in the jurisdiction of the Panel, a notification to the Supreme Court on the use of the media should suffice;

Ad. 3. On the trial that lasted for more than 180 days
That on the time extension of the trial, the Panel of Judges took these matters into account:
That it is true that the maximal limit of time regulated by article 31 UU No. 26 year 2000 on the Court on Human Rights is 180 days from the time the court receives the case to the time of verdict. The Panel had put their effort to the fullest to ensure just that. However, there were a lot of witnesses, whose accounts should be addressed by the court, live outside the boundaries of the State of Indonesia, namely, in East Timor. Meanwhile the Ad Hoc General Prosecutor found tremendous obstacles in presenting the witnesses on many grounds, most

notably are the witnesses' concern for their own safety and the fact that there were many witness who were not at their residence, including the Archbishop Belo who was in Europe at the time of the trial.
That realizing the importance of the accounts of these witnesses from East Timor who fell into the category of key witnesses and/or victims, therefore even though the litigation of the case had been declared over, for the purpose of revealing relevant facts that would lead to the material truth, the Panel of Judges decided to extend the time limit which was December 3, 2002;
Taking into account furthermore that the UU No. 26 year 2000 also did not regulate the legal repercussions of extending the 180 days of time constraint in the Court on Human Rights;
Taking into account that based on the grounds that have been stated above, the Defendant's Legal Defense team's objections on the three issues aforementioned are overruled;
Taking into account that based on the witnesses' accounts, the Defendant's accounts, and the evidences as well as the evidences in form of notes and letters, after connecting them with one another, the existence of the following legal facts can be constituted:
1. That it is true that the Defendant served as the Military District 1627 Dili Command (DANDIM 1627 Dili) from August 9, 1999 to December 20, 1999.
2. That Kodim Dili supervised 4 Korems with 381 personnel in total, all stationed at the Makodim and the 4 Koramils;
3. That it is true that during the Defendant's service as DANDIM 1627 Dili, two assaults occurred in Dili, which are the assault at the Diocese of Dili on September 5, 199 and the assault at the Archbishop Belo's residence on September 6, 1999;
4. That it is true that as DANDIM, the Defendant had a primary mission to conduct Target Operasi Cabut II, which is as follows:
· securing the UN and UNAMET personnel and all the vital installations of the state
· ensuring the evacuation process of the local and foreign civilians runs smoothly;
· providing back up to the POLRI upon request;
5. That it is true that in Dili there were two major groups in the society that were clashing with one another, which are the pro-integration group and the pro-independence group;
6. That it is true that the assaults at both the Diocese of Dili and at the Archbishop Belo's residence resulted in casualties and some fatalities, as well as arson;
7. That it is true that at 05.30 WITA the Archbishop Belo came to see Captain Inf. Hartono and asked him to help the refugee who wish to relieve themselves by the beach, whereupon Captain Hartono ordered around ten of his men to carry out the request. Afterwards, at around 06.00 WITA, the Archbishop Belo requested Captain Hartono to pull out his troops since he was planning to perform a service at around 07.00 WITA;
8. That it is true that at around 06.00 WITA, two platoons were pulled back to the Makodim and upon arrival were sent back to their respective posts. From around 06.00 WITA to the time of the incident, the Defendant and Major Salman Manafe took turns to monitor the activity of the people surrounding the BTT posts;
9. That it is true that soon afterwards the Defendant ordered Captain Hartono to go promptly to the site of the incident and rescue the Archbishop Belo. Upon the order, Captain Hartono and Peltu Adolfo Tilman went to the site of the incident where they were then able to rescue and safe the Archbishop Belo;

Taking into account that the Ad Hoc General Prosecutor had indicted the Defendant of committing a crime against Human Rights as regulated in UU No. 26 year 2000 as follows :
PRIMARY : article 7 letter (b) jis article 9 letter (a), article 42 verse 1 letter (a) and (b), article 37 UU No. 26 year 2000 on the Court of Human Rights.
SUBSIDIARY : article 7 letter (b) jis article 9 letter (h), article 42 verse 1 letter (a) and (b),

article 40 UU No. 26 year 2000 on the Court of Human Rights.
Taking into account that following the legal proceedings of a crime case, the Panel of Judges would first try the Primary indictment, whereupon if it is proven to stand, then the Subsidiary indictment would not need to be addressed. The Subsidiary indictment will only be tried if the Primary indictment was not proven to stand;
That what would be the Panel of Judges' foundation in declaring that the Defendant guilty is how far the elements of the Ad Hoc General Prosecutor's indictment is proven to be true, based on the legal process of the court;
Taking into account that the Ad Hoc General Prosecutor had indicted the Defendant of crimes against humanity at the locus (place) and tempus (time) as follows:
1. At the Diocese of Dili on September 5, 1999
2. At the residence of the Archbishop Mgr. Carlos Filipe Ximenes Belo, SDB on September 6, 1999.
Hence the Panel of Judges should focus legal considerations at the specific time and place.
Taking into account that the Panel should then consider the Primary indictment as follows:
· Article 7 letter (b) states:
"Gross violation s against Human Rights includes: …. (b) Crimes against humanity"
· Article 9 letter (a) states:
"Crime against humanity as stated in article 7 leter (b) is one of the acts committed as apart of a widespread or systematic attack upon the knowledge that the attack is targeted directly to the civilians in the form of …. (a) Murder"
· Article 42 verse (1) letters (a) and (b) state:
"A Military Command or a person who effectively acts as a Military Command can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control whereupon the crime is a result of his lack of control over his troop, which include:
o The Military Command or the person was well aware or under the situation at the time should have been well aware of the actions of his people who were committing or just committed a gross violation of Human Rights, and
o The Military Command did not take the necessary actions that fell within his jurisdiction to prevent and halt such acts or to surrender the individuals who committed such acts to the officials to be investigated, processed, and prosecuted"
· Article 37 regulates criminal repercussion;

Taking into account that the Panel of Judges needed to group the elements to be proven from the Primary indictment, among others: the element of article letter (b) should be grouped into article 9 letter (a), since the two articles are a set of that can not be separated from one another in terms of crimes against humanity; while article 37 on the criminal repercussion is not an element to be proven, but a criminal regulation that should be implemented by the Panel once and if the Defendant is proven guilty of the charges put against him;
Therefore, the elements needed to be proven by the Panel in the Primary indictment are as follow:
1. The crime against humanity was committed in the form of a widespread or systematic attack;
2. The attack was known and was targeted directly to the civilians in the form of murder;
3. A Military Command or a person who effectively acts as a Military Command can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control;
4. The crime is a result of him not exercising the appropriate control over his troop;
5. The person was well aware or under the situation should have been well aware that the

troop were committing or just committed a gross violation of Human Rights;
6. The person did not take the appropriate and necessary actions that fell within his jurisdiction to prevent and halt such acts or to surrender the perpetrators to the officials authorized to commence inquiry, investigation and prosecution;

Taking into account that on the six elements aforementioned, the Panel should consider them with the utmost scrutiny and link them with the legal facts revealed in the court one by one as explained in the following;
Taking into account that on the first and second elements, the Panel should consider them as a group since as stated before, the two elements are closely linked with each other, since the "murder" itself is a form of a crime against humanity;
Taking into account that the element of crime against humanity here meant here is an act committed as a part of a "widespread" or "systematic" attack targeted on "civilians";
Taking into account that the term a "widespread" or "systematic" attack in UU No. 26 year 2000 is not defined clearly, but since the law was adopted from the Roman Statute 1998, the Panel should refer to the International Criminal Court practices as well as the international law literatures;
That the term "attack" in this case, from the Panel of Judges' point of view, did not necessarily have to be defined as military assault such as defined by the International Humanitarian Law, hence the attack itself did not necessarily have to include the use of a military force or weapons. Therefore, a killing or a murder that was resulted from the unleashing of a force or an operation targeted on civilians, should fell into the definition of the term "attack;"
That the term "an attack targeted on civilians" did not necessarily mean that the attack was launched on the population as a whole. An attack on a group of civilians that had their own political opinions should fell into the definition of the above term;
Taking into account that one of the Judges of the International Criminal Court for Yugoslavia, Jean Jacques Heintz, stated that what is meant by the term a "widespread" attack was an attack that is massive in nature, conducted in a large scale, carried out collectively, with considerable seriousness directed against a multiplicity of victims. Meanwhile, Norway's Advocate General Justice Arne Willy Dahl stated that "a widespread attack is one that is directed against a multiplicity of victims;"
Taking into account that in his requisition from page 67 to page 69, the Ad Hoc General Prosecutor had also defined the term "a widespread attack" and stated that the element had been proven based on the following legal facts:
· That it is true that on September 5, 1999 at approximately 14.00 WITA, the Diocese of Dili was set on fire and on September 6, 1999 at around 11.00 WITA, an assault was launched and riot broke out at the Archbishop Belo's residence;
· That the clash occurred was between two groups, which were the pro-integration and the pro-independence groups, where in the clash at the two places, the members of the pro-integration group launched attacks by way of using gunfire from generic weapons and sharp objects;
· That the members of the pro-integration group who was involved in the assault wore black long-sleeved T-shirts and around them there were many militias and armed apparatus;
· That witnesses explained that at the time of the assault at the diocese of Dili on September 5, 1999 at approximately 10.00 WITA, gunshots were heard for a relatively long time directed to the office and some members of the militia along with several members of the TNI and the police who were armed entered the Dili Diocese. Some people in the Diocese were stabbed; one of them was the husband of Pereira Soares. Furthermore, the attackers, which consisted of the militia and the TNI, committed gruesome acts by brutally shot, maimed, and stabbed the people who took refuge at both the Diocese of Dili and at the Archbishop Belo's residence;

Taking into account that on the other hand, the Defendant's Legal Defense team in their pledoi from page 127 to page 130 maintain the opinion that the element of a "widespread or systematic attack" was not proven by the law to be conducted by the Defendant;
That the Defendant's Legal Defense team's conclusion derived from the assessment of the legal facts that could be deduced as such:
· That the term "widespread" in Indonesian Dictionary meant to widen or to become more in area. This went accordingly with the understanding of the term "widespread" that was included in The Trial Chamber Judgement Information: The Akayesu Case, Case ICTR-94-4-T, September 2, 1998, Case ICTR-96-3-T, December 6, 1999, Case ICTR-95-10-T, December 14, 1999, as stated by Darryl Robinson in his book entitled Definitive Crimes Against Humanity at Rome Conference, paragraph 2 and footnotes:
"Widespread is a large scale action involving a substantial number of victims. The concept of widespread may be defined as massive, frequent, large scale action carried out collectively with considerable seriousness directed against a multiplicity of victims;"
Meanwhile the term systematic was defined by Darryl Robinson as an organized action following on a certain pattern, based on the same policy, involving large resources, engineered carefully, and was planned methodologically.
· That based on the reality on the field, the riot occurred outside the security apparatus's expectation. But regardless off their surprise and limitations, the mass riot at the Diocese of Dili and the Archbishop Belo's residence was successfully put out and the spread to other regions and areas were cut, hence preventing further casualties;
· That based on the accounts of the witnesses and the Defendant in court, there had been no polices that were planned carefully and methodologically by the government of the Republic of Indonesia, nor from the TNI, nor from POLRI, nor from KODAM IX Udayana nor from PEMDA Tk. I of the East Timor Province, nor from POLDA of East Timor, nor from KOREM 164/WD, nor KODIM/POLRES Dili, nor from any organization within the boundaries of the State of Indonesia to launch an assault or an attack to the societal groups in East Timor;
· That the mass riot on September 5, 1999 at the Diocese of Dili and on September 6, 1999 at the Archbishop Belo's residence were clearly conducted by groups of mass outside the leadership, command, and control of the Defendant as DANDIM 1627 Dili;
· That the mass riot at Diocese of Dili and the Archbishop Belo's residence were successfully put out and prevented from spreading out to other regions, hence preventing further casualties;

Taking into account that from the differences of opinion between the Ad Hoc General Prosecutor and the Defendant's Legal Defense team, the Panel of Judges weighed the following considerations:
That as it has been taken as a legal fact in the court, the enmity, conflict and violence in East Timor had a long history beginning in the year 1975. On January 27, 1999 the then President of the Republic of Indonesia, B. J. Habibie decided to conduct a referendum in East Timor, giving its people the two options of whether still being an integrated part of the State of Indonesia with special autonomy or being an independent state on its own.
That the purpose of President B. J. Habibie's policy in giving the two options was to give one final solution for the people of East Timor from their never ending clashes.
That the proposal to solve the problem in East Timor once and for all by giving its people the two options received a response from the United Nations that led to the agreement further known as the New York Agreement or the Tripartite Agreement between the Government of Indonesia and the Government of Portugal under the United Nations' jurisdiction that was signed in New York on May 5, 1999, where one of the agreements was that the obligation to ensure the safety of the people and the legal order in East Timor in general would rest upon

the Indonesian authority, the TNI and POLRI.
That after the release of the Tripartite Agreement on May 5, 1999, various mass-based organizations were formed in East Timor as a way for the people of East Timor to show and hold on to their own integrity and to achieve their political goals. The organizations that were pro-integration were among others the Forum Persatuan Demokrasi dan Keadilan (FPDK), Barisan Rakyat Timor-Timu Indonesia (BRTT), Besi Merah Putih (BMP), Mati Hidup Demi Indonesia (MAHIDI) and AITARAK. While the East Timorese people who were pro-independence joined organizations such as CNRT, FRETILIN, and FALINTIL, to name a few.
That the peak of the widespread riots and clashes in East Timor (13 regencies) as was revealed in the court occurred right after UNAMET released the announcement on the result of the referendum on September 4, 1999-which was expedited from the originally planned date of September 7, 1999-at around 09.15 WITA, with the victory of the pro-independence group. After the government of the Republic of Indonesia through President B. J. Habibie stated officially that they accepted the result, the people of East Timor from both groups gave out a strong reaction. While those who were pro-independence cheered for their victory, the people who were pro-integration showed the spontaneous reaction by being disappointed, angered, even by directly committed violent actions which were conducted in "widespread" manner upon the civilians who gathered and took refuge in various places such as the Mapolda, Makodim, the Diocese of Dili, the Archbishop Belo's residence, the Gubernatorial Office, and the Port;
Taking into account that in accordance with the locus and tempus of the gross violation against Human Rights as indicted by the Ad Hoc General Prosecutor, the violations took place at the Diocese of Dili on September 5, 1999 and at the residence of the Archbishop Belo's residence on September 6, 1999 and resulted in casualties among the civilians;
That from the fact revealed in the court, the approximately 5000 civilian refugees, who were in general those who were pro-independence, took refuge at the Diocese of Dili and at the Archbishop Belo's residence where they were attacked by the pro-integration group which caused a clash (between the) mass(es). The assault was carried out using arms, knives and other sharp objects, and in the end, fire. The Archbishop Belo was targeted since the pro-integration group deemed him partial and took side with the pro-independence. The riots at the Diocese of Dili and at the Archbishop Belo's residence resulted in casualties among the civilians-some fatal-and the burning down of parts of the Archbishop Belo's residence.
Taking into account that even though the Panel of Judges did not include the exact identities, number and causes of death of the victims accurately, the Panel was of the opinion that in context of proving a gross violation against Human Rights, in order to prove the existence of a number of victims especially considering the fact that the incidents had occurred in several places and after quite a long period of time, accordingly to the practices of the international judiciary (the Nuremberg trial and ICRT) as would also be implemented in this case, it was decided that (the above details) need not be elaborated, it would be sufficient that the legal facts from the legal evidences revealed that the assault did result in a number of civilian casualties;
Taking into account that since the element "widespread" in this context was proven, therefore the element "systematic" would no longer be necessary to be considered since the Law used the word indicating alternative "or;"
Taking into account that regarding the element "attack targeted to the civilians in the form of killing and murder," the Panel of Judges also reached the decision that the element was proven since the legal facts revealed in court showed that an act of violence was carried out by the pro-integration movement by arson, stabbing, maiming, and shooting the civilians and resulted in casualties and fatalities;
Taking into account that from the legal facts taken into considerations as stated above, the

first and second elements have been proven;
Taking into account that the Panel of Judges should then take into consideration the third element, namely: that a Military Command or a person who effectively acts as a Military Command can be held accountable for the crimes within the jurisdiction of the Court on Human Rights, which were committed by the troop under his effective command and control;
Taking into account that based on the principal of individual criminal responsibility for a gross violation against Human Rights, each individual, regardless of his status and position, who committed a crime against humanity and a violation against the law and custom in battle, should be criminally responsible for his action and hence can be brought to justice in court;
Taking into account that from the doctrines and verdicts of the International Criminal Court, there had been developed some legal principals that state:
· A person who committed crimes against humanity and crimes of war can not justify his actions on the base that it was for the interest of the state or that it was based on the state's order
· That the individual's official position, be that as the head of the state or as an official who was positioned in the governmental institution, can not be used as justification to release the individual of his or her responsibility;
· That following a superior officer's order can not be used as a ground to release the individual from indictment and prosecution;

Taking into account that the practices of Ad Hoc International Criminal Courts (ICTY and ICTR) and other international instruments that had developed the aforementioned legal principals also gave parameters of individual responsibility as follows:
· Individual responsibility can be charged to a person who planned, provoked, ordered, committed or provided help, or became an accomplish in planning, preparing, or committing crimes of war and crimes against humanity;
· A crime against humanity that is committed by an individual's subordinate does not release the individual as the superior officer from his or her criminal responsibility, if he or she knows or by common sense should know that the subordinate is committing or about to commit the crime while the superior officer fails to take the necessary reasonable actions to prevent the crime or deliver a repercussion;
· That the action was carried out as order from a superior officer can not be used as a ground for releasing an individual from his or her criminal responsibility, but the fact can be used as a consideration for leniency;

Taking into account that the doctrine of the responsibility of a military command or a person who was effectively acted as a military command as regulated in article 42 verse (1) letters (a) and (b) UU No. 26 year 2000, which was a part of the individual criminal responsibility by the international law, was further developed by the international community in trying the criminals of war in World War II and in the end was crystallized in the Rome Statute 1998. Basically the doctrine can be used to hold accountable a military or non-military command for the crimes committed by their followers or subordinates on the grounds that they failed to to prevent or control their subordinates;
Taking into account that according to Prof. Nico Keijzer, who followed the view of Hugo Grotius, there were three conditions where a commanding officer can be held accountable for his or her people's actions:
1. When the individual had "control" over others;
2. When the individual did not take actions to prevent the crime of which he or she was aware of;
3. When the individual was not only aware, but also had the power and jurisdiction to prevent

the crime (Prof. Dr. Muladi, S.H., Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Inondesia, First Edition, 2002, pg. 285);

That under the case law and the tribunal, in relation with article 28 of the ICC Statute, an effective control was generally interpreted as a condition where the superior was in fact could have exercised his authority if he wanted to. Therefore the term referred to a "material ability" to prevent and halt a crime. Furthermore, under article 86 paragraph 2 protocol 1, the commanding officer did not even have to witness the crime him or herself, but it was enough for him or her to be aware that the people under his or her command were in the process of committing a crime or had committed such act and the commanding officer failed to take the necessary actions;
Taking into account that based on the doctrine and the legal practices aforementioned, it can be concluded that there were four major elements of a command responsibility:
1. There was a direct link between the subordinate and the superior officer, in terms of both de jure and de facto;
2. The superior officer was aware or had reasons to be aware that the crime was being or had been committed;
3. The superior officer had the power and jurisdiction to prevent or halt the crime;
4. The superior officer failed to take such necessary actions to prevent or halt the crime;

Taking into account that the Panel of Judges was of the same opinion as the Defendant's Legal Defense team in their pledoi on page 111 citing the doctrine of command responsibility that was stated in article 86 appendix protocol I year 1977 (AP I) which in essence stated that "the responsibility of a commanding officer (or superior) in terms of the crimes committed by his or her direct subordinates, in this case the superior is obligated to intervene by taking all the necessary actions that are within his jurisdiction to prevent or take action against the violation." Furthermore, the Defendant's Legal Defense team in their pledoi on page 113 also cited a legal principal on command responsibility that was implemented at the Nuremberg Tribunal, which state that "a commanding officer who was effectively responsible for his troops or his effective subordinates can be held accountable for a crime even if he or she did not gave the order to commit the crime, but knew or should have known about the crime that his or her people committed, and failed to take the reasonable action to prevent, stop, and prosecute the criminal;"
Taking into account that based on the doctrine and the international legal practices, in relation with the element of commander's responsibility as stated in the Ad Hoc General Prosecutor's indictment in article 42 verse (a) letter (a), a commanding officer is not only responsible for the crime committed by his troops under his or her effective command and control, a commanding officer is also responsible when the crime was the result of not exercising the appropriate control over his troops, in which the commanding officer failed to take the necessary action to prevent or stop the violation against Human Rights that occurred within the scope of his or her effective command;
Taking into account that the Panel of Judges was of the opinion that the word "committed" in the third element did not necessarily have to be interpreted as an active act, but can also interpreted as a passive act. This matter had also been developed and acknowledges in international legal practices who qualified such act as a failure to act;
Taking into account that to prove whether or not the Defendant as DANDIM 1627 Dili can be hold criminally responsible for the gross violation against Human Rights in East Timor thus depended on whether or not the Defendant Letkol Inf. SOEDJARWO can be deemed to have failed in taking the necessary action to prevent or stop the gross violation against Human Rights that occurred after the announcement on the result of the referendum in East Timor,

specifically at the Diocese of Dili on September 5, 1999 and at the Archbishop Belo's residence on September 6, 1999;
Taking into account that tin order to answer that question, the Panel of Judges should first consider the Defendant's position as DANDIM 1627 Dili who had the troops to secure the situation during the process and during the announcement and after the announcement on the result of the referendum up until the taking over of the command (Kodal) from POLRI to TNI on September 5, 1999 at 19.30 WITA;
Taking into account that the definition of a Military Command is an individual who was appointed as a military, was given rank, was getting paid by the state, and was promoted in the military command structure that gave him or her the full authority to lead, move, control, and monitor his or her troops, which were made of personnel and organic members of a military unit;
Taking into account that in accordance to the legal fact which was revealed in court that the Defendant Letkol Inf. SOEDJARWO indeed served as DANDIM 1627 Dili based on the Keputusan KASAD No. SKEP/284/X/1999 since August 9, 1999 until September 19, 1999 who commanded 4 KORAMILs, 39 BABINSAs, and 381 personnel spread in the KODIM 1627 Dili and the four Koramils;
That this fact was further stressed by the Defendant's Legal Defense team in their pledoi on page 119 which stated that at the time of incidents on September 5, and 6, 1999, the Defendant was an active military personnel with the rank of Lieutenant Colonel Inf. and served as the DANDIM 1627 Dili;
Taking into account that the Panel of Judges thus deemed that the Defendant had fulfilled the element of being an effective Military Command for the military personnel at the Kodim 1627 Dili;
Taking into account that the legal facts revealed at the court by among others the witness Kombes Pol. Drs. Leo Pardede, the witness Kombes Pol. Drs. J. J. Sitompul, the witness Marcelino Martins Ximenes, the witness Briptu Makarau, the witness Victorino A. Dos Santos, all of whom delivered their accounts to the court under oath, and also the accounts of the a de charge witnesses: the witness Elizario D.P., the witness Captain Hartono, the witness Peltu Adolfo Tilman, the witness Major Salman Manafe, further strengthened by the Defendant's own account at the court, showed these things to follow:
· That it is true that on September 5, 1999 at approximately 14.30 WITA, a mass riot broke out at the Diocese of Dili between the pro-integration group and the pro-independence group while at the time of incident the Defendant was on the road with his driver, Pratu Suhardiman, and his aide, Pratu Marito, monitoring the troops who were on duty to secure the refugee's route across the town of Dili. The Defendant found out of the incident at the Diocese from the report of Captain Inf. Toyib Anwar, Pasi Intel Kodim 1627 Dili by radio.
· That it is true that upon knowing about the incident, the Defendant, with his authority as DANDIM, ordered 15 personnel of Kodim 1627 Dili under the command of Peltu Adolfo Tilman to immediately isolate from one another the two clashing groups, prevent further clashes, assist in protecting and rescuing the people from the complex of the Diocese of Dili;
· That it is true that the Defendant drove out from Makodim Dili to the site of incident at the Diocese of Dili, and since the riot was over, the Defendant then went to the Mahkota Hotel, where the UNAMET personnel and foreign reporters were staying, to guard the place. The Defendant then ordered to TNI units who were on duty at the Mahkota Hotel to block the mass bearing sharp weapons who were running towards the Mahkota Hotel;
· That it is true that upon the Defendant's arrival back at the Makodim at approximately 15.00 WITA, the Defendant took the initiative to guard the premises of the Archbishop Belo's residence in anticipation to prevent the incident at the Diocese of Dili from reoccurring and thus on September 5, 1999 at approximately 19.30 WITA deployed to platoons of 60

personnel to be placed at the Archbishop Belo's residence, lead by Pasi Ops Captain Hartono;
· That it is true that the Archbishop Belo, based on the account of Captain Hartono, on September 6, 1999 at approximately 06.00 WITA at Archbishop Bello's residence, requested Captain Hartono to withdraw the troops from the premises since a service would be held at 07.00 WITA. Captain Hartono then reported the matter to the Defendant, whereupon the Defendant said "do what Archbishop Bello requested" and hence the 60-personnel troops were pulled back from the Archbishop's residence and were then diverted to other strategic places such as the Mahkota Hotel, where the UN and UNAMET personnel were staying, and guarding the logistics and vital infrastructures, as well as ensuring the security of refugees (in other places?);
· It is true that the deployment of troops to guard the premises of the Diocese of Dili and the Archbishop Belo's residence was the Defendant's initiative. According to the Defendant, the target of the operation to be secured and guarded were originally the Mahkota Hotel, where the UN and UNAMET personnel were staying, the logistics and other vital infrastructures, and the security of refugees. This was so because it was of the Defendant's opinion that it was improbable that the Archbishop Belo's residence would be attacked by either the pro-integration or the pro-independence group, since the Archbishop was a highly respected and charisamtic figure in the East Timorese society;
· That it is true that in approximately three hours, at 10.00 WITA on September 6, 1999, the Defendant's prediction on the security of Archbishop Bello's residence was proven to be inaccurate, since there was the absence of the security provided by TNI at the Archbishop Belo's residence, the pro-integration easily attacked and burned Archbishop Belo's residence which caused the refugees who were inside became victims, either dead or injured;

Taking into account that from the legal facts revealed above, it was clear that the Defendant as DANDIM 1627 Dili did have the authority and jurisdiction which made him responsible for the actions of the personnel under his direct command or control, where the Defendant had the obligation to lead, move, control, and monitor his personnel;
Taking into account that then the Panel of Judges should consider whether the Defendant can be deemed to have failed in terms of preventing or stopping the crimes that occurred within the boundaries of his jurisdiction;
Taking into account that to answer the question aforementioned, the Panel of Judges should prove it based on the legal facts that had been revealed in the court as follows:
· That when the clash between the pro-integration and pro-independence groups broke out on September 5, 1999 at the Diocese of Dili at around 14.00 WITA, the Defendant's initiative and action on September 6, 1999 to secure and guard the premises of the Archbishop Belo's residence as an anticipation by deploying 60 TNI personnel led by Pasi Ops Captain Hartono whom had received briefings from the Defendant beforehand was deemed appropriate by the Panel of Judges. However, as told by the a de charge (prosecution) witness??? when the Archbishop Belo later on requested that the troops be withdrawn from his residence since he was planning to hold a service there at around 07.00 WITA, the Defendant promptly granted the Archbishop's wish and withdrew the whole 60 personnel from the Archbishop's residence after obtaining suggestion of witness Major Salman Manafe (Kasdim);
· That the Defendant placed more weight in the charisma of Archbishop Belo's at the time than the fact that the security condition after the announcement on the result of the referendum had become very grave. That (condition) was the reason why on September 5, 1999 at approximately 19.30 WITA, the command of control in the region was transferred to the TNI from POLRI (alih Kodal);
· That after the announcement on the result of the referendum was delivered on September 4, 1999, the situation in East Timor became extremely hostile and dangerous that resulted in

waves of masses seeking refuge in places such as the Mapolda, Makodim, the Diocese of Dili, the Archbishop Belo's residence and the port. This fact raised the question in the Panel of Judges on whether it was feasible in that situation for the Archbishop Belo to hold a service at his residence;
· That according to the Archbishop Belo's account, on September 6, 1999 at approximately 06.00 WITA, about 15 minutes after the Archbishop requested the TNI personnel to guard the refugees who needed to go to the beach to relieve themselves, the two trucks that carried the 60 TNI personnel left the premises and disappeared. The Panel therefore doubted that there was indeed a service in that morning, since even the Archbishop Belo never gave any account about there was a plan to hold the service at his residence at the time;
· That the truth about the request to withdraw the TNI troops by the Archbishop Belo from his residence as stated by the witness Captain Hartono who was accompanied by Adolfo Tilman is questionable, since under the then volatile atmosphere, it would have been very relevant for the Archbishop to require the protection of the TNI rather than asking the TNI troops to be pulled out from his residence;
· That about three hours after the 60 personnel were withdrawn from the Archbishop Belo's residence, the pro-integration mass came barging in, attacking and burning the Archbishop's residence where previously thousands of refugees consisting of civilians, specifically from the pro-independence part of the community had to suffer from the panic and pain from the stabs and slashes which caused a number of people injured and dead;
· That in the Panel of Judges' opinion, even if there was a service conducted at the Archbishop Belo's residence on September 6, 1999 at 07.00 WITA as stated by the witness Major Salman Manafe, it would have only taken about an hour, whereupon the Defendant afterwards should have brought back the troops to the premises and keep anticipating the worsening situation. Instead, the Defendant returned the troops to each of their posts to guard the UN and UNAMET personnel at the Mahkota Hotel and to secure the logistics and vital infrastructures;
· That in the Panel of Judges' opinion, activating the security posts (BTT-territorial batalyon), which had relatively smaller personnel and were about 150 meters away from the Archbishop Belo's residence at the nearest, was an ineffective decision made by the Defendant, since even when the attack took place, the troops at the security posts were not able to do much;
· That the Defendant's excuse that he could hot have foreseen the assault at the Diocese of Dili and at the Archbishop Belo's residence since both places were considered sacred by all the society in East Timor was unacceptable by the Panel of Judges, since the Defendant should have known and realized that after the clash occurred at the Diocese of Dili on September 5, 1999, the Archbishop Belo's residence became a central point of attention and a priority for the security apparatus, besides securing and guarding the UN and UNAMET personnel at the Mahkota Hotel, securing the logistics and vital infrastructure, and guarding the refugees in other places. The point is further highlighted by the fact that on that day at 19.30 WITA, the command of control had been taken over by TNI from POLRI, which gave the TNI full authority and responsibility for the situation;
· That the Defendant as DANDIM 1627 Dili who was responsible for the security and order in Dili should not have fulfilled the sugestion to withdraw TNI troops from Archbishop Bello's residence without considering the worsening condition and volatile atmosphere in Dili at that time;
· That when faced with a dilemmatic situation such as at that time, the Defendant was expected to take the most effective actions and not only based them on suggestions from his staffs Captain Hartono (Pasi Ops) and Major Salman Manafe (Kasdim). Furthermore, the Defendant should have reported promptly to his superior officer, who in this case was DANREM 164 WD Brigjen M. Noer Muis, which he did not. In the period of during and after the announcement on the result of the referendum, the role of security should have been the

dominant consideration instead of the Archbishop Bello's charisma, which in truth that charisma had been proven to disappear with the riot at or the attack of or the clash at the Diocese of Dili on September 5, 1999 between the pro-integration and the pro-independence groups;
· That the misplacement of security priority and the retraction of the troops from the Archbishop Belo's residence and the ineffective anticipation of only activating the security posts around the premises gave way to the attack by the pro-integration mass at the Archbishop Belo's residence;

Taking into account that based on the analysis of the facts revealed above, the Panel of Judges reached to the conclusion that the Defendant had failed to prevent or halt the assault and violence that occurred at the Archbishop Belo's residence;
Taking into account that based on the reasons given above, the third element had been proven;
Taking into account that the Panel should then consider the fourth element, on whether or not the "crime was a result of the failure in exercising appropriate control over his troops;"
Taking into account that on this fourth element, in their pledoi on page 132, the Defendant's Legal Defense team were of the opinion that a crime against humanity can only be committed by the military or individuals whom by the law are in the capacity equivalent to the military;
Taking into account that on the subject put forward by the Defendant's Legal Defense team, the Panel of Judges were not of the same opinion, since the Human Rights crimes as regulated in article 42 verse (1) UU No. 26 year 2000 did not have to be committed by the military or troops under a military command, but also those who were not in the military capacity;
The question to be answered then was whether the Human Rights crimes were committed because the appropriate control over his troops was not exercised;
Taking into account, as has been stated in the explanation on the third element above, the Defendant as DANDIM 1627 Dili had the responsibility over his troops whom were under his effective command and control;
Taking into account that even though the troops under the Defendant's command were not active perpetrators in the assault and violence launched at the Diocese of Dili and the Archbishop Belo's residence, however, as has been stated before, the troops under the Defendant's command were a passive perpetrators since the responsibility to stop, control, and prevent the incident rested on them, and it was in the Defendant's jurisdiction to effectively control and command his troops to take the necessary actions;
Taking into account that the fourth element was very relevant to the third element, hence the Panel of Judges was of the opinion that the considerations taken to prove the third element was also applicable to the fourth element and therefore there was no need to further scrutinize the fourth element;
Hence the Panel of Judges was of the opinion that the fourth element had also been proven;
Taking into account that the Panel of Judges should then consider the fifth element, which was whether the Military Command know or under the situation should have known that the troops were committing or just committed a gross violation against Human Rights;
That before the Panel of Judges scrutinized the fifth element, the Panel would beforehand explain the meaning of the element for even though the element stated "the people who were committing or just committed a gross violation against Human Rights," it did not necessarily mean that the troops must took an active role in the attack to be held accountable, but when in terms of as passive role the troops did not take the necessary action within their jurisdiction to prevent or stop a gross violation against Human Rights, the subject can be held accountable for the crime itself;
Taking into account that since the fifth element was also very much relevant to the third element as explained before, hence the Panel of Judges was of the opinion that the

considerations taken to prove the third element was also applicable to the fifth element and therefore there was no need to further scrutinize the fifth element;
Hence the Panel of Judges was of the opinion that the fifth element had also been proven;
Taking into account that the Panel of Judges should then scrutinize the sixth element, which was on whether or not the Defendant failed to take the necessary actions that fell within his jurisdiction to prevent and halt such acts or to surrender the individuals who committed such acts to the officials to be investigated, processed, and prosecuted;
Taking into account that before the Panel of Judges put the sixth element on scrutiny, the Panel would beforehand explain that the element was alternative in nature, meaning that should it be proven that the Military Command fail to take the necessary actions that fell within his jurisdiction to prevent and halt such crimes, than it would be irrelevant whether or not the Military Command surrender the individuals who committed such acts to the officials to be investigated, processed, and prosecuted;
Taking into account that it would suffice for the Panel of Judges to apply the considerations in proving the third element to prove whether or not the Military Command had taken the necessary actions that fell within his jurisdiction to prevent and halt such crimes, the Panel was of the opinion that there was no need to scrutinize the sixth element further;
Hence the Panel of Judges was of the opinion that the sixth element had also been proven;
Taking into account that based on the explanation above, the substantiation of the main elements of the Primary indictment has been fulfilled, and hence the Defendant by law had committed the acts indicted to him in the Primary indictment;
Taking into account that hence the Panel of Judges was not of the same opinion with the Ad Hoc General Prosecutor who in his Requisitor stated that the Defendant was proven guilty of committing a gross violation indicted in the subsidiary indictment;
Taking into account that the matter at hand then was whether the Defendant can be criminalized for his actions;
Taking into account that to reach the decision on whether or not the Defendant can be criminalized, the Panel of Judges would first of all discuss the conditions to criminalize (Strafvoraussetzungen);
That in the science of criminal law, there were two major views in terms of the conditions to criminalize:
1. The Monistic view, which were supported by the likes of Prof. Mr. D. Simons and Prof. Mr. G. A. van Hamel
2. The Mono-Dualistic view, which were pioneered by Herman Kantorowiez, Prof. Moeljatno, Prof. Ruslan Saleh, and Prof. Dr. Andi Zainal Abidin;

That of the two major views, the one that was more commonly used in legal practices was the mono-dualistic view, which set the conditions to criminalize into two groups:
1. The Action (actus reus), which governed the elements:
1.1. is fulfilling the elements of the offense;
1.2. is against the law in nature
1.3. does not have reasons of justification
2. The Committer (mens-rea, dader), which governed the elements:
2.1. existence of guilt
2.2. does not have reasons of excuse

Taking into account that as has been considered above, the Defendant had already been proven to have had committed the actions as indicted in the Primary indictment, but to deliver a criminal verdict to the Defendant, there was still some conditions to be fulfilled, namely whether the Defendant was then guilty for committing the actions or whether there were any

reasons of excuse that can release the Defendant's from his criminal responsibility;
Taking into account that throughout the trial, the Panel of Judges wound no reasons of excuse to release the Defendant from his criminal responsibility for the actions he had had committed, hence the Panel found the Defendant guilty of committing a gross violation against Human Rights which was indicted to him in the Primary indictment-of violation article 7 letter (b) jis article 9 letter (a), article 42 verse 1 letters (a) and (b), article 37 UU No. 26 year 2000 on the Court of Human Rights;
Taking into account that based on the legal reasons considered above, the Panel of Judges concluded that the Defendant was indeed proven to be legally and convincingly guilty of committing the crime, "Gross violation against Human Rights in the form of murder;"
Taking into account that the Defendant hence must be criminalized;
Taking into account that since the Primary indictment was proven as it has been stated above, then by the criminal code of law, there was no need to further scrutinize the Subsidiary indictment;
Taking into account that to deliver the suitable sentence that upholds justice, the Panel of Judges must first of all consider the severities and leniencies over the Defendant's actions:

The severities:
· The Defendant as DANDIM, who was effectively responsible to ensure the safety and security of the town of Dili after the announcement on the result of the referendum, had failed in preventing the riot at the Archbishop Belo's residence
· That as the result of the failure, there were casualties from the civilians, some even fatal;

The leniencies:
· The Defendant as DANDIM 1627 Dili had given his maximum effort to stop the riot that occurred at the Diocese of Dili and at the Archbishop Belo's residence, hence preventing further casualties;
· That the riot and chaos that occurred after the announcement on the result of the referendum in East Timor was were very much influenced by the Indonesian government's policy in solving the problems in East Timor by giving the two options to the people of East Timor, hence any TNI officer who was on duty in East Timor at that time would have to face the consequences;
· The Defendant as a member of TNI had served his state and country, Indonesia;
· The Defendant showed respect to the court during the trial;
· The Defendant still had a family to look after;

Taking into account that in deciding the weight of the sentence to be given to the Defendant after considering the severities and leniencies of his actions, the Panel should then consider the criminal sentencing as regulated in UU No. 26 year 2000 in article 37 that charged a maximum sentence of death penalty and a minimum sentence of 10 years in prison to each individual who committed the crime such as stated in article 9 letters (a), (b), (d), (e), and (j), which were as follows:
· That as generally known, the act in UU No. 26 year 2000 on the Court on Human Rights was adopted from the Rome Statute in year 1998, hence even thought the Roman Statue itself had not been ratified by the government, it would be appropriate to ponder upon the the fact that the Roman statute does not set any minimum standard of sentencing;
· That the international judiciary practices that are accepted as the international common law do not recognize the existence of minimum standard of sentencing
· That philosophically, to determine the gravity of a crime as a part of sentencing policy is the authority of the Judges presiding the trial after considering the legal facts, the severities and

leniencies of the Defendant's actions, as well as other matters related to the sentencing system;
· That the minimum standard of sentencing in UU No. 26 year 2000 on the Court on Human Rights was itself a debate in the society;
· That the Human Rights crime committed by the Defendant in this case was one related to neglect or failure in taking actions (omission in nature);
· That before the UU No. 26 year 2000 was legalized, the government had released the PERPU No. 1 year 1999 on the Court on Human Rights that stated a minimum standard sentencing of five years for the same crime, hence when considering the article 1 verse 2 of the Criminal Code, that fact can also be taken into consideration upon deciding the sentence for the Defendant:

Taking into account that after considering the matters above, all the severities and leniencies of the Defendant's actions, and other matters that were related to the sentencing, the Panel of Judges had decided to gave a sentence that was most suitable for the level of crime the Defendant had had committed, as shall be stated in the verdict to follow;
Taking into account that the evidence as listed in the evidence list were given back to the Ad Hoc General Prosecutor to be used as evidence in other cases;
Taking into account that since the Defendant was found guilty and given sentence, the trial fee was also burdened on him;
Taking into account UU No. 39 year 1999 on Human Rights jo UU No. 26 year 2000 on the Court on Human Rights jo UU No. 8 year 1981 on the Criminal Code and other laws in relation with this case;
Taking into account the convention of the Panel of Judges on Monday December 23, 2002;

DELIVERS THE VERDICT:

· Stating that the Defendant Letkol Inf. SOEDJARWO had been legally and convincingly proven to be guilty of the crime: "GROSS VIOLATION AGAINST HUMAN RIGHTS IN THE FORM OF MURDER;"
· Sentencing the Defendant to 5 years of prison;
· Stating that the evidence as listed in the list of evidence be given back to the Ad Hoc General Prosecutor to be used also as evidence in the other cases;
· Ordering the Defendant to pay the trial fee in the amount of RP. 7,000.00 (seven thousand rupiahs);
Hence the verdict was taken by a majority vote of the Ad Hoc Panel of Judges of the Court on Human Rights at the Central Jakarta State Court on Monday December 23, 2002, which was made up of: H. ANDI SAMSAN NGANRO, S. H. as the Chair Judge, BINSAR GULTOM, S.H., S.E., H.M., KABUL SUPRIYADHIE, S. H. M.Hum., HERU SUSANTO, S.H., M.Hum., AMIRUDDIN ABURAERAH, S. H., each as the Member of the Panel. The verdict was delivered on Friday, December 27, 2002 in an open court by the Chair Judge, accompanied by the Members of the Panel, with the assistance of PIPIH RESTIVIANI, S. H., and GANDA HENDRAWAN, S. H. as the Substitute Court Reporters; also present at the court, RUSMAN HADI, the Ad Hoc General Prosecutor, and the Defendant accompanied by his Legal Defense team.