

Judgement

Defendant Herman Sedyono et al.

Indonesian Ad Hoc Tribunal - Judgment of Herman Sedyono et al.

THE CENTRAL JAKARTA AD HOC COURT
CASE OF GRAVE HUMAN RIGHTS VIOLATIONS
IN EAST TIMOR

JUDGMENT

Case Reg. No. 01/HAM/TIM-TIM/02/2002

DEFENDANTS

HERMAN SEDYONO et. al.

JAKARTA, August 15, 2002

Judgment Transcript, Case of HERMAN SEDYONO et.al.
Dated on August 15, 2002

These matters have not been read :

1. Indictment Letters
2. Witnesses' Testimonies (read only the main points)

Judgment Number 03/Pid. B/HAM AD HOC/2002/PN Jakarta Pusat
"For Justice based on the One and Only God"

Mandate of the Ad Hoc Court at Central Jakarta District Court presided and ruled over the case at the first instance according to regular procedure had pronounced the judgment as stated in order (amar) under the cases of the respective defendants.

1. Name : Col. Inf. Drs. HERMAN SEDYONO
Place of Birth : Malang, East Java
Age/ Date of Birth : 54 years/ October 12, 1947
Sex : Male
Nationality : Indonesian
Address : Bonorejo I/ 34 C, Solo
Religion : Catholics
Occupation : Member of the Indonesian Armed Forces
(ABRI)/ The Indonesian Army TNI AD

(Former Regent of Kovalima Regency, East Timor).

Education : The Indonesian Armed Forces Academy (AKABRI)/ Undergraduate Degree.

2. Name : Col. Czi. LILIEK KOESHADIANTO

Place of Birth : Madiun, East Java

Age/ Date of Birth : 49 years/ November 18, 1952

Sex : Male

Nationality : Indonesian

Address : Jl. Adityawarman No. 40, Surabaya.

Religion : Islam

Occupation : Member of ABRI/ TNI-AD

(Former Acting Commander of Military District Command (Dandim) 1635, Suai, East Timor

Education : AKABRI

3. Name : AKBP Drs. GATOT SUBYAKTO

Place of Birth : Blitar, East Java.

Age/ Date of Birth : 42 years/ October 17, 1959

Sex : Male

Nationality : Indonesian

Address : Jl. A.Yani No. 2, Maros, South Sulawesi

Religion : Islam

Occupation : Member of the Indonesian Police/ Polri

(Former District Police Commander/

Kapolres of Suai, East Timor).

Education : Undergraduate Degree (S1), of Sespim Polri Police Academy.

4. Name : ACHMAD SYAMSUDIN

Place of Birth : Tangerang, West Java (Now Banten Province)

Age/ Date of Birth : 37 years/ June 21, 1964

Sex : Male

Nationality : Indonesian

Address : PLP Curug, Tangerang

Religion : Islam

Occupation : Member of ABRI/ TNI-AD

(Former Chief of Staff of Military District Command 1635/ Kasdim Suai, East Timor).

Education : the Military Academy AKMIL.

5. Name : SUGITO

Place of Birth : Banyuwangi, East Java
Age/ Date of Birth : 49 years/ June 14, 1952
Sex : Male
Nationality : Indonesian
Address : Asrama Kodim 1604, Kupang
Religion : Protestant
Occupation : Member of ABRI/ TNI-AD
(Former Commander of Subdistrict
Military Command/Danramil of Suai, East
Timor
Education : Technical Middle School (STM)

The defendants in these cases have never been detained.

The defendants were defended by 2 teams of attorneys:

1. Team of Human Rights Advocation for TNI Officers/ the defending attorneys for the respective defendants I, II, IV, and V:

- a. ERMAN UMAR, SH
- b. Col. CHk. SETYAWAN, SH, MBA
- c. M. RUJITO, SH, LLM
- d. Lieut. Col. CHk. K. NURHAZIZAH, SH

2. Team of attorneys of the defendant III:

- a. HOTMA SITOMPUL, SH
- b. TOMMY SIHOTANG, SH, LLM
- c. WARSITO SANYOTO, SH
- d. PARTAHI SIHOMBING, SH
- e. MARIO C. BERNARDO, SH
- f. RUHUT SITOMPUL, SH
- g. PALMER SITUMORANG, SH
- h. JUNIVER GIRSANG, SH
- i. ROBERTO HUTAGALUNG, SH

The Mandate of the Ad Hoc Court has read the file and the letter of official turning over of dossier from the Ad Hoc General Prosecutor for Grave Human Rights Violation Cases in East Timor, to the Indonesian Attorney General Office on February 21, 2002, No. b-217/F/FT2 HAM-AH 2002 for the defendants HERMAN SEDYONO et. al. Criminal Reg. No. 03/HAM/TIM-TIM/02/2002.

After reading the decision of the deputy head of the Mandate of the Ad Hoc Court at the Central Jakarta District Court No. 03/Pid/HAM/AD HOC/TIM-TIM/02/2002 on February 21, 2002 on the appointment of the panel of judges to preside and rule over the case.

After reading the decision of the head of the panel of judges No. 03/Pid/HAM/AD HOC/TIM-TIM/02/2002 of the Central Jakarta District Court dated on 05 2002 (sic!) on the settlement of days for court hearings.

After hearing and observing the Indictment Letter, Case Reg. No. 03/HAM/TIM-TIM/02/2002 on February 19, 2002, which had been read by the Ad Hoc General Prosecutor in the court hearings.

After observing the Intermediate Decision No. 03/Pid. B/HAM/AD HOC/2002/PN Jakarta Pusat on April 9, 2002, basically stating the eksepsi (Exception) of the team of defending attorneys had been unacceptable, and the Ad Hoc Court at the Central Jakarta District Court had been authorized to preside and rule over the case of the defendants HERMAN SEDYONO et. al., ordering the Ad Hoc General Prosecutor to continue the investigation of the case of the defendants.

After hearing and observing the charges of the Ad Hoc General Prosecutor mainly stating the panel of judges of the Mandate of the Ad Hoc Court presiding over the case of grave human rights violations, to make the judgment, as follows:

1. Declare the defendants had been legally and convincingly proven guilty of committing grave human rights violations in the form of promoting criminal acts against humanity, which had violated article 41 jis article 7 letter b, article 9 sub a, article 37 Law No. 26, 2000, article 55 paragraph 1 to 2 KUHP.

2. Free the defendants of the primary charges.

3. Declare the defendants had been legally and convincingly proven guilty of committing grave human rights violations in the form of assistance to the acts of crime against humanity, which had violated article 41 jis, article 7 letter b, article 9 sub a, article 37 Law No. 26, 2000.

4. Sentence the defendants:

- a. Defendant I, Col. Inf. Drs. HERMAN SEDYONO with 10 years imprisonment.
- b. Defendant II, Col. Czi. LILIEK KOESHADIANTO with 10 years and 6 months imprisonment.
- c. Defendant III AKBP Pol. Drs. GATOT SUBYAKTORO (sic) with 10 years and 3 months imprisonment.
- d. Defendant IV, Major Inf. ACHMAD SYAMSUDIN with 10 years imprisonment.
- e. Defendant V, Major Inf. SUGITO with 10 years imprisonment.

5. Declare the material evidences

The material evidences:

a. Objects:

- 1. 7 (seven) plastic mats
- 2. 1 (one) green ribbon cloth
- 3. 1 (one) pink curtain cloth
- 4. 1 pair of white skirt and black blouse
- 5. 1 red, silk table mat

6. 1 white and brown skirt
7. 1 white shirt
8. 1 child's dress, white color
9. 1 pair of gray trousers
10. 1 batik cloth
11. 1 wheat bag
12. 1 blue checkered sarong
13. 1 pair of brown sandals
14. 1 purple skirt

b. Letters:

Report on the grave excavation No. TT. 3002/SK II/XI/1999 dated on November 30, 1999, as the result of the unanimous mass grave excavation dated November 25, 1999, out of which 26 corpses were unearthed, with the visum et repertum reports No. 001/TT. 3002/SK II/XI/1999, up to No. 026/TT. 3002/SK/XI/1999, each of which, dated November 30, 1999.

had been returned to the Attorney General Office to be presented for other cases.

After hearing and observing the plea presented in separate court hearings by the team of attorneys of the defendants, mainly appeal to the panel of judges presiding over the case to declare the defendants not legally nor convincingly guilty of committing criminal acts as indicted by the Ad Hoc General Prosecutor, and therefore free the defendants of all charges of the Ad Hoc General Prosecutor, and restore the dignity and status of the defendants, and impose the court financial charges to the state, but when the panel of judges had other decision, would therefore make fair judgment.

After hearing and observing the replik of the Ad Hoc General Prosecutor with the duplik of the team of attorneys, read to the defendants.

Considering, that the defendants had been presented before the court by the Ad Hoc General Prosecutor, with indictments as follows:
(unread)

Considering, that the Ad Hoc General Prosecutor had submitted material evidences as follows:

- a. (The same evidences as stated above under the numbers of 1 to 14)
- b. Letters

Considering, that the court hearings had presented witnesses who had given testimonies under oath based on respected religion of each witness, mainly stated as follows:

1. Witness SONIK ISKANDAR

- The witness was an army TNI-AD soldier of Kodim (Military District Command) 1635 of Suai, ranked first private, had been assigned as the driver of the defendant IV, the Kasdim of Suai, since 1998 until 1999.

- The witness had heard about LAKSAUR (Black Hawk militia) and MAHIDI (Dead or Alive for Integration militia), but had never known about their leaders.

- The witness had known of the popular consultation/ ballot conducted in East Timor but did not remember when the exact date was, only remembered the month, which was September 1999.
- The situation before the popular consultation/ ballot had been calm.
- On September 6, 1999, the witness was cleaning a car when he heard the sound of shots coming from the lower hill area, then the witness saw Defendant IV ACHMAD SAMSUDIN got out and shouted to gather around more or less than 30 people, and ordered further to secure the roads.
- The witness was told to go with Defendant IV to the down hill area, where the sounds of the homemade guns were heard from the direction of the church near a traditional market, with other Kodim members using a vehicle driven by Sergeant MUIS.
- When the witness, who was holding an M-16 gun, and Defendant IV, who was carrying a handgun, arrived at the shopping area across the church, the witness saw that the masses were running into the church compound, then the witness fired his gun upwards 3 times, to break up the fights occurring in the masses. In the churchyard, Defendant IV called out for Sergeant MUIS with orders: "Guard here. Don't let anybody come into the church. Anybody trying to force his way in, shoot." At the time, part of the masses had been running outside the churchyard.
- At that time, many people in the masses carrying machetes and home-made firearms had been running in the church yard, the witness did not know from which group the masses came from, as they ran in all directions, and fought one another, there had been more or less than a thousand people in the masses.
- The Kodim soldiers were far below in numbers, compared to the clashing masses.
- The witness saw many policemen in the nearby intersection shouting: "Break up! Break up!" toward the clashing masses.
- The witness saw I WAYAN SUKA ANTARA at the location joined in to break up the clashing masses.
- The witness saw Defendant IV and I WAYAN SUKA ANTARA rushed toward the church with their arms stretched out while shouting: "Stop! Stop!" to disperse the masses trying to force their way into the church carrying sharp weapons and homemade firearms.
- The witness saw Defendant IV knocked on the church's door and said: "Sister, this is the Kasdim," at least 3 times before the door was opened by a nun who said: "Thank you, Kasdim has saved us," who was then answered by Defendant IV: "Jesus Christ is the One Who Saves you," and they continued talking, but the witness could not follow the conversation, then the nun was brought to the Military District Command Headquarters (MaKodim).
- Beside the nuns, some of the people reaching around 600 civilians were also brought to the MaKodim, where they were given food, such as rice, milk and other necessities, but the witness did not know how long the people took shelters at the MaKodim.

- On September 7, 1999, the witness and Defendant IV went to the Suai church, and at the time, the witness saw a woman pressing her stomach while moaning in great pain, and the witness saw she had severe knife wound, then the woman was carried by Defendant IV to the Kodim Headquarters.

- The witness met Captain SUGITO at the church's front yard, and then the witness saluted him while saying: "Good morning." Then was asked by Defendant V to pick up the corpses and bury them.

- The witness, at the time, saw many corpses covered with canvas, then using 3 vans; a Panther, a Toyota-Kijang pickup, and a red public transport vehicle (angkot), the corpses were loaded onto. The witness saw Defendant IV drove the Panther, the witness drove the Kijang pickup, while an East Timorese man drove the red transport van (mikrolet), and also went along with them 8 to 10 other people carrying tools like spades and shovels.

- The corpses were carried as far as 30 km away from the church toward Metamauk beach, in the East Nusa Tenggara (NTT) area, and they were buried in 3 graves, the corpses were wrapped in curtains and mats, and after the graves had been heaped up with earth, they were marked with stones.

- The witness had time to see that the corpses mostly had severe knife wounds, and there were more or less than 25 corpses.

- The burials were not informed to, nor attended by the families, as there were only those who took care of the burials.

- The incident was reported by the witness to Defendant IV, the next day.

- The witness recognized the material evidences: the plastic, curtains, and sarong.

- The witness denied the content of the Police Deposition Document (BAP) issued by the examiners, because the witness had been threatened to be fired unless the witness signed the BAP document, by a member of the officers in charge of the investigation, who was a military police.

- On the testimony of Witness First Private SONIK ISKANDAR, the respective defendants I, II, III, and IV express no objections, while Defendant V said that the location of the burials was actually an old graveyard.

2. Witness I WAYAS (sic!) SUKA ANTARA

- The witness had been assigned at Kodim 1635 Suai since 1999

- The witness had known Defendant II since August 29, 1999.

- The witness knew that before the popular consultation/ballot, there were people taking shelters at Ave Maria church, Suai.

- As far as the witness knew, Kodim Suai had never assigned security officers or squads to specifically secure the Ave Maria Catholics Church compound, as the situation had been calm.
- The witness had heard of the clashes at the Ave Maria Suai Church compound between groups of people inside the church's gate against those outside the compound, during which they mocked and yelled at each other.
- After the announcement of the result of the popular consultation/ballot, many people were terrified upon hearing that the losing party, or the pro autonomy groups, very disappointed and dissatisfied with the ballot's mechanism.
- The witness saw that Defendant IV was present at the church area holding a pistol while trying to disperse the chaotic masses.
- The witness heard interrupting sounds of gunshots in between every 5 minutes, for as long as the witness knew, the difference between a manufactured gun and the homemade one was in the sound of the shots, as the manufactured gun had louder shots. When the witness observed the church compound, the witness saw people ran around in panic, and some of them were wounded, then under Defendant IV's orders, the witness carried 3 wounded victims to be treated at MaKodim.
- The chaos had been going for about an hour when the witness saw several policemen tried to secure the area outside the churchyard, the witness saw several corpses scattered in the location, but he did not know for sure the names of the dead victims, and the next day, the witness heard that 3 Catholic priests died in the incident.
- The witness knew that the clash happened due to the disappointment concerning the result of the popular consultation/ballot won by the pro-independence, and because the church had been allegedly become a command post (posko) of the pro-independence.
- The witness saw people came into the churchyard, carrying sharp weapons, machetes and homemade firearms.
- The pro-independence side had hated the TNI and Polri, however, they asked TNI and Polri to give them protection, while the pro-integration party had been angry at TNI and Polri for protecting the pro-independence.
- As far as the witness knew, the TNI had always provided security for UNAMET personnel, and had evacuated them out of Suai, by helicopters.
- The witness' testimony in the preliminary BAP was true.
- On the testimony of First Sergeant I WAYAS (sic!) SUKA ANTARA, the respective defendants I to V had no objections.

3. Witness SULISTIONO

- The witness had been in Suai since July 3, 1999, and had worked as a truck driver at the Kodim 1635 of Suai.

- The witness had heard of the popular consultation/ballot conducted for the general election purpose, in Suai, East Timor.
- The witness had heard about two groups of opponents, the pro-integration groups and the pro-independence groups.
- In Suai town since September 1, 1999, many people had left their homes to take shelters at several places in Suai such as schools and other public places. At the time, Kodim 1635 Suai had started to secure government buildings such as the state-owned Electricity Company (PLN), the state Telecommunication Company (Telkom), the state-owned Water Company (PAM), gas stations, rice storehouses, and refugee shelters.
- The witness knew the security protection for the refugees at Ave Maria church, Suai, had been provided by the police, posting at a nearby three-way intersection more or less than 100 m away from the church.
- In August 1999, Kodim 1635 Suai had provided food aid for refugees at the Suai church, such as rice and instant noodles.
- The popular consultation/ballot announced on September 4, 1999, which was won by the pro-independence group, had caused unrest among the pro-autonomy for losing the ballot.
- The witness was aware that in September 1999, some people had filed protests due to the alleged frauds by the UNAMET, but UNAMET did not give any response, they even asked for protection from the police and TNI, which then safely evacuated the UNAMET personnel to Dili (sic!).
- On September 6, 1999, at around 14.00 hrs, the witness heard a shot fired from a homemade gun, coming from the direction of the Ave Maria church.
- Under Defendant IV's orders, all members were gathered to secure the roads by blocking the routes leading to the scene of the crime (TKP), and then some of the soldiers went to the scene of the crime at the Ave Maria church compound.
- The witness stayed at MaKodim, and packed some things to be brought to Kupang.
- The witness did not see with his own eyes the incident at the church but heard about it, and the witness saw people kept coming to Kodim, brought by TNI members for safety.
- On the testimony of Witness SULISTIONO, the respective defendants I, II, III, IV, and V made confirmation.

4. Witness JEHEZKIEL BERK

- The witness had been at Kovalima, Suai as the District Police Deputy Commander (Wakapolres), and on September 5, 1999, the Kapolres of Suai was Defendant III, GATOT SUBYAKTORO (sic!).

- The witness had known about the popular consultation/ballot on August 30, 1999, to allow the people to decide independence or integration with Indonesia.
- The witness, under the order of the Kapolres or Defendant III, and as a member of the police force, had the general duty to secure the popular consultation/ballot process so it could be conducted smoothly.
- The situation before the popular consultation/ballot was relatively calm, though some disturbances had occurred, but they could be overcome before becoming big commotions.
- There were often clashes between the pro-independence against their pro-integration opponents, so on September 3, the local community leaders (Muspida) in Suai organized a meeting at Defendant I residence, resulting in a disarmament agreement, and that all parties would accept whatever result of the popular consultation/ballot.
- The witness knew that the refugees at the church had returned back to their villages, soon after the September 3, 1999, agreement was settled at the residence of the Kovalima regent.
- To secure the Ave Maria Church compound, the police post at the nearby three-way intersection in front of the market, had been guarded by 2 policemen during daytimes and 3 policemen in the night shifts.
- The result of the popular consultation/ ballot was that the pro-independence won the ballot.
- On September 6, 1999, up until about noon, the situation was relatively calm, but nearing the afternoon, when the witness was at the District Police Headquarters (Mapolres), several shots were heard coming from the direction of the church near the market, the location which was about 600 meters from the Mapolres. At the time, Defendant III was not present with the witness, so the witness ordered the kepuskodalops (sic!) to approach the source of the shots.
- The witness knew and heard that the Kapolres had made a phone call to Kapusdalops to order more personnel to back up the security measures in the area, and to make patrols to further investigate the riot at the Ave Maria Church, and the team led by First Lieutenant. SONNY SANJAYA consisted of 7 men.
- The witness had stayed at the Mapolres and had heard from the incoming refugees including a nun who came for help in a Kijang van, informing that a clash had occurred at the Ave Maria church, and the refugees were brought to safety to MaKodim.
- The witness had heard about these organizations; PAM SWAKARSA LAKSAUR and MAHIDI and also had heard about the name OLIVIO MERUK as the leader of LAKSAUR, but the witness had never known him.
- The witness had never heard about the victims, wounded nor dead, and had never known of their numbers.
- The witness had learned about the burials of the dead victims several months later, when the witness had already been in Kupang.

- The security status of Suai after September 7, 1999 was graded as the state of civil emergency.
- The squads supervised by the Polres were the Community Security Guards (Kamra), and the Civilian Security Guards (Satpam).
- The witness never approved of the term attack in the BAP, as the witness did not see the incident as an attack by a group of people to another, but explained it as a clash between people outside the church gate against those from inside the churchyard.
- The witness, when he was questioned by the investigators at the Public Prosecutors Office in NTT, could not fully concentrate because he was in an angry state, feeling he had fought hard, but still had to be questioned in cases concerning human rights violations in East Timor, though in this case, he was summoned as a witness.
- On the testimony of the witness, Defendants I, II, III, IV, and V, express no objections.

5. Witness JACOBUS TANAMAL

- The witness was assigned at the Mapolres in Suai for 3 months, and had known Defendant III GATOT SUBYAKTORO (sic!) as the Kapolres of Suai.
- In August 1999, the witness had been held as a hostage inside the Ave Maria church compound, in Suai, during which he came there as requested by a priest to pick up wounded victims in the church, while at the time, the churchyard was already full of people from the pro-independence groups who threw things at him, and he got hit on the mouth, whereas his acquaintances the Kasatserse (Chief of the Police Detective Squad), and the Kasat Sabhara (Chief of the Sabhara Squad) had managed to escape the throws and arrows shot at them, and got back to the Mapolres unhurt.
- The witness had been aware of the popular consultation/ballot conducted to allow East Timorese to decide independence or integration, and the witness had the duty to maintain security in the area.
- It was true that before the popular consultation/ballot was conducted, the situation was relatively safe, although many incidents occurred, they could be immediately overcome.
- Since the popular consultation/ballot's result was announced on September 4, 1999 with the pro-independence group in the lead, and up to the next day on September 5, 1999, the situation was still relatively calm.
- Because the situation had heated up, HANOIN LOROSAE II Operation was launched, authorizing all Kapolres to evacuate refugees, secure government assets, coordinate with related security officials to secure evacuations of refugees.
- On September 5, 1999, KODAL commands were officially transferred from the police (Polri) to the TNI, and so the Polres was in charge of only the security of refugee evacuations.

- Polres of Suai had got 290 more personnel who had been assigned to all Polsek (Sector Police) under its jurisdiction, while for the Mapolres in Suai, the BKO (troops reinforcements sent in from outside the territorial commands) additional personnel included 1 platoon of the Police Mobile Brigade (Brimob) of the Regiment II Brimob Corps, consisted of 1 company of 90 Brimob personnel from Regiment II, 1 company of 100 Brimob personnel from Polda (Provincial Police) Lampung, and 1 company of 100 pathfinders (perintis) from Polda Lampung.
- On September 6, 1999 at around 14.00 hrs, shots from homemade firearms were heard from the direction of Ave Maria church, during which, the witness was at the Makorem (Military Subdistrict Command Headquarters) with 8 other officers.
- Under the orders of the Wakapolres, the witness sent a team of 6 personnel to the location, while the remaining officers were on guard at the Headquarters. The witness, later, went to the scene of the crime in a Kijang van, driving on about 1 km route to the location.
- The witness saw the masses as they ran around in all directions, and at the time, the policemen were assisted by the Brimob officers led by First Lieutenant SONNY SANJAYA to disperse the event to prevent further development, but the witness did not enter the church compound due to the unsafe situation.
- Defendant III ordered the witness to help and evacuate the wounded victims and refugees to be brought to polyclinics.
- At the time, neither the witness nor Defendant III carried guns.
- The witness saw wounds, scratch wounds, and other wounds due to sharp objects.
- The witness could not make distinctions between people from the pro-integration groups or those from the pro-independence ones.
- The witness was aware that the incident occurred due to the disappointment of the pro-integration group for losing the popular consultation/ballot.
- The witness had been aware that the refugees had taken shelters in the church since before September 3, 1999, but all the refugees had been evacuated soon after the peace agreement was settled at the regent's residence.
- The witness did not know for sure who the people were, or which group they belong to, or when the refugees came back to the church.
- The witness saw Defendant III gave orders to police officers to stop firing gunshots.
- Because of the fearful situation, the witness did not enter the church compound, and it was impossible to arrest the criminals because they blended in the crowd and blended into clashes, while it was getting dark because there were no lights, so the witness knew it was impossible to further investigate the scene of the crime, then the witness decided to delay his investigation until the next day.

- The next day on September 7, 1999, at around 8.30am, upon arrival of the crime scene, no single victim was found, both the wounded nor the dead, only blood spots and the remains of the last night's arson were found.

- The witness had known about of Kamra and Satpam, but he had never heard of PAM SWAKARSA, LAKSAUR or MAHIDI.

- Before the popular consultation was conducted, the witness had known about 7 foreigners who had been almost attacked by the local people in Mape reGENCY because they carried around ballot forms, they were later secured by the Kapolsek, they were then handed over to the Kapolres then they were evacuated out of the area in a helicopter.

- In Kupang, the witness had heard about the 27 civilian victims, 3 of the local people pastors.

- The witness' testimony in the BAP at the Public Prosecutors Office was only partly true, because in giving the testimony the witness was not ready and felt very tired, during the questioning he was not under pressure or forced by anyone.

- On the witness testimony, Defendants I, II, III, IV and V have no objections.

6. Witness YOPI LEKATOMPESSY

- The witness was assigned as Kapolsek of Suai, in September 1999.

- The witness was generally in charge of security maintenance to promote peaceful condition in his jurisdiction, in the town and the surrounding area.

- On September 3, 1999, there was a peace meeting between the 2 groups, the pro-integration and the pro-independence, at the regent's residence when they agreed on disarmament, avoiding rancor, and accepting whatever result of the popular consultation/ballot.

- The witness knew that the popular consultation/ballot on August 30, 1999, was held to allow people to decide independence or integration. The result was planned to be announced on September 7, 1999, but on September 4, 1999, the announcement was already made.

- The popular consultation/ballot was won by the pro-independence group, and the witness had heard that the pro-integration was disappointed for the defeat.

- During the popular consultation/ballot, the witness made patrols throughout the polling places (TPS) in Polsek Suai jurisdiction, and the situation was in control, under the Polres Suai commands.

- The witness knew that at the police post near the market across the church, there were 2 policemen from the Polres during daytimes, while during the night one policeman added.

- In September 5, 1999, the witness helped the local people to leave Suai for NTT, at the time there was no indication of a possible conflict at Ave Maria church.

- On September 6, 1999, the witness heard one shot of a homemade firearm, and at the time, the witness was present at a refugee shelter at a Middle School (SMP 1) building, to take care of the refugees until it was over. The witness had only heard about the unrest at the Ave Maria church.

- During the September 6, 1999 incident, the witness was summoned on HT radio by Defendant III with code name "anggrek 1.1 (orchid 1.1)," and was ordered to secure the refugees, and monitored the situation at the Mapolres.

- On September 7, 1999, the witness was just learned about the dead victims, including the 3 pastors, and the wounded ones as the result of the incident.

- The witness had known about Kamra, and Satpam with duties to help the police, but had never known about PAM SWAKARSA, LAKSAUR or MAHIDI.

- On the witness testimony, Defendants I to V express no objections.

7. Witness SUDHARMINTO

- The witness was on duty at the Dilli, East Timor border since January 1999, and in September 1999 was on BKO assignment at the border's Polsek Wemasa, under Polres Belu's commands for 1 month, in a cross-border operation during the popular consultation/ballot.

- The popular consultation/ballot was conducted to allow East Timorese to decide whether they wanted independence or integration with Indonesia.

- Before the popular consultation/ballot took place, the situation at the border used to be normal, but after the ballot, it suddenly became a bustling area, since a number of vehicles went back and forth from East Timor to Belu regency, NTT, pass Polsek Wemasa, carrying the refugees.

- When the result of the popular consultation/ballot was announced, won the pro-independence group at the time, the witness heard about the dissatisfaction among the pro-integration group, therefore they fled to the outskirts of East Timor, even cross the border to NTT province.

- The witness had heard about the incident at Suai church due to the pro-integration's defeat.

- On September 7, 1999, information received from the Kasospol (Chief of the Social and Political Section) of Metamauk, YULIUS BASA BAE, that a convoy of vehicles had entered Kobalima (sic!) district, Belu regency, going toward the beach with lights on.

- The witness was present at Polsek Wemas (sic!), when he was immediately ordered to join the Kapolsek and the Kapolpos (sic!) to approach the convoy, which had stopped at Metamau (sic!) beach.

- The witness saw an unidentified man in camouflage uniform followed by several other men wearing red and white headbands carrying traditional weapons approaching, the witness with JULIUS BASA BAE and another witness PHELIPUS KANAKADJA, who was the Kapolsek

of Wemasa. Then the witness PHELIPUS KANAKADJA asked the man in uniform: "What's happening?" which was answered by the man: "We want to bury the corpses as the result of the unrest at the church, because no one took care of the matter." Kapolsek stopped them and not allowed the corpses to be buried because the area was not part of Suai, but the men kept insisting that the burials should be done there. Witness PHELIPUS was eventually gave in, and even on the request of the man in uniform, Witness PHELIPUS was seen to go away and back a moment later carrying plastic and curtains to wrap the corpses of the pastors, who were the victims.

- The witness knew that they dug 3 graves for the 27 corpses, and the witness had time to see the digging of the third grave, and had time to see some of the men praying for the deaths just like commonly held at a funeral.

- The witness saw Defendant V, SUGITO, who was not in TNI uniform, was in the group watching the burial process.

- The witness saw that some men in the group wore red and white headbands in camouflage uniforms, and carrying machetes, lances, as well as bows and arrows.

- The witness knew about the re-excavation of the graves conducted by a forensic team and the Indonesian authority, and that the corpses unearthed were later sent to Atambua Hospital for further autopsies and examinations.

- The witness had seen the material evidences including the plastic and the curtains used to wrap the corpses in the Metamauk burials.

- On the witness' testimony, the defendants express no objections.

8. Witness JULIUS BASA BAE

- The witness was assigned as the Kasospol of Metamauk within the jurisdiction of Polsek Wemasa, Belu regency, NTT, for 2 months since September 1999 to October 1999, with 2 subordinates.

- The witness had seen and had known the defendant who was assigned in Suai.

- The witness knew that the popular consultation/ballot was conducted to allow the people of East Timor to choose independence or integration, which was won by those wanted independence.

- It is true that on September 7, 1999, around 08.00 am WITA, when the witness was present at the police post in Metamauk, saw 3 vans coming in procession from the direction of Suai, turning towards the beach with front lights on.

- It is true that the vans in procession were: a transport vehicle (mikrolet) with no license plate, driven by Defendant V, on the second row, a Toyota Kijang pick-up with license plate No. DF-9025-AA with canvas covered back, and on the last row, a yellow truck licensed DH-8373-M with canvas covered back, carrying more or less 20 men from LAKSAUR group holding sharp weapons and homemade firearms.

- The witness was suspicious on the procession of the three cars, and then reported it to Witness PHELIPUS KANAKADJA, the Kapolsek of Wemasa. Then the witness, who was the Kasospol, with the Commander of the First Platoon of Brimob squad, and the Kapolsek, rode on motorbikes, and upon arrival at the beach, the witness with Kapolsek and SUDHARMINTO found a group of men digging graves of more or less 10 corpses.
- The witness saw and heard Witness PHELIPUS, as the Kapolsek talked with an unidentified man in camouflage uniform: "Why bury them here?" which then answered by the man: "There's no chance in Suai."
- The witness with the chief of the Kapolsek and the Brimob Commander, at first, prevented the group from continuing the burial process, reasoning that the area was not part of Kovalima subdistrict, and that it was part of the Kobalima subdistrict, which was in Belu regency, NTT province, but the men kept on insisting, then Witness PHELIPUS had no chance to refuse anymore.
- The witness saw Defendant V, who was always in silence, just stood by one of the vans doing nothing.
- When the witness stood near the corpses, he had time to see there were more or less than 27 corpses with most of their clothes stained with dry blood.
- The witness saw the 27 corpses consisted of 10 women and 17 men, including 3 pastors had been buried, then the funeral prayers was led by a man the witness recognized as MARTINUS BERE, worked as a school teacher in Suai.
- The location of the burials was at an open field on the beach, marked with woods taken from somewhere within the area.
- The witness had seen the material evidences presented in court, including the curtains and clothes similar to those worn in the burials.
- On the testimony of the witness, Defendants I, II, III, IV, and V express no objections.

9. Witness PHELIPUS KANAKADJA

- The witness had been assigned as the Kapolsek of Wemasa, Belu, NTT, since 1998 to 1999.
- On September 1999 around 8 am, the witness received a report from Witness JULIUS BASA BAE, the Kapolpos (sic!) of Metamau (sic!), saying that a convoy of vans had been riding with lights on towards the beach. The witness with Witness JULIUS BASA BAE, and Witness SUDHARMINTO, rode on motorbikes to Metamau (sic!).
- Upon arrival at the Metamau (sic!) beach, there were 3 cars; a Fuso truck with a license plate No. DH-8321-F, a red Kijang van with a police license No. DF-90225-AH, and a mikrolet public transport van without license plate.

- Upon arrival on the beach of Matemau (sic!) village, the witness saw several men had been digging in the sandy soil; the group of men at the location wearing camouflage uniforms, also red and white headbands.

- The witness said to an unidentified man in the group, wearing camouflage uniform: "What's happening here? Why are you burying corpses here?" The man answered that they were going to bury the victims of a riot at the Suai church, as it was impossible to bury them in Suai because of the unsafe situation.

- The witness had tried to prevent the burials because it was a fishing area, but the man said they wanted to bury the pastors, so the witness did not argue anymore, and let them continue the digging.

- The man then asked the witness to help him find plastic and canvas to wrap the 3 pastors, and the witness helped by giving them the curtains and plastic, the only things he could find in his office and house.

- The witness recognized and saw Defendant SUGITO was present at the location, wearing civilian clothes, but the witness did not talk to him.

- The witness saw that after the burial was completed, the men conducted prayers, led by MARTINUS BERE, the witness knew as a schoolteacher in Suai, then the graves were marked with woods.

- The witness saw bloodstains and a severe cut on the left arm of one of the pastors.

- The witness saw that, in the grave re-excavation, later conducted by the forensic team lead by the National Commission for Human Rights (Komnas HAM), as many as 26 corpses were unearthed, and then they were sent to Atambua Hospital in police vehicles.

- The witness had always coordinated with Kovalima regency, which were the Subdistrict Military Command (Koramil), the Polsek and the head of Covalima district, whenever crimes conducted by the people of Suai, within Belu area.

- The witness no longer coordinated with Suai authorities because the area was no longer part of the Indonesian territories.

- All the details on the burial process were reported by the witness to his superiors at Polres Belu.

- The witness recognized several of the items presented in court, namely the 2 pieces of red and blue curtains, clothes he took from his office and house, and also the sandals unearthed in the later grave re-excavation.

- On the witness' testimony, the defendants have no objections.

10. Witness PRANOTO

- The witness had been questioned by the investigators and had confirmed all his information in the BAP, excepted the term attack, which should be termed as clash.
- The witness had been assigned as the principal of the public middle school SLTPN 1, Suai, and the witness knew Defendant I as the regent of Suai, Defendant III as the Kapolres of Suai, Defendant IV as the Kasdim of Suai, and Defendant V as the Danrem of Suai.
- The witness knew that the popular consultation/ballot conducted in East Timor was to choose between integration and independence.
- The witness knew that the PAM SWAKARSA Suai was called LAKSAUR, but it only maintain security within the village area.
- The witness knew that LAKSAUR members never had uniforms they only wore T-shirts decorated with hand written, black-color word LAKSAUR.
- The witness knew that LAKSAUR members had weapons such as bows and arrows, lances, guns, and homemade firearms.
- The witness knew OLIVIO MENDOZA MORUK because he was a former student at the SLTPN 1 in Suai, who then become the Commander of the LAKSAUR Battalion (Danyon LAKSAUR).
- Since August 17, 1999, there were no activities in the school because of the unsafe situation in the town of Suai due to the growing unrest, and the teachers had fled outside of the area.
- It is true that nearing the popular consultation/ballot, many government offices were no longer functional, a few institutions still in operation including the city government office (Pemda), Kodim, Polres, the state-owned telecommunications (Telkom), and the hospital.
- Nearing the popular consultation/ballot, the situation in Suai was chaotic, as many people had been terrorized. The unrest had caused many people to flee the area to take refuge.
- On September 6, 1999, the witness was in Betun and met Defendant V, then the witness, at around 15.00 hrs WITA, rode in a Panther van with Defendant V, from Betun to Suai.
- On the route near a water spring, the witness and Defendant V met OLIVIO MENDOZA MORUK with around 100 of his men riding on 2 trucks, during which OLIVIO said that they had a clash with people from the pro-independence group at Suai church.
- Then the witness was asked by Defendant V to ride in the Panther to the Koramil office, and upon arrival, the witness heard the report of a duty officer at Koramil headquarters saying that OLIVIO MENDOZA MORUK clashed with pro-independence people at Ave Maria Catholic Church in Suai.
- The witness with Defendant 5 (sic!) went to the church compound, and at the location, the witness saw many corpses were still scattered around the place, and he met MARTINUS BERE and many other people.

- The witness saw MARTINUS BERE counted 27 corpses in full clothes, and searched for identities in their pockets, but failed to find one. The witness recognized the 3 pastors and 1 child among the victims.
- It was getting dark without proper illumination in the location, and then the witness, together with Defendant V, carried the 3 pastors into the convent's car. On the body of Father HILARIO, there were bloodstains and a severe cut wound in the right arm.
- It was already dark, so the witness and Defendant V went home and promised each other to take care of the corpses the next day.
- The witness saw and heard MARTINUS BERE told his friends to help him with the burials planned for the next morning on September 7, 1999.
- The next morning, upon arrival at the church, the witness, Defendant V, MARTINUS BERE and his friends loaded the corpses onto 3 vans to be brought to a western area of Metamauk beach, in Wemas (sic!) district, Belu regency, and upon arrival at Metamau (sic!) beach, MARTINUS BERA (sic!) who, at the time wore a red and white headband, and about 15 of his friends, started to dig graves.
- The witness saw and heard, during the occasion at Metamauk beach, that they met 3 police, one of whom was PHELIPUS, who talked with MARTINUS BERE, who said they had to make proper burials there for safety reasons.
- The witness heard that MARTINUS BERE asked PHELIPUS, the Kapolsek, for his assistance in finding mats for the bodies of the pastors to be placed on, and curtains for the covers.
- During the burial process, Defendant V bought them food in Betun, but before he went, his gun was left with the witness, but he had taken out the magazine and brought it with him.
- The witness heard that the burials were decided to be in Metamauk, after an earlier agreement among those who took care of the burials.
- The witness saw that in the group of men taking care of the burials, there were those wearing the camouflage uniforms, those wearing only the camouflage top, or those like the witness, who wore the camouflage trousers with a black shirt.
- The witness had recognized and had known that some of the material evidences presented in court, were those used to wrap the bodies of the pastors.
- On the testimony of the witness, Defendants I, II, III, IV, and V have no objections.

11. Witness SONNY SANJAYA

- The witness was assigned according to BKO assignment at Polres Suai to maintain security and order during the popular consultation/ballot, and in his duties, he was supervised by Defendant III, as the Kapolres of Suai.

- The witness knew Defendant I as the regent of Suai, Defendant II as the Dandim of Suai, Defendant III as the Kapolres of Suai, Defendant IV as the Kasdim of Suai, and Defendant V as the Danramil of Suai.
- The witness knew about LAKSAUR before the witness was assigned in East Timor, but the witness did not know who supervised the organization.
- The witness knew that LAKSAUR was established by the local people, and according to its members, they were unpaid and devoted themselves only for the sake of the red and white.
- It is true that LAKSAUR members often coordinated their actions with the police, such as reporting their planned activities to the Polres, and also making visits to the Polres station.
- The witness was assigned in East Timor to provide security for United Nations' personnel, and under the Kapolres' orders, also to accommodate refugees in the shelters, before they were further evacuated to NTT.
- During the popular consultation/ballot, many people took refuge at Ave Maria church compound, though had been returned to their villages, came back to the church.
- During the process of the people's consultation/ballot, security measures were in the hands of Polri, and after the ballot, were transferred into the hands of TNI.
- The refugee shelter at the middle school building was near the Ave Maria church in Suai, so that the witness could clearly see toward the church compound.
- On September 6, 1999, shots were heard around noon, and at the time the witness had been helping refugees carrying their luggage to the shelter, and then the witness approached the church, which was the source of the shots.
- Before reaching the church, the witness stopped at a nearby market, some 30 meters away, when other shots were fired from inside and outside the church. The witness walked while keeping his head down approaching the church, and made a stealing (sic!) move.
- In the church compound, some of the TNI members and policemen making the stealing (sic!) moves did not fire any shots, they just kept watching alertly as the gunshots were heard from inside the church.
- While making the stealing (sic!) move, the witness approached an army officer in stealing (sic!) position and asked: "Pro-integration is inside attacking pro-independence people. Why they are not stopped?" and was answered by the officer: "It's impossible, there are so many of them, and the situation is already chaotic."
- The witness said to the officer: "OK! Cover me with shots and follow me." Then the witness made a flanking route approaching the church from his spot at the elementary school compound.
- The witness then hid behind a toilet, and shouted to the pro-integration masses: "Stop! Stop! Retreat!" He was followed by some of his men, while firing upwards.

- The witness' shouts were imitated by the other TNI officers and policemen outside the church gate, and then the shots eased down.
- The witness did not enter the church due to the unsafe situation, so the witness only stayed in his hiding spot near the toilet.
- After the shots eased down, the witness' subordinate reported that Kapolres was in the back.
- The witness turned his head and saw Defendant I, II, and III. They did not carry any guns.
- The witness tried to prevent Defendant I and Defendant III who wanted to enter the church compound, as the situation was still unsafe, while they did not carry guns.
- When the witness met Defendant III, the witness was ordered to secure the refugees from the direction of the church.
- The witness heard Defendant III said: "No more gunshots," because Defendant III thought the witness was one of the attacking party, and then the witness answered that he had been trying to break up the fights between the two opposition groups.
- The witness helped a nun who came out of the church, walked toward the witness, then held the witness' hand tightly, then the witness brought her to the MaKodim.
- In the afternoon, the witness came back after escorting the nun, because he felt restless and uneasy. After checking his men who accommodated the refugees at the middle school shelter, the witness came back to the church with 8 of his men.
- Upon arrival at the church, the witness saw several corpses were still scattered around being neglected on several spots in the church compound.
- The witness and his men got angry and yelled at people but no one wanted to help the witness piling up the corpses reaching dozens in number, on the church's ground floor.
- The witness recognized one of the corpses as a figure from the pro-independence group who often made orations in campaigns, and the witness knew him because he often escorted the pro-independence people, and the witness also knew there were a Javanese and East Timorese pastors among the victims.
- When the witness and his men gathered the corpses, nobody from other army and police units helped them, excepted from the witness' troops who started to help after a while later.
- The witness saw many of the corpses were soaked in blood, and had severe wounds.
- The witness saw bullet shells scattering around several places in the church, especially on the upper floor of the new church building of Suai.
- The witness saw and heard Defendant II, who was the Dandim of Suai shouted at OLIVIO MOU (sic!) telling him to retreat, but OLIVIO refused by shouting back: "No! It's my responsibilities!"

- The witness never heard orders to attack.

- On the testimony of the witness, Defendants I, II, III, IV and V have no objections, except that Defendant II had objected the witness' testimony saying he had talked with the LAKSAUR commander, as Defendant II had not known him, but the witness was persistent with his testimony.

7. (sic!) Witness DOMINGGOS DOS SANTOS MAUZINHO

- The witness was a resident of Suai, a Timor Leste nationality, and the witness had once stayed overnight at Ave Maria church in Suai, East Timor, as a place for religious services.

- The witness knew and chose independence in the popular consultation/ ballot in August 1999, the result of the ballot was announced on September 4, and won by the people of Timor Leste.

- Since September 4, 1999, the situation grew threatening, and the witness felt terrified and stayed inside the house with the witness' children, because at the time, some refugees destroyed and burned down residential houses in the area, including 5 homes in the neighborhood.

- On September 5, 1999, around 14.00 hrs, the witness saw MARTINUS BERE with OLIVIO MORUK coming out of a vehicle, then repeatedly firing their riffle-guns at houses in Debos village, including at the witness' house, and when one shot hit the front door, the witness' husband ran out toward the hills. The witness with the children FATIMAH, FERNANDO, FRANSISKA, and MAGDALENA, also rushed out of the house and ran toward the Ave Maria church, it was around 17.00 hrs.

- In the church, there had been already around 300 refugees from the pro-independence group, and they did not carry any weapons.

- In the church compound, there were the 3 pastors, namely: Father HILARIO, Father FRANSISCO, and Father DEWANTO.

- On September 6, 1999, around noon, LAKSAUR and MAHIDI groups, led by OLIVIO MORUK, came inside the church, and attacked the refugees. Then they repeatedly shot at and then burned down the pastors' house.

- During the attack, the witness felt terrified and hid herself behind the refrigerator's door, in the dining room of Father HILARIO's house.

- From her hiding place, she could see clearly that the militia forced their way into the church, and the witness recognized several of them, including OLIVIO MORUK, OLIVIO MOU, MARTINUS BERE, IVIVIO TATO, and some others. They wore T-shirts with written black words LAKSAUR and MAHIDI. They kept on firing their guns at the gate, door and windows of the house within the church compound.

- The witness saw Father HILARIO was shot in the forehead and died, and Father DEWANTO and Father FRANSISCO were slashed to death by OLIVIO MORUK.

- When the militia forced their way into the church, the witness saw no army officers, nor policemen guarding the church complex.
- The witness saw many victims with shot wounds including her daughter FATIMAH who was shot in the arm, and her nephew CARLOS who was killed, and many others who lost consciousness or died.
- Father HILARIO was shot dead, Father DEWANTO was also shot dead, and Father FRANSISCO died slashed with a sword by OLIVIO MORUK.
- The group repeatedly shouted to those who were hiding, and forced them to walk out with their heads down, and they were not allowed to observe around. On the way out of the church complex, the witness had time to see several corpses on the floor, and Defendant I holding a pistol, standing outside the new church building, and the witness also saw Defendant V carrying a rifle gun entering the church.
- When the witness was outside, the witness saw several TNI officers and policemen guarding the church compound. The witness kept on walking, then she was told to ride in a Kijang van with her children, and were brought to the Kodim office, and upon arrival, the wounded were given medical treatment, and they were given food and shelters for a week.
- In their first night at Kodim, at around 2 am WITA, the witness' daughter FATIMAH was forced by OLIVIO MORUK to wake up and follow him out, and she was threatened to be killed if she refused, and FATIMAH had to go with OLIVIO MORUK and came back about 2 hours later crying and told the witness: "Mom, the man who forced me, raped FATIMA" then the witness reported it to a duty officer.
- Seeing the material evidences presented in court, the witness recognized a white skirt as one item that was similar with one of hers, and she did not recognize the rest.
- On the testimony of the witness, Defendant III and Defendant IV express no objections. Defendant I denied the witness' information saying he carried a pistol, as he, in fact, did not carry a pistol. Defendant II said the witness' information saying Defendant V was present at the scene during the attack was not true, because Defendant V was assigned to go to Atambua at the time of the incident, with special permission given by Defendant II, and there was no rape at Kodim Headquarters, because no report was ever filed. Defendant V denied the witness information saying he was present in the church during the riot, because on September 6, he was assigned to Atambua to look for transport vehicles for refugees, and arrived back at the church at 17.00 hrs.
- On the denials of the testimony, the witness was persistent with her confirmation saying Defendant V carried a gun and was inside the church that afternoon.

13. Witness dr. MUHAMMAD FADHOLI AGUS HARYANTO

- The witness had been assigned at Fohorem district, Kovalima reGENCY as a PTT doctor (general practitioner) since October 1, 1997 until September 5, 1999.

- The witness was aware that many people decided to flee East Timor because the popular consultation/ ballot was won by the pro-independence, and they were afraid of possible riots.
- On September 4, 1999, the witness started packing to get ready to leave East Timor, as at the time, the neighborhood area was already deserted, because all his neighbors had moved out, excepted the local state-owned clinic (Puskesmas) employees on duty.
- On September 5, 1999, at 9 am WITA, the witness left his residence in East Timor, and went to Betun, East Nusa Tenggara (NTT).
- In Betun, on September 6, 1999, the witness who stayed at the official residence for the local Puskesmas' doctors in Betun, NTT, at around 10 am WITA, met Defendant V who came alone in a Honda GL sedan to the witness' house, and told the witness that his visit was to look for transport vehicles for refugees.
- The witness was then asked by Defendant V to go with him using the ambulance, to look for borrowed vehicles and managed to get a Fuso truck owned by a businessman who owned Wijaya shop and another Hino truck which was still in use to transport other groups of refugees, and that they could pick it up later on September 1, 1999, and in the afternoon someone had borrowed them a Panther van to be used by the defendant.
- While waiting for the owners' confirmations on the vehicles, the witness and Defendant V had a talk, and at around 14.00 hrs they went fishing at the Betun village's beach but they failed to get any fish until around 15.00 hrs WITA. After fishing, the witness went home while Defendant V went back to Suai by himself.
- The witness heard about the riot at Ave Maria church, Suai, from the refugees moving to Betun and living in his neighborhood.
- On the witness' testimony, Defendants I, II, III, IV, and V have no objections.

14. Witness LUDO FICUS ULU

- The witness was a member of the Kodim 1635 Suai since 1998, and was assigned as the Commander of the First Platoon of the Military Trainees of MILSAS (Danton I MILSAS), recruiting East Timorese willing to serve the country and join the TNI.
- MILSAS guards had the responsibility to help maintaining security at Kodim, and were equipped with camouflage uniforms and clubs.
- When the witness and his subordinates were on duty at the Kodim barracks, at around 2 pm, when the witness suddenly heard gunshots coming from the direction of the church, and then the witness was summoned by Defendant IV at the Kodim's front yard with Witness SUMANTRI, who was the administrative and logistics officer. (Pasimenlog).
- The witness got orders from Defendant IV to go with 12 MILSAS personnel to go down to the main route towards the church who were 3 milsas members guarded the intersection across the Public Prosecutors Office, 3 other members guarded the local Legislative Council

(DPR) housing complex and SMP 2 middle school, 3 members on the right side leading to the water spring, and the rest members guarding the Puskesmas.

- The witness with 8 other MILSAS personnel went to Ave Maria church compound, and when they arrived at the market near the church, the witness saw Defendant I in civilian clothes, and Defendant II and III in uniforms, were standing in front of the market, and in the area surrounding the Ave Maria church, the witness saw a lot of police and Brimob officers trying to disperse the masses, with their backs facing the church.

- Seeing the chaos, the witness and Defendant IV, with 8 of his personnel joined in to help chasing away the masses trying to force their way into the church. At the time, no one could get in.

- The witness saw Defendant IV accompanied by Witness First Private SONIK ISKANDAR entered the church compound towards the convent, and it was true that at the time, the witness was ordered by the Kasdim to carry a gun to guard the rear gate of the church compound.

- A moment later, Defendant IV came out of the church with 5 nuns and a helper, followed by many others to MaKodim.

- The number of refugees taking shelters at the MaKodim reached around 500 people who were accommodated at the MaKodim's front hall, and were properly treated and taken care of.

- The witness had never heard of a rape crime, during the refugees' stay at MaKodim.

- The witness just heard about the 3 pastors and the other dead people from radio news sometime on September 9, 1999, but the witness did not know where the victims were buried.

- On the testimony of the witness, Defendants I, II, III, IV, and V have no objections.

14. Witness SUMANTRI

- The witness, since the beginning of the year until September 1999 was assigned as the Pasimenlog at Kodim 1635 Suai, and was in charge of managing internal activities at MaKodim.

- On September 5, 1999, the witness saw the refugees coming down the hills then took shelters in school buildings or just waited on roadsides.

- On September 6, 1999, at around 5.30 am WITA the witness met Defendant V who requested permission to go to Betun but the witness advised him to request the permission from Defendant IV instead, because the witness was not authorized to issue such permits.

- It was true that on September 6, 1999, around 2 pm WITA, when was in his office, the witness heard shots, and then the witness was ordered by Defendant IV to assemble personnel of the maKodim, and after they were gathered, the defendant IV distributed the assignments by sending some of the personnel to secure the scene of the crime, and some of the personnel to secure Kodim, and the witness was ordered to stay at the maKodim.

- There were 20 personnel of Kodim assigned to secure the TKP, including the MILSAS personnel, who were equipped with their clubs.
- At around 14.30 WITA, the refugees started arriving at maKodim, and the witness had to accommodate them at the maKodim's front hall and they looked exhausted and some were wounded.
- At around 16.30 WITA the witness saw 5 nuns, 1 helper and 1 driver arrived to take refuge at maKodim and they were not accommodated in the hall but in Sabar lodging located beside the maKodim, but the next day, they asked to be taken to Atambua Pastora, and were greeted by a Western pastor.
- In conducting his responsibilities as a Pasimenlog or the officer in charge of accommodating and serving the refugees who stayed at the Kodim, the witness provided food taken from the army cooperative storerooms all the refugees at maKodim were guarded day and night by the personnel of the Kodim in round-the-clock shifts, so it would be impossible for outsiders to get in, and on the other hand, it would be difficult to go out without permission from maKodim.
- The hall where the refugees were sheltered was properly illuminated.
- The witness had seen witness Mrs. DOMINGGUS MAUZINHO who took shelter at maKodim but did not know whether she was with her family as she came for shelters with other refugees from the church.
- During the refugees' one-week stay at Kodim, the witness never heard about any woman or refugees who had been raped.
- On the witness testimony, the defendants I, II, III, IV and V express no objections.

16. Witness JULIO GUSMAO

- The witness understood that the popular consultation/ballot was to decide for independence or integration with Indonesia.
- The witness knew that there were refugees who came into Ave Maria Catholic Church, Suai.
- On September 5, 1999, at around 22.00, the witness left his home and family to go to Ave Maria church compound, Suai and arrived at the church at around 23.00 WITA and the witness saw that the lights inside the church were on and there were so many refugees including men, women and children.
- In the church compound sheltering the refugees, the witness had never seen any security officers.
- The witness took shelter because he just followed others, and in the church compound, the witness just sit around the area near a high school building.

- The next day on September 6, 1999 at around 5.30 am WITA, the witness woke up and slept and played around the area within the high school premises and the area surrounding the church compound was safe, at around 14.30 WITA, when the witness was sitting, suddenly shot was heard from the back of the church, some 100 meters away from the witness.
- The witness was scared and hid under a yellow, broken truck, and from that place, the witness could see to the right and left, and at the back he saw many people ran around in all directions, coming out of the church compound.
- Then some people, while shouting, rushed in from all directions, carrying weapons like machetes, and homemade guns.
- From his hiding place under the truck, besides shots, the witness also heard screams of people in pain, but the witness could not see the area from under the truck, and he was terrified.
- The sounds of shots at first were heard at the back of the church, but soon they were shots from all over the church, and went through until around 15.30 WITA.
- The witness who was inside the church during the conflict knew only that the conflict occurred among civilians.
- When the gunshots had eased down, the witness got out from under the truck, stood up, and saw a man in a camouflage uniform was carrying a corpse, and the witness did not see what had happened after that, because he was terrified, then the witness left the church compound through a narrow trail straight towards the water spring that time was already dark.
- On the witness' testimony, the defendants express no objections.

17.A de charge Expert Witness Dr. DODI HARYADI

- The witness was an expert in the mass psychology field, had been working as one of the teaching staff at the Faculty of Psychology, Padjadjaran University, Bandung.
- The occurring reaction of the mass symptoms had been always based on dissatisfaction, disappointment, and frustration, experienced by individuals. Generally, there should be certain conditions that formed the background of the particular mass behavior.
- It should be differentiated between an individual and a number of individuals who had become masses. For a single individual, there would be open possibilities to control oneself through rational judgment, while in a mass, the individual was a collective agent, and the masses subject was uncontrollable emotion.
- One of the basic characteristics of mass symptoms is the anonymity of the individual's identity, with the main aspect that the element of emotion has become more dominant than rational judgment, so that the mass behavior reflects an instant reaction, a reaction having the characteristics of releasing things collectively desired by the masses.

- The accumulation of disappointments or dissatisfactions generally brings out a collectivity which occurs at the same time, and when in certain situations there had been the trigger, there would be a totality that was termed as the masses reaction, which has situational characteristics, and possibly destructive.
- To ease down the emotional, uncontrollable, and destructive masses, there should be a break up between the masses and the targets.
- When the masses have reached thousands in numbers, the officers who could control or make a stop against the brutal masses should be equal. . When the masses were in thousands, it should be clear that there should be an equal number of officers, because if the number of the authorities had been far below, the outnumbered masses would try to force themselves against anything that come in their way.
- Besides that, it could be done in extreme ways, such as shoot the ones in the front, or make a mental shock. That would give an effect, or we could make a loud explosion that could create a similar effect. In principle, there should be the things that could give pressures, which the target was to pressure the emotion, which would bring out the identity of oneself with individual control back in function.
- The brutal emotion of the masses would stop if their targets were achieved, so that when it had eased down, they would come back to the individual emotion.
- Psychologically, the choices in the popular consultation/ballot were included in the category of basic characteristic choices (sic!).
- The conditions in disappointment, dissatisfaction that had accumulated would be unpredictable when they would explode.
- Measures to hamper or stop a masses reaction by set forth a public figure would depend whether the person had been influential enough to hamper or stop the masses.
- On the testimony of the expert witness, Defendants 1, 2, 3, 4 and 5 have no objections or response.

18.A de charge Witness IMAM JAUHARI

- The witness was a policeman, ranked Adjutant to the Commissioner of the Police Superintendent (AKBP) during the incident was assigned as a Liaison officer (Lo) of the Indonesian Police Headquarters (Mabes Polri) at UNAMET, in charge of Kovalima regency since the end of June until September 17, 1999.
- A task of a Lo was monitoring the implementation of the popular consultation/ballot, and as a translator in translation activity in the joined activities of Indonesia and UNAMET.
- During his job as the Lo, the witness with UNAMET personnel had arranged 2 meetings with Defendant I in the official residence of Defendant I.

- On September 3, 1999, a peace agreement was held at the Suai regent's house and at the time the opposing community groups had handed down their weapons such as machetes and other kinds to the security authorities.

- As long as the witness knew refugee shelters in Suai were the maKodim, Mapolres, and SMP 2 building.

- On September 6, 1999, the witness came to Defendant I residence at 14.15 WITA. At the time Defendant I was talking about refugees to Defendant II and III.

- A few minutes later, at around 14.30, shots were heard from the direction of the church near Debos market and a phone call came informing the riot occurring at Ave Maria church.

- The witness saw Defendants I, II and III using their own cars departed to the TKP while the witness came back to the Polres Suai to pick up another Lo officer, Police Captain DODI.

- The witness went to the TKP and upon arrival at Debos market some 10 meters away from the church compound gate the witness approached the Chief of the Traffic Squad (Kasatlantas) and the Chief of the Intelligence Squad (Kasat Intel), and the witness also saw the Brimob officers who were firing their guns upwards.

- At the TKP the witness made preventive measures by calling out the people to stop attacking each other and stop moving forward.

- At the TKP the witness saw group of people carrying machetes and spears but the witness saw no homemade firearms.

- The witness saw Defendant IV the Kasdim came out of the church door along with several nuns, and some more people, who were brought to maKodim on cars.

- According to the witness' observation the number of the security officers were far below that of the conflicted masses.

- The witness saw victims with severe cut wounds were brought to Mapolres and MaKodim, but the witness saw no dead victims.

- Since the beginning, the witness saw no indications of conflict at the church, but the security officers had guarded the premises day and night.

- On the testimony of the witness, Defendants I, II, IV and V have no response, while Defendant III clarified that the meeting of the Muspida had been routinely conducted and the position of the convoy to the TKP was the car driven by Defendant I was in the lead, followed by the car driven by Defendant III, and then Defendant II's car.

19.A de Charge Witness SYAMSUDIN

- The witness was assigned in Polres Suai since early 1986 until early 1999.

- The witness recognized IZEDIO MANEK as his wife's brother.

- As a member of Polres Suai, the witness had been acquainted to UNAMET personnel as he often escorted and had joined patrols with UNAMET throughout the villages.
- The witness knew about the popular consultation/ballot on August 30, 1999, and its result was announced on September 4, 1999, which was won by the pro-independence.
- The witness did not know about PAM SWAKARSA but knew about MILSAS which was wanra established by the Military.
- The witness knew that there were refugees at Suai Ave Maria church before the implementation of popular consultation/ballot.
- The witness knew that in Suai Ave Maria church compound there had never been any special security officers guarding the refugees taking shelters in the church.
- On September 6, 1999 morning, the witness requested permission to the Defendant III to bring family to Betun for safety. Then at 8.30am WITA, the witness went to Betun.
- Upon his arrival back from Betun on September 6, 1999, on 18.30 WITA, got information from his colleagues that in the afternoon of the day, there was a conflict at Ave Maria church, Suai.
- It was true that on the testimony of the witness, Defendant I and Defendant II have no objections. Defendant III questioned about the implementation of Siaga I (Red Alert) operations, and who was in charge of security maintenance during the popular consultation/ballot, which was answered by the witness. Defendant III. Defendants IV and V have no objections.

20.A de charge Witness NURSALIM

- The witness had been assigned at Kovalima regency since 1995 until 1999, as the personal secretary of Defendant I, the Kovalima regent.
- The witness had heard about the term of PAM SWAKARSA whose members were the local people recruited by the organization, to maintain security in their villages, and they were not armed.
- The members of PAM SWAKARSA received payments from the financial division of the local government in Kovalima the sum of which the witness did not know.
- The members of PAM SWAKARSA were not similar to those of MILSAS, who were already TNI members.
- The number of employees at the local government offices in Kovalima soon after the implementation of popular consultation/ballot had decreased significantly as most of them had left for refuge, moreover on September 4, 1999, there had been no attendances at the office excepted for the witness and WENSESLAUS NAAT as the acting first assistant to the secretary of the local government (Asisten I Sekwilda) of Kovalima regency.

- There were 3 peace agreements initiated by the local government those held at the SMP 2 middle school front yard, at the Ave Maria churchyard on August 29, 1999, and at the regent's residence on September 3, 1999.

- On September 3, 1999, at the official residence of Defendant I a meeting was held attended by Defendant I as the Kovalima regent the pro-independence group represented by ANTONI WALI and OSORIO SOARES and the pro-integration group represented by Haji NUH and Tilomar district head. It was also attended by Ave Maria Church party, represented by pastor HILARIO.

- The witness had heard of written peace agreements in which the two opponent groups were banned from disturbing one another would receive whatever result of the popular consultation/ballot and would socialize the agreements.

- The witness as many as 4 times had brought food and drink aids under Defendant I orders to the refugees at Ave Maria church compound including 400 kg of rice, instant noodles, and canned Coca Cola and Sprite drinks.

- The witness knew of the government efforts to prevent possible conflicts between the pro-independence, and the pro-integration groups by promoting peace and calls for restraints.

- On September 5, 1999, the witness accompanied Defendant I driving an Opel Blazer to Atambua to look for vehicles borrowed from the local businessmen, and managed to get nine trucks to transport refugees still sheltering in Debos and Jumalay in Suai area and the next day on September 6, at 9 am WITA, went back to Suai. On September 6, 1999, afternoon when the witness was at the regent's house the witness heard shots coming from the Suai church, the witness followed by Defendant I went to the church Defendant I wore T-shirts and carried no guns they were followed by Defendant II and Defendant III wearing official uniforms using their own vehicles.

- In front of Debos market the vehicle carrying Defendant I was halted by the security apparatuses so that the car was backed up and parked in front of the local health authority office.

- At 100 meters away from the church compound gate the witness heard gunshots from inside the church and saw the masses in the church ran out in panic to all directions.

- The witness saw Defendant I chased away and ordered the masses who wanted to rush towards the church compound who were still in the market area, to retreat and break up resulting the masses to run back into the market.

- At the time the witness saw police together with Brimob and soldiers carrying clubs were hampering the masses trying to enter the church gate.

- The witness saw several refugees coming out of the church escorted by the officers walking towards Defendants I, II and III who were standing, ordering preventive measures to the apparatuses then they were escorted to safety to MaKodim.

- The witness saw no TNI, Polri or Brimob members attacking or firing their guns towards the Ave Maria church.

- The witness saw several people brought to MaKodim were wounded in the arms, stomach, or other parts of their bodies, and the witness was at the scene until it was getting dark and no masses left at the church compound then the witness went home.

- On September 7, 1999, with Defendant I went to Betun but stopped first at the Ave Maria church compound to see the deserted church premises then the witness and Defendant I continued the trip to Betun.

- On the testimony of the witness, Defendants I, II, III, IV and V make confirmation and make no response.

21. A de charge Witness WENSES LAUS NAHAK

- The witness had been assigned as the PLH Asisten I Sekwilda of Kovalima regency since August 1985 until September 1999 with the main duty in the general government field was coordinating the formulation of regulations issued by the local government.

- The witness had heard about PAM SWAKARSA which was the civilian guards maintaining security in their own areas but the witness did not know who had established the organization.

- The witness heard that PAM SWAKARSA members were paid for their activities maintaining security in their villages, as their work as farmers were temporarily halted.

- As long as the witness knew there was the second opsi (option) the pro-independence felt they were leading in winning the people's support, so they always terrorized the people and demanded donations (apellu), for the pro-independence.

- During the popular consultation/ballot, there were conflicts between the pro-integration and pro-independence groups by as many as 30 people from a certain group could have fought against 40 or 50 people from the oppositions. The conflicts took place in front of Debos market across Ave Maria church compound, and at the Suai monument.

- Although the conflicts had always been responded by the government by initiating peace settlements, they were still enemies and it was difficult to live in harmony.

- There was once when the representatives of the Kovalima Muspida visited the Ave Maria church compound were attacked by the pro-independence people in the church for a misunderstanding.

- Before the result of the popular consultation/ballot was announced, exactly on September 3, 1999, a meeting on peace was held for the two opponent groups, attended by the Muspida, UNAMET personnel, and 2 pastors from Ave Maria church, Suai.

- The regent had given aids to the refugees at Ave Maria church in the form of rice, instant noodles Supermi, drinks, and also medical services.

- The witness knew that during the popular consultation/ballot on August 30, 1999, the attendance of employees at the local government office reached only 10 %, with only the

fourth echelon of the structural officials were at work and on September 4, 1999, there were no officials left at the Kovalima regency in Suai.

- The number of people of the pro-independence and that from the pro-integration was equal.

- The content of the peace agreement was that the two parties would live in harmony would hand over their weapons, would accept the result of the popular consultation/ballot and the two parties would agree to socialize it.

- The peace agreement on September 3, 1999 planned to be socialized on September 3 through September 7 failed to be implemented, the result of the popular consultation/ballot planned to be announced on September 7, 1999 was advanced to September 4, 1999, so the pro-integration people was not ready to accept the loss in the popular consultation/ballot.

- In the morning of September 4, 1999, the witness went to Betun and on September 5, 1999, met Defendant I in Betun and later on in the morning of September 6, 1999 went back to Suai.

- On September 6, 1999, when the witness came to Defendant I official residence Defendant I had not been arrived there yet, and arrived from Atambua, at around 10.00 WITA, and not long after that, Defendant I (sic!) and Defendant III arrived to meet Defendant I.

- At that moment, the witness heard Defendant I ordered to look for a tank truck (truk tangki), which was being used in Betun to serve refugees from Betun and made the preparation to build a command post (posko) in Betun.

- Nearing 14.00 WITA, the witness intended to go to Betun through a route passing the church, but in front of the market he was halted by officers and told to avoid the route because a riot had erupted at the church.

- From the spot he was halted, the witness saw within 200 m distance Defendant I wearing civilian T-shirts, Defendants II and III wearing their official uniforms, and carrying HT radios, but did not hear what the ongoing conversation was about, when the witness heard several shots coming from the church direction.

- At the time, the witness saw the masses had been running in all directions in panic, some approaching Defendant I to ask for help, Defendant I was seen shouting at the people to retreat and break up.

- On the testimony of the witness, Defendants I, II, III, IV, and V confirm and do not reconfirm (sic!).

22.A de charge Witness ADAM RACHMAD DAMIRI

- The witness had been acquainted with the defendants when the witness was assigned as the Military Territorial Commander IX (Pangdam IX) Udayana since November 1998 until November 1999 in which the witness met the defendants face to face in Suai.

- The witness also knew of the additional back-up troops from Java, the number was more than 7000 personnel from the territorial squads as well as from the fighting squads to face the separatist movement groups.

- As long as the witness knew with the joining of UNAMET, the TNI members could only stay in their posts, which were the Koramil, the Kodim, and the battalion, termed as the pocketing (kantongisasi) operations, although there were many requests from the people who opposed the withdrawals from residential areas because of feeling threatened by groups wanted to murder and terrorize them.

- Kantongisasi regulations were applied only to the TNI personnel, sent in from Java island while some of the TNI personnel including the territorial officers like the officers of the Non-Commissioned Law Enforcement Office (Babinsa), the Koramil, the Kodim and the Korem were still allowed to have outside duties.

- All activities related to the change of officials or TNI personnel should be done with permission from UNAMET.

- The refugees from Ave Maria church compound, Suai, from the pro-independence group refused to be secured by the TNI, so that the territorial TNI apparatuses only secured the distant area to avoid intimidations from the pro-independence group.

- The witness, as the Pangdam of Udayana had never received direct reports of the situations in Suai town from the Dandim and the Danrem that conflict of masses or masses attack was going to happen in Suai.

- After the popular consultation/ballot implementation on August 30, 1999, the witness received reports from the Danrem saying the situation in East Timor heated up.

- After the popular consultation/ballot, the witness instructed the Danrem to organize a peace agreement so that whatever result of the popular consultation/ballot would be accepted, as the popular consultation/ballot was conducted to decide the future of East Timorese and the peace meeting was held in Suai on September 3, 1999, organized by the representatives of the Muspida in Suai also attended by UNAMET personnel, and witnessed by pastor HILARIO.

- The witness had received reports from the Danrem that after the popular consultation/ballot on August 30, 1999 there were changes in the situations as protests concerning the alleged frauds by the UNAMET in the process of popular consultation/ballot, after which the people had planned to make a large-scale demonstration at UNAMET'S office.

- The witness heard and knew that the result of the popular consultation/ ballot earlier planned to be announced on September 7, 1999, was forwarded to September 4, 1999, without official notice on the change of the announcement date but the witness had been informed from Jakarta that the result of the popular consultation/ballot's announcement was to be advanced to September 4, 1999.

- The witness, on September 2, 1999, made a phone call to JAN MARTIN, the Chief of UNAMET, saying representatives from the pro-integration group would like to express their disappointment concerning the implementation of the popular consultation/ballot and that UNAMET should meet the representatives.

- On September 3, 1999, the aspiration was declared to UNAMET, but the aspiration was not responded by UNAMET so that on September 4, 1999, UNAMET persisted in announcing the result of the popular consultation/ ballot.

- After the situation in East Timor had heated up and UNAMET realized the development of the situation which the UNAMET pointed out that the police personnel could no longer control the situation, so that after coordinating with the East Timor Kapolda, the Danrem 164 Wira Dharma requested approval from UNAMET to take over the Kodal Command to allow the TNI to have additional power.

- The witness knew that after the transfer of the Kodal Command on September 5, 1999, on 19.30 WITA, the TNI had the necessary authority to implement direct security measures and that the TNI troops in East Timor could operate outside their posts.

- The TNI had tried to do their duties and came (sic!) managed to secure more or less than 3500 UNAMET personnel and vital objects initially controlled by the local people, but then left unattended.

- To support the transfer of Kodal Command, the witness had a concept of code named RO Cabut II to control the situation and later the witness added the strength with 2 battalions. With the additional strength together with the police they tried to gain control over the situation to secure state assets, to secure UNAMET personnel and foreigners.

- The form of the transfer of Kodal Command was declared in the Letter of Mandate (ST) from the Pangdam TNI IX Udayana to the Danrem in the letter ST No. 551/1999 dated on September 5, 1999.

- The witness heard about the incident at the church in Suai from the report of the Danrem and the witness instructed the Danrem based on the report of the Suai church incident the four instructions: to prevent the fall of more victims, secure the remaining refugees, find the perpetrators of the crime, and no more similar conflicts occur in other places.

- The witness had never allowed the riot or conflicts happened in the witness' jurisdiction including that in Ave Maria church compound in Suai.

- As long as the witness knew, the number of TNI personnel was quite significant to effectively do their jobs in the field.

- On the testimony of the witness, Defendants I, II, III, IV, and V express no objections.

23.A de Charge Witness Drs. GM TIMBUL SILAEN

- The witness knew Defendants I, II and III, but had never acquainted with Defendants IV and V.

- The witness was assigned as the Kapolda of East Timor since July 1998 until September 1999.

- At the time, the Kapolres of Suai was Defendant III.

- The witness had heard about the riot at the Suai Kovalima church after the popular consultation/ballot was done, which was at the end of September 1999.
- When related to the security measures during the popular consultation/ ballot with the HANOIN LOROSAE 99 Operation, the security measures should be the responsibility of the police who had the full authority, assisted by other officials.
- HANOIN LOROSAE 99 Operation was an operation with the main task of the East Timor police force to maintain and secure the UN missions in the preparation process of the popular consultation/ballot in East Timor.
- In the further development, after the chaos, HANOIN LOROSAE II Operation had been prepared with a task to secure and to evacuate the refugees who wanted to enter (sic!) East Timor.
- During the security process for the popular consultation/ballot in East Timor with a normal estimation police personnel in East Timor were adequate for duty assignment because it was proven nothing happened, but after the post popular consultation/ballot riot, the number of police had become unequal with the riot event.
- The number of police members assigned was initially reaching 3000 personnel, and then added with 3600 more with the main task to secure vital projects and assist people who wanted to take refuge.
- Concerning the incident at Ave Maria church of Suai, Defendant III made no direct reports to the witness but reported to the Wakapolda which then forwarded to the Kapolri.
- During the announcement of the popular consultation/ballot result on September 4, 1999, the witness was still in Dilli, then on September 15, 1999, the witness left East Timor.
- It was true that before and after the popular consultation/ballot, the witness saw indications that the situation disrupted the security.
- The numbers of police assigned in Suai were around 100 and 200 personnel, and during the popular consultation/ ballot was added with 2 company squads (SSK) from Java to assist the security maintenance.
- Everyday, through written reports and phone calls, Defendant III always filed reports on the situation of Suai town, especially on the number of refugees which had increased by thousands each day.
- To accommodate thousands of refugees, as many as 3000 assigned officers had been considered adequate.
- The witness heard of an anecdote spreading in East Timor saying: "If the autonomy wins, blood drips, but if the autonomy lose, blood flows."
- There was no early indication for the apparatuses that the church would be used as the location of a possible riot, but the facts showed that at that time the riot had taken place as reported by Defendant III.

- The date for the announcement of the result of the popular consultation/ ballot earlier planned on September 7, 1999, was advanced to September 4, 1999 without clear reasons.
- On the testimony of the witness, Defendants I, II, III, IV, and V have no objections.

24.A de Charge Witness M. NOER MUIS

- The witness was assigned as the Danrem 164 Wiradharma, East Timor, from August 13, 1999 until March 30, 2000.
- The main task of the Korem was to accommodate geographical and demographical potentials, as well as social conditions to provide space, equipments and struggle conditions in the territory, so that able to support the defense system in the territory in supporting the defense system of the Kodim.
- Besides the main task, the Korem had special tasks to ensure the success of the popular consultation/ballot in Suai, with the details of tasks according to the supervisor command.
- In East Timor, after the announcement of the 2nd option, there was the pro-integration forces (PPI) organization in which included among others LAKSAUR, MAHIDI and BMP (Besi Merah Putih) in Liquisa.
- During the process of the popular consultation/ballot in East Timor, a task force or PP3TT was officially established with its members were from the Foreign Affairs Ministry (Deplu), and TNI army headquarters (Mabes TNI), which in charge, among others to manage the voting posts (TPS).
- The witness knew about the Committee for Peace and Stability, called as KPS in regencies level, with its elements were representatives of the pro-integration group, the pro-independence group, the TNI and the Polri, which had no structural relations with the Korem, but facilitated by the Korem.
- The witness knew that UNAMET often interfered with the matters concerning the TNI, among other things, in the change of leaders in the posts of the Danrem of Dili, Maliana and the Dandim of Suai.
- The witness knew about the PAM SWAKARSA in Suai, it was local community activities in the neighborhood unit (RT) and community unit (RW) levels, to control crimes in their areas.
- The number of MILSAS in Suai was between 200 and 300, and this group had become the source of strength for the TNI in certain areas without the required military standard procedures, due to the needs of son of local natives.
- According to reports received by the witness, nearing the popular consultation/ballot, physical conflicts had occurred between the pro-independence and the pro-integration groups resulting in the wounded and dead victims.

- During the process of the popular consultation/ballot from the campaign stage to the implementation stage the security commands were in the hands of the police while the TNI assisted the police with permission from UNAMET.
- On August 13, 1999, the witness made an official visit to the Kodim 1635 Suai, and saw Ave Maria church, Suai, which was the best church in East Timor and had sheltered refugees so the witness asked his subordinates to coordinate with the local government and UNAMET concerning the church being used as refugee shelters.
- Under the orders of the Pangdam IX Udayana, as the Chief of the Operational Commandoes (Pangkoops), on August 23, 1999, the witness again visited Suai town and visited Ave Maria Catholic church compound to check on complaints expressed by according to Pastor were 2000 refugees who lacked water necessities.
- On August 29, 1999, the witness held a meeting with FRETILIN prominent figure from the pro-independence to make a peace agreement to ensure success of the popular consultation/ballot and avoided bloodsheds.
- On August 30, 1999, the popular consultation/ballot was implemented during which the pro-integration group accused UNAMET of cheating in 89 voting posts (TPS).
- On the alleged frauds by UNAMET the pro-integration had planned to organize a large-scale demonstration against UNAMET in Dilli, but was prevented by the witness suggesting them to make a written protest instead while at the time the situation started to get alarming.
- In accordance with the planned stages of the popular consultation/ballot, the announcement of the popular consultation/ballot should be made on September 7, 1999.
- On September 2, 1999, in a meeting with UNMO, KPS elements, P3TT Military task force elements, the Danrem, and the Kapolda, UNAMET suggested to advance the announcement of the popular consultation/ballot to September 4, reasoning that all the voting cards (sic!) and already counted, and that the result could be determined on September 3, 1999, and it would be unsafely too long to wait until the morning of September 7, 1999.
- During the meeting, the witness, as the Danrem strongly opposed the plan to advance the date of the announcement of the popular consultation/ ballot, reasoning the people of East Timor were already informed that the announcement of the popular consultation/ ballot was scheduled for September 7, 1999, and if it should be changed abruptly, not all of the East Timorese would know as many of them lived in remote areas.
- The witness reasoned that if the announcement was made on September 7, 1999, the five-day period between September 2 and September 7, 1999 was a chance to socialize various activities initiated by the Danrem, which could not be executed due to the advancement, and another reason was that the strong complaints from the pro-integration group had not been fully responded by UNAMET. But the witness' reasons were not heard, and finally the announcement on the result of the popular consultation/ ballot was made on September 4, 1999, in which 21,5 % votes was for the pro-integration, and 78,5 % votes was won by the pro-independence, and after the announcement, the situation in East Timor had becoming chaotic.

- Due to the chaotic situation, the witness made coordination with UNAMET, while at the time, the police could no longer control the situation, so that the TNI was to be joined in, and so that the transfer of Kodal Command should be implemented which was approved by UNAMET.

- With UNAMET 's approval on the transfer of Kodal Command, the witness had requested for additional force from the Upper Commandoes (Komando Atas), in which in the mornings of September 4 and 5, 1999, a company of soldiers had arrived, but the Kodim 1635 of Suai could not get the allocation of the additional troops.

- The result of the coordination with UNAMET was reported by the witness to the Pangkoops of Nusra, resulting in the issuance of a letter from the Pangdam IX Udayana on the transfer of Kodal Command from the Kapolda of East Timor to the TNI Commander as the Pangkoops of Nusra, as well as the application (memberlakukan) the Operation Plan (RO) Cabut II, to become the Operation Order (PO) Cabut II, started on September 5, 1999, at 7.30 pm WITA.

- With the transfer of the Kodal Command, the functional tasks were still in the hands of the present elements such as upholding the law as the responsibilities of the police, which did not leave out the obligations of each of the functions.

- On September 6, 1999, at 16.30 WITA, the witness received a short report from Defendant II saying there had been a mob fight between young people of pro-integration group and those of the pro-independence group resulting in the unknown number of victims.

- Responding the report, the witness ordered Defendant II to make a maximum use of the personnel available to avoid further clashes, and secure the premises of the Ave Maria Catholic Church, Suai.

- The detailed reports from Defendant II was received by the witness on September 10, 1999, when Defendant II was summoned back to Dili to be assigned as the assistant to the intelligence of the Military Emergency Army started on September 7, 1999.

- On the testimony of the witness, Defendants I, III, IV, and V express no objections, and no response. Defendant II confirms all the testimony of the witness.

25.A de Charge Witness BUDI SAMPURNA, SH, SpF

- The witness was assigned in Kobalima (sic!) district, Belu regency, East Nusatenggara (NTT) on November 25 and 26, 1999, to excavate masses graves in South Alas village.

- The witness, with 2 medical doctors, had been requested by the Public Prosecutor's Office of East Nusatenggara (NTT) to assist the team of investigators of the Komnas HAM, in charge of the masses grave excavations, and the witness made the visum et repertum report for each of the unearthed body.

- The excavations were conducted by the team of investigators from the prosecutors office of East Nusatenggara (NTT) and the Komnas HAM at the sandy, bushy coast started at 7 am WITA until 16.00 WITA.

- There were 3 masses graves, marked by their sunken surfaces and more tender soil compared to those of the surrounding area, which made them easy to identify.
- The excavation of the masses graves were unearthed in layers, with each layer of soil measured some 10 cm, and 70 to 110 cm in depth, which on the 90 cm depth, the plastic mats, used to cover the top of the piled corpses, were unearthed.
- As many as 26 corpses were unearthed, each of them still wearing their ordinary clothes, wrapped again in wide cloth, which looked like mats.
- There were 3 masses graves; the first grave had 12 corpses, the second had 3 corpses and the third had 11 corpses.
- Since the corpses were still in their original clothes, the witness could still recognize the bullet holes on the corpses' clothes.
- On November 25, 1999, on the location of the excavations, the witness could examine only 3 corpses, with the rest were sent to Atambua Hospital for further examinations.
- On November 26, 1999, the witness, with the other team members started to work at around noon, until reaching nightfall, and had managed to examine the remaining 23 corpses unearthed from the masses graves in Kobalima district.
- Based on the result of the examinations by the forensic team led by the witness, 17 corpses were identified as males, and 9 corpses were males (sic!) including a child.
- The 26 corpses, based on the examinations by the forensic team consisted of 12 corpses with their death caused by gunshots, 8 corpses with death caused by sharp tools, and the other 3 corpses with unidentified causes of death. Each of the 26 corpses had a visum et repertum report, Number 001/TT.3002/SK.II/XI/1999 to Number 026/TT.3002/SK/XI/1999, each of which, dated on November 30, 1999.
- On the material evidence presented in court, the witness said did not remember, as it was over 3 years ago, and the witness had been familiar to seeing similar things.
- On the testimony of the witness, Defendants I, II, III, IV, and V have no objections.

Considering:

- The public prosecutors had requested to the court to read the testimonies of the witnesses who had been summoned several times by the court but failed to make attendances due to several reasons, Witness TRIMO SUNGKOWO could not attend the court due to stroke illness, while the respective witnesses TOBIAS DOS SANTOS, FRES DA COSTA, ARMENDO DE DEUS GRANADEIRO, based on the letter of the General Attorney of Timor Leste, could not attend the court for safety reasons and due to the request, the court ordered the public prosecutors to read the complete testimonies of the witnesses as stated in the BAP, which were considered one unit within the judgment.

- For the testimonies of the witnesses, the defendants I, II, III, IV, and V denied the all the testimonies concerning the information involving the defendants in committing crimes, and stating that the testimonies consisted of lies and requested the testimonies to be denied as evidence.

Considering, that the defendants had given their own testimonies in the court, which mainly stated as follows:

1. DEFENDANT Col. Inf. Drs. HERMAN SEDYONO

- Defendant I was assigned as the regent of Kovalima, started in September 1994 to September 7, 1999.
- Defendant I, as the regent had duties and responsibilities in managing the development administrative, social administrative, and government administrative in general.
- Defendant I knew of the tri-partite agreement on May 5, 1999, signed by Indonesia, Portugal and the UN on organizing a popular consultation/ ballot to decide the future of East Timor.
- On May 1999, to the people of East Timor, the independence and integration options were announced at the governor's office.
- The process of the popular consultation/ballot started in early May 1999 until early September 1999, which was a continuing activity, based on New York agreement on May 5, 1999 which determined the implementation stages process of the popular consultation/ballot, however, the practice of the stages was not in accordance with the agreed plans.
- The local government's role in the popular consultation/ballot was to provide a building for UNAMET office including the necessary facilities.
- The popular consultation/ballot earlier planned by UNAMET to take place on August 8, 1999, was changed to August 30, 1999, and the announcement on the result of the popular consultation/ballot earlier scheduled on September 7, 1999, was suddenly advanced to September 4, 1999 for unclear reasons, in which the pro-integration got 21% of the votes, with the rest of the votes for the pro-independence.
- The implementation of duties of Defendant I was supervised by the governor, and with the district heads down to the village heads as his subordinates.
- The Defendant knew that PAM SWAKARSA was security group unit established by the civilians within their own communities.
- Some of PAM SWAKARSA members were those from the pro-integration group and pro independence group, depends on the leaders.
- LAKSAUR group was established by community to compete the activities of CNRT or the pro-independence group in Suai.
- The leader of LAKSAUR, OLIVIO MORUK was once reported dead by the newspapers.

- OLIVIO MORUK was a civil servant assigned in the general division of the local government office, and also a former village head who was dismissed for violations of allegedly embezzling the government's fund, and harassing a man's wife.
- Defendant I knew about the existence of LAKSAUR after he went home from Java on July 1999 and Defendant I felt he had no related commandoes either on the supervisory or the subordinate levels with the LAKSAUR.
- In accordance with the governor's direction, the members of PAM SWAKARSA were paid as compensations to provide incomes for the families left for their security duties Rp. 150,000,- per month, in a 5 month period, starting May 1999 up to September 1999.
- As the regent or head of the local government, Defendant I always supervised the village heads to maintain order in their own area, and avoid intimidations of outsiders.
- PAM SWAKARSA had no higher supervisor, but they were controlled by each of the village heads, while Defendant I had only provided necessary supervisions and advice.
- The activities of LAKSAUR and Pro Integration were to give motivation to the community not to be influenced and intimidated by the pro independence or CNRT during the popular consultation/ballot.
- The 2 options for the people of East Timor made the 2 groups, the pro-integration and the pro-independence mocked each other in the harsh competition to win votes but whenever a conflict occurred, Defendant I always tried to mediate the solution through peace measures, and in order to prevent conflicts, Defendant I placed a police post near the market.
- Long before September 6, 1999, Defendant I often provided rice aids as requested by LAKSAUR group.
- LAKSAUR group armed themselves with sharp weapons such as machetes or short machetes, which had been daily tools for the people of East Timor called "katana", bows and arrows, and several homemade firearms.
- The number of LAKSAUR members reached thousands, and its activities before and after the popular consultation/ballot were considered positive.
- LAKSAUR had once organized a demonstration against UNAMET, expressing protests on the alleged frauds in the popular consultation/ ballot, and demanded their complaints to be properly responded.
- In August 1999, the refugees in the church of Suai were restless due to the lack of water, which they reported to UNAMET, who then forwarded to the UN and then UN requested attention from Defendant I, who then made a visit to overcome the problem, and found out that the water source had no water.
- After the result of the popular consultation/ballot was announced, in which the pro-independence won, most of the people in the church premises, on September 4, 1999, were shouting in victory, and screaming out that the Indonesians should immediately leave, and the

Kovalima Muspida had once called on the priests to ease down the shouts, as they could lead to negative results.

- At the time, there had been a high number of mobility among people, all the people, from the pro-independence or the pro-integration groups, had blended in as refugees, and the group of people in the church once tried to destroy Defendant I's and the head of the local legislators' cars.

- In the occurring conflicts between the 2 groups, there was not yet any law enforcements as there were no committed crimes.

- To the refugees in the church, the Muspida had called out to return to their villages with escorts from the Kodim and the refugees, and were supplied with rice, but many of them came back.

- Concerning the refugee shelters, Defendant I had ordered Defendant III to provide special protection for the refugees in the Suai church premises, while the local community leaders had offered the church's priests, the security assistance from the police or the Kodim, but the offer was turned down by the priests saying that the church youth had provided the necessary measures to secure the refugees.

- During the activities of evacuation of the refugees on September 5, 1999 the regent often coordinated with Belu regent in Atambua to ask for a land especially to allocate the refugees from Kovalima regency, so Defendant I could control his people who sought in Betun regency.

The reasons of the people to seek refuge were the attack to transmigration people in Jumalai district, murders of 3 residents in Kuluan village, intimidations to East Timorese to give donations otherwise they would be killed, a kidnap in Falulolik district which was a remote uphill area, an ambush in which the Danramil of Tolotoi was ambushed and killed, threats against non-native residents.

- The announcement of the popular consultation/ballot won by the pro-independence made Defendant I deeply disappointed and felt like crying, as the long devoted work in Kovalima regency but the popular consultation/ballot's result made it useless, but Defendant I was still resolute and continued his duty to evacuate the refugees.

- On September 6, 1999, afternoon, OLIVIO MORUK came with 3 people to meet Defendant I, who was asked by the Defendant I: "What are you doing here?" and he answered: "Nothing, sir. I'm just looking around." At that time, many people had gathered in the regent's residence. After that they left to unknown place.

- When Defendant I talked to OLIVIO MORUK, at that time at the Defendant I' house, there were Defendant II and III who were talking about the distribution of duties on securing the evacuation of refugees, which became the responsibility of Defendant III.

- During talks in the meeting on September 6, 1999, suddenly shots were heard then the Defendant III from a HT radio received reports from a member of Kapolres that something was going on at Ave Maria church, and then the Defendants I, II and III went straight to Ave Maria church in their own cars.

- Upon arrival at the TKP, many people were already outside the church compound, and the masses from below (sic!) had already gathered on roadsides trying to enter the churchyard, and at the location where the three defendants were standing, there was a gunshot coming towards them.
- The mark that the gunshot was directed towards the three Defendants was that there were bullets that went through a kiosk some 5 meters away from the 3 defendants and was around 20 meters distance from the church compound gate.
- Arriving at TKP, the Defendant I saw a unit of Brimob who were around the police post at the market to hamper the conflict, as the masses had started to force their way forward the Defendant I was prohibited from entering the compound.
- Towards the masses who got out of the church compound, Defendant I requested Defendant II and Defendant III to secure the masses preventing possible victims, as there was a child among the masses bursting out of the church who was wounded in the arm and had to be escorted to the Kodim or the Polres Headquarters.
- Defendant I saw members of the Brimob and the TNI members outside the church compound gate, their numbers were 8 people, while at the inside, Defendant I saw no members of the TNI or Polri.
- Besides the Brimob and Polri members, there were other units but they were unclearly seen since they were blended in the masses but not involved in the conflict.
- The defendant saw several wounded people came out of the church escorted by the officers to be treated and brought to the Kodim Headquarters.
- At the TKP Defendant I saw OLIVIO MORUK, the leader of LAKSAUR in a far distance from the defendant's position, shouting repeatedly, but Defendant I did not know whether or not OLIVIO MORUK saw him.
- Defendant I left the TKP around 16.00 hrs WITA, with the situation still in the one-two-one-two action (sic!) going to the Kodim, visiting his house before continuing the trip to the Kodim.
- After the conflict at the Suai church had eased down, there were spreading informations that the maKodim, the maPolres and the regent's residence were going to be attacked.
- Defendant I did not know whether or not the perpetrators were caught, as in the TKP, Defendant I had requested Defendant III to handle the situation of the church problem and the Dandim to secure and assist the police.
- Defendant I had never imagined there would be no conflict, there would be only possible disturbances, and if conflict occurred definitely it was between the pro-independence and the pro-integration groups.
- In the chaos, Defendant I and the other apparatuses had no chance to catch the perpetrators, or made peace efforts as the defendant had no authority in the area.

- On September 6, 1999 evening, around 20.00 WITA, Defendant I received news from Defendant IV that there were victims in the incident, among others were 3 pastors though the number of all the victims was yet to be determined, then Defendant I requested members of the Kodim to make coffins for the proper burials.

- At first, Defendant I did not know where the bodies of the victims of the incident were taken to and where they were buried because at the time Defendant I was busy accommodating the refugees sheltering in Atambua also providing logistics for the refugees but finally Defendant I heard from the mass-media later on that the bodies were buried in a location in East Nusatenggara (NTT), and that after the conflict the Muspida had no chances to meet again.

- On September 7, 1999, going to Atambua on September 8, 1999, the defendant left Suai and did not return as most of the people there were gone.

- Defendant I did not recognize the material evidences presented in court.

DEFENDANT II, Col. Czi. LILIEK KOESHADIANTO

- Defendant II was assigned as the Acting Dandim since August 29, 1999 until September 8, 1999, under an oral mandate from the Pangdam IX Udayana, with the main duty to accommodate the geographical and demographical potentials, and the social conditions to function properly.

- Besides the main duty, Defendant II had been given the authority and special tasks from the Pangdam IX Udayana to ensure the success of the popular consultation/ballot, as well as developing harmonious relationships with UNAMET and UNMO personnel.

- Defendant II, in carrying out his duties was supervised and given orders from the Pangdam IX Udayana, as well as from the Danrem 164 Wiradharma.

- Defendant II knew about PAM SWAKARSA in villages but did not know who established and trained them.

- Defendant II heard about LAKSAUR group but did not know about its activities its members and the leader.

- The situation up to the announcement of the popular consultation/ballot was not conducive, as at the time the security maintenance was under the police Kodal command.

- Defendant II, on September 5, 1999 assisted in the evacuation of 130 UNAMET personnel, with a full support from personnel of the Kodim 1635 Suai and Kovalima Polres.

- There was a regulation from UNAMET concerning the security maintenance during the popular consultation/ballot that Polri personnel could be posted in 200 m distance while the TNI personnel in 500 m distance, from a TPS.

- In the peace meeting on September 3, 1999, the Kapolres had offered to handle the security measures at the church compound, but the pastors answered that the security could be sufficiently handled by the church youth.

- Based on the result of the coordination with the Muspida, Kodim 1635 Suai after the popular consultation/ballot secured the vital objects, such as the state-owned telecommunications (Telkom), Logistics Depot (Dolog), and the state-owned electricity company (PLN) because the PLN had no longer operators.

- On September 6, 1999, around 12.30 pm WITA, Defendant II met Defendant I and III and a police Lo (Liaison officer) officer at the regent's residence to talk about the evacuation process of the UNAMET personnel on September 5, 1999.

- Based on the given information, around 20,000 refugees had gathered in the refugee meeting points at SMP 1 middle school, SMP 2 middle school, and SD Mata Air elementary school, in which they desperately needed aids for food transportation and security maintenance, because they repeatedly came in and went out to meet the Kapolres and Dandim as well as to anticipate unwanted matters.

- Defendant I delivered 9 trucks, 7 of which were halted by the refugees along the border route toward Suai town so that only 2 trucks left, and at the regent's residence there was a badly broken bus after a crash accident, however, could still be used.

- At the regent's residence, Defendant II heard shots coming from the church direction, and through a HT radio of Defendant III there was a report on the ongoing conflict at the churchyard.

- Later on Defendant II ordered Defendant IV through the radio to prepare the members of the Kodim, while Defendant I had left for the TKP followed by Defendant III, and Defendant II left soon afterward with Defendant IV.

- After around 10 minutes at the TKP, Defendant II saw many people rushed out of the church crying, then many refugees outside the church tried to force their way in.

- Defendant IV ordered to mobilize members to hamper the people trying to force their way into the church and then Defendant IV members in patrol vehicles.

- In TKP, Defendants II, I, and III chased away people who were intimidating and forcing people out of the church, also gave directions to the members of the Kodim.

- During the chasing, Defendant II shouted get back get back I'll shoot.

- When the the refugees coming out of the church compound had diminished, Defendant II received information from Defendant III that there were masses who were going to attack the refugees who were at the maKodim and the maPolres.

- Arriving at the maKodim, Defendant II ordered Defendant IV to secure the refugees who were at maKodim and anyone trying to attack the quarters, would be shot at.

- In the maKodim, nun's room was separated from other refugees.

- On September 6, 1999 evening, Defendant IV, based on reports from the refugees, reported to Defendant II, that resulting from the conflict at Ave Maria church, Suai, there were several

dead victims, which Defendant II later knew, when he was already in Dili, that the numbers were 27.

- On September 7, 1999, there was a telegram came from the Danrem 164/WD (Wira Dharma), telling the defendant to prepare his departure to Dili to post as the assistant to the intelligence (asintel) PDM.

- The incident on September 6, 1999, at 13.00 WITA was reported by Defendant II, as the asintel PDM to the TNI Commander with the copies of the reports sent among others to Danrem 164/WD and Pangdam IX Udayana.

- As the numbers of refugees were increasing, the Kodim's attention was focused on measures to accommodate the refugees in which the defendant had no chance to contact Defendant V so that Defendant II had no chance to know the Defendant V's condition who had carried out the burials for the victims of the conflict at Ave Maria church, Suai.

DEFENDANT III, Adjutant to the Commissioner of the Police Superintendent (AKBP) Drs. GATOT SUBYAKTORO

- Defendant III was assigned as the Kapolres of Kovalima since 1998 until September 1999, based on the Letter of Mandate from the Kapolri as well as the Kapolda of East Timor, with the main duty to serve people in maintaining security and order and upholding law.

- Defendant III had special tasks to secure the popular consultation/ballot based on the order of HANOIN LOROSAE 99 Operation and based on the order of HANOIN LOROSAE II started to take effect on September 1, 1999, on securing the evacuation of refugees assisted by 2 companies of Brimob troops and one company of pathfinders (perintis) consisting of 250 people and a unit of TNI task force.

- The evacuation had been started in August 1999 especially for non-native people such as teachers and civil servants and the refugees were evacuated to Kupang, Bali, and Java island.

- After the announcement of the popular consultation/ballot, Defendant III had difficulties to find transportations and logistics for the refugees at the refugee meeting points. The problem was discussed with the 2nd level of Muspida Kovalima on September 6, 1999 at the Defendant I's residence.

- The refugee meeting points in Suai town were SMP 2 middle school building, SMP Keladi middle school building, the Polres office, and MaKodim to facilitate the transportation.

- In the evening of September 4, 1999, the number of refugees was increasing and the refugees who were inside the church had different intention to those refugees from other places, they did not want to leave East Timor, and the pastors had refused to be given special security offered by the apparatuses.

- On September 6, 1999, Defendant II and Defendant III were discussing the refugee problems at Defendant I house, when OLIVIO MORUK and his friends came standing on the front yard, and then Defendant I approached OLIVIO MORUK and talked for several minutes

but Defendant III could not hear what the talk was about and then OLIVIO MORUK left the place.

- While Defendant III was talking to Defendant I and II suddenly shots were heard, and at the time, reports sent through the HT radio carried by Witness IMAM JAUHARI said that there were conflicts inside the Suai church, after that Defendant III left for Suai church along with Defendant I and Defendant II, and upon arrival at the market near the church, Defendant I, II, and III were halted by Brimob members to stop and not entering the church compound since it was dangerous because there were shots coming from inside.

- Defendant III saw many people gathered around the church compound and shots were heard coming from inside, and several members of the TNI, the Brimob and the police tried to chase away people who came towards the church, at that time Defendant III summoned members who were mapolres through the HT radio.

- Defendant III had difficulties to distinct pro-integration with the pro-independence members as they had no permanent uniforms.

- With the preventive measures by the police, Brimob and TNI members, the situation eased down and at the time Defendant III saw several wounded people came out of the church compound escorted by Defendant IV and the TNI and police passing by the place where Defendant III and Defendant II and I had gathered.

- At the time, Defendant III chased away approaching people, while saying "watch out, don't disturb", then with directions from Defendants I, II, and III the wounded people and other refugees were brought to MaKodim and some to the mapolres to be secured, protected, and given adequate medical treatment.

- LAKSAUR literally means a large-black hawk (rajawali) was led by OLIVIO MORUK, a civil servant and former village head and MAHIDI, the acronym of "Dead or Alive for Integration" (Mati HidupIntegrasi (sic!)), was placed in Ainaro regency, and was led by VASCO DA CRUZ, a former policeman who made a resignation and became a village head.

- Defendant III had seen OLIVIO MORUK carrying a firearm and when he was warned, OLIVIO said that he just kept the weapon left by Portuguese.

- The regulations stated that civilians were not allowed to carry firearms without authorized permits.

- Defendant III knew about the SWAKARSA security system in which its members consisted of Kamra and Satpam. The Kamra were civilians of 18 years old, not civil servants, and wearing light brown uniforms, while Satpam wore white-and-blue uniforms, similar to those of the Telkom and the Post Office.

- Kamra and Satpam were not similar to LAKSAUR and MAHIDI.

- The meaning of the words "watch out don't disturb" was that if anyone interfered would be punished and a member had committed it, if anyone interfered would be shot at.

- The police at the TKP were 9 people added by back-up from the Polres, some were fully equipped and saw several of the Brimob members made warning shots upwards.
- Comparing the number of the police that was only 17 personnel added by Brimob members of 1 battalion of more or less than 20 personnel to the number of the conflicting masses at the church compound that were thousands it was impossible to apply severe measures of arresting people or seizing their firearms.
- Defendant III saw, from a far distance Brimob members fired warning shots upwards alongside the outer part of the church to chase away the loud crowd trying to come into the church compound.
- The position of dozen of Kodim members were making preventive measures by blocking and chasing away the masses who tried to come into the church.
- The rioters could not be arrested because Defendant III did not know what the problem was and there were no law enforcement officers to make the arrests, investigation and prosecution at the premises.
- In conducting his tasks, the Defendant III used term of no crimes in front of eyes so whenever there were indications of possible crimes were prevented from being seen again.
- Defendant III after JACOBUS TANAMAL, as the Kapuskodal arrived in the TKP the defendant ordered for an investigation and securement of the TKP and instructed further to his ranks to prevent more conflicts like at Ave Maria church, Suai. Later on the defendant left the TKP at 16.00 WITA.
- In the evening, Witness JACOBUS TANAMAL reported to Defendant III that based on the investigation there were dead victims of the incident during the afternoon, which number was yet unknown. The cause of the conflict was disappointment on the part of the pro-integration group led by OLIVIO MORUK, for losing the popular consultation/ballot.
- Defendant III ordered the detective squads unit to look for OLIVIO MORUK but he was not found at that time and read newspapers and watched TV news in Kupang, reporting that OLIVIO was in Atambua, and was already dead.
- Defendant III was informed by community that the dead victims had already been brought by people to the west.
- Defendant III had Second Sergeant (Serda) BUDI, Major Sergeant (Serma) SYAMSUDIN, Serka MADE SUARSA, First Sergeant (Sertu) ARNOLUS NANGGALO, and Second Sergeant (Serda) MARTINUS BAIN. But during the incident they were all not seen at the TKP.
- Kodal Command, based on the tri-partite agreement was in the hands of Polri and based on the TR (sic!) received by Defendant III in the morning of September 6, 1999, Kodal Command had been handed over from the Polri to the TNI since September 5, 1999.
- With the transfer of the Kodal Command, Polri was still in charge of the special operations, the HANOIN LOROSAE II, on evacuations of refugees.

- Defendant III did not recognize the material evidences presented in court.

DEFENDANT IV, Maj. Inf. ACHMAD SYAMSUDIN

- Defendant III (sic!) was assigned as the Kasdim/1635 Kovalima since September 1, 1998 until September 12, 1999.

- As the Kasdim, he had a supervisor who was the Dandim Lieut. Col. Inf. MAS AGUS, who was replaced, without the defendant knew of the reason, by Defendant II, Lieut. Col. Czi. LILIEK KOESHADIANTO.

- Defendant IV had duties to assist the Dandim coordinating his staff, and to assist in managing on-duty officers, to assist the sons of local natives during the popular consultation/ballot.

- LAKSAUR was only a term of the people, and Defendant IV did not know its members.

- The Dandim had the duties to give briefings to staff and the Danramil, and especially to the Danramil who was emphasized that Koramil should assist the police in securing the popular consultation/ballot.

- Defendant IV knew the popular consultation/ ballot was implemented on August 30, 1999, and the authority in charge of the security maintenance was the police, as the Kodim only assisted the police work.

- The popular consultation/ ballot was safely, smoothly and orderly conducted, won by the pro-independence group, and announced on September 4, 1999.

- The duties of the Kodim 1635 Suai after the CABUT II Operation took effect, were securing the vital objects, put the security maintenance in the Kovalima area as their first priorities, assisted the police in the evacuations of refugees, and assisted in securing the evacuation points.

- After the announcement of the popular consultation/ ballot, there had been a mobility of people, in which people from the uphill areas and the villages sought refuge within Indonesian territory.

- There were refugee meeting points in Suai, the maKodim, SMP II middle school, the Kodim and the Polres barracks compound, Koramil of Suai, and part of the SMP 1 middle school near the Koramil.

- People sought refuge because they were afraid of FALENTIL (sic!) group, whose members were men from up-forest areas they used guns to threaten and scare people.

- Defendant IV actions were coordinating the Kodim members to assist and serve the refugees.

- On September 5, 1999, the people organized a movement demanding UNAMET to fulfill the promise to guarantee security in East Timor, which in fact, failed to happen as East

Timorese lived in unsafe situation, and they also demanded UNAMET to be responsible for their frauds during the popular consultation/ ballot.

- Despite the people's demands, all UNAMET personnel were evacuated by TNI and Police out of Suai unhurt.

- In the morning of September 6, 1999, Defendant IV was requested permission from Defendant V to go to BETUN, and Defendant IV gave the permission.

- On September 6, 1999, at 13.00 WITA, the defendant heard about the incident at the church after hearing gunshots, and Defendant II, through the HT radio asked about the gunshots, and ordered Defendant IV to stand by his officers.

- The defendant gathered the officers to strengthen the security in the Headquarters, but soon after that an order came to immediately mobilize his officers to hamper the masses from moving toward the church.

- To be able to hamper the masses from entering the church complex, Defendant IV determined 4 security posts which were near the court house, at the three-way intersection near SMP 2 middle school, at the three-way intersection near the residence of the head of the Regional Legislative Council (DPRD), and near a traditional Padang food stall.

- Defendant IV immediately prepared 20 personnel of the Kodim, led by the Commander of the first platoon (Danton I) of MILSAS, the Chief of Sergeant (Serka) LUDO FICUS ULU, and the driver, the Chief of Sergeant (Serka) MUIS, with the duties to block the route toward the church, and they were adequately equipped with guns for the senior officers and clubs for the other personnel.

- Defendant IV went straight to the TKP at the church compound in a Suzuki Katana jeep equipped with FN 46 pistol.

- Arriving at the TKP, one or two shots were still heard coming from the back of the church, while there was none coming from the outside the church, the situation was chaotic, with the masses moving in all directions.

- In the TKP, Defendant IV saw Defendant I, II, and III were busy trying to secure the masses with shouts: "Stop! Stop!" They tried to ease down the riot by making a blockage, preventing the crowd from entering the church compound.

- When Defendant IV, assisted by Witness Pratu SONIK ISKANDAR tried to prevent the masses from running amuck or violent, Defendant IV ordered: "ISKANDAR, shoot upwards!" and Witness SONI ISKANDAR obeyed by firing 3 warning shots. Soon after that, the loud chaos eased down.

- Defendant IV received orders from Defendant II to secure and evacuate the masses coming out of the church compound to be taken to the maKodim.

- Defendant IV managed to come inside the churchyard as far as the convent to rescue the nuns, a nun helper, school children, and several wounded people who were in pain and scared, then the group of nuns from the church were escorted by the Kodim officers to maKodim.

- Defendant IV never made an attack into the church compound.
- Defendant IV had heard about LAKSAUR group and had known OLIVIO MENDOZA MORUK, the former head of Salele village, but Defendant IV only knew that they had no command links with the Kodim.
- In the church incident, based on the information of the people sheltering at the maKodim, there were many wounded and dead victims, but did not know the number.
- Defendant IV did not know who started the masses conflict at Ave Maria church.
- Defendant IV did not know where the victims of the riot at Suai church were taken to. Just found out, when he was in Kupang, that there was an investigation team who found the bodies buried in Wemasa.
- At 16.30 WITA, after the riot had eased down, the members of the Kodim were withdrawn from the TKP and they did not report on the victims.
- On 19.00 WITA, Defendant IV coordinated with Defendant I on the victims of Suai church incident, in which Defendant IV (sic!) asked Defendant IV to prepare the coffins and assisted the funeral process.
- Defendant IV did not recognize the material evidence presented in court.

DEFENDANT V, Maj. Inf. SUGITO

- Defendant V was assigned as the Danramil 1635-01 Suai since 1992 throughout 1999.
- Defendant V had known OLIVIO since 1998 saw that before the popular consultation/ ballot had carried around a Mauser rifle, and an air-rifle.
- Defendant V had a superordinate, the Dandim and the Defendant V's subordinates were the members of Babinsa (the law enforcement officers affiliating with the civilian administration, posted in villages), and the staff of Koramil.
- The Koramil had 30 members, including 9 personnel of Babinsa, 4 Koramil staff assisted by 4 civil servants.
- Defendant V knew about the popular consultation held on August 30, 1999, which was safely, smoothly, and orderly conducted won by the pro-independence group and announced on September 4, 1999.
- After the announcement of the popular consultation/ ballot, since September 5, 1999, there had been a mobility of people, coming from the uphill areas and villages trying to seek refuge in the Indonesian territory. They had been sheltered in the meeting points around Koramil, the Kodim, SMP 2 middle school, and other places.
- They sought refuge because they were afraid of FALENTIL (sic!) people from the uphill forests, who were armed, always threatened and influenced people.

- On September 6, 1999, Defendant V was in Betun district, since 07.00 WITA, and earlier left for the trip on 6.30 WITA after receiving the permission from Defendant IV.
- After getting the permission from Defendant IV, Defendant V left alone on a motorbike wearing his army-stripped uniform (PDL loreng) and arrived in Betun on 09.00WITA.
- Defendant V went to Betun to look for transportation vehicles to evacuate military personnel and people sheltering in the Koramil.
- Defendant IV (sic!) met Witness dr. AGUS HARYANTO to ask for assistance in looking for the vehicles, and together they went looking and managed to get 3 vehicles: a Panther, a Fuso and a Dyna.
- While waiting for the vehicle, Defendant V and Witness dr. AGUS HARYANTO, went fishing to Betun beach for 2 hours without getting any fish. When he was leaving Betun, Defendant V met Witness PRANOTO, and asked him to go with him to Suai. When they arrived at the Mata Air (Spring Water) village, Defendant V met MARTINUS BERE who said: "Watch out, sir! There is an conflict at the market."
- After that, the Defendant V went to the makoramil and received reports from the on-duty officer about the incident at Ave Maria church, Suai, so Defendant V went straight to the Suai church compound accompanied by Praka ALFREDO AMARAL and Witness PRANOTO.
- The church compound was deserted, and Defendant V saw corpses in front of the church, and met MARTINUS BERE and 3 of his friends. Defendant V asked MARTINUS BERE: "How did it happen and end like this?" and MARTINUS answered: "I don't know, sir."
- Among the scattered corpses, the Defendant recognized the 3 pastors; Father HILARIO, Father FRANSISCO, and Father DEWANTO, and he did not know the rest.
- The corpses were counted by MARTINUS, and there were 27 bodies, and then MARTINUS left to look for canvas. The corpses were assembled and covered with canvas, and as it was getting dark, Defendant V went back to the maKodim, and the next day, on September 7, 1999, the burials had been scheduled for the victims.
- On September 7, 1999, at 06.00WITA, Defendant V went back to the church, in a car, and then the corpses were loaded onto the car covered with the canvas, and brought to Metamau beach, Wemasa district, Belu regency. Most of the corpses had severe cut wounds, and covered in blood.
- Defendant V did not report the discovery and burials of the corpses to the Defendant II, thinking that it had been reported by Witness Pratu SONIK ISKANDAR, and because Defendant V had never been warned by Defendant II.
- When MARTINUS BERE and his friends were in the burial process, Defendant V left to buy food and drinks for the men digging up the graves.
- The burials were made in 3 graves, and completed with funeral prayers led by MARTINUS BERE.

- Defendant V recognized the curtains used to wrap the corpses of the pastors.

Considering, that the court had further observed all things in the investigation process during the trial. To restrict the content of the judgment, it would be adequate for the court to point out the items in the BAP including the preliminary of BAP which all considered included in the content of this judgment.

Considering, that based on all of the evidence, either the witnesses' testimonies or the experts' testimonies, the defendants' testimonies, the material evidence, as well as the letters, in connecting relations to one another, therefore, there had been adequate facts revealed during the trial with undeniable truth, which mainly stated as follows:

1. It is true that Defendant I, Col. Drs. HERMAN SEDYONO was assigned as the regent or the Chief of Kovalima regency (KDH Kovalima) since the end of September 1994 until the incident on grave human rights violations in East Timor on September 6, 1999, which was based on Law No. 5/1974, on the Principles of the local government in function as the head of government and the head of the regional authorities, was in function as the head of the regional authorities Defendant I as the representative of the government was responsible in the fields of governance and development within Kovalima regency, in leading the government, coordinating development, and accommodating the people's life in all fields, including maintaining peace and order in the region.

2. It is true that Defendant II, Lieut. Col. Czi. LILIEK KOESHADIANTO (now is Col. Czi) was assigned as the Acting Dandim 1635 Suai since August 29, 1999 up to when the incident took place.

3. It is true that the governor of East Timor had announced the policy on the independence option and the integration option for the people of East Timor in May 1999.

4. It is true that in the implementation of the independence and integration options, a tri-partite agreement had been signed in New York on May 5, 1999, by the governments of Indonesian Republic (RI), Portuguese, and United Nations (UN) on supervising and organizing the popular consultation/ ballot to allow the people of East Timor to choose independence or integration.

5. It is true that in accordance with the New York, tri-partite agreement, article 3 on the implementation of the popular consultation/ ballot in East Timor, the security commandoes were in the hands of the Indonesian Police with the obligation to maintain peace and security to ensure the popular consultation/ ballot could be smoothly, fairly and safely conducted within an atmosphere which were free of threats and interference.

6. It is true that the Kapolres during the popular consultation/ ballot up to the riot incident at Ave Maria church of Suai, was Defendant I, that the regent was Defendant II, that the Kasdim was Maj. ACHMAD SYAMSUDIN, and Defendant V SUGITO was the Koramil Commander.

7. It is true that since the announcement of the popular consultation/ ballot, 2 groups had been developed; they were the pro-independence and the pro-integration.

8. It is true that in Kovalima regency, there was a civilian army organization known as PAM SWAKARSA, and Kamra which were established on the local people's initiative in maintaining security in their own villages, and assisting in activities concerning the maintenance of security and order.

9. It is true that within the Kovalima regency, there were community groups called LAKSAUR and MAHIDI in the pro-integration groups.

10. It is true that before the popular consultation/ ballot, especially in Kovalima region, conflicts often occurred between the pro-independence and the pro-integration, which conflicts were always mediated by the authorities by proposing peace settlements, or legal solutions.

11. It is true that on September 30, 1999 the popular consultation/ ballot was implemented to allow the people of East Timor to decide whether they want independence or integration with Indonesia.

12. It is true that the pro-integration people had stated protests against UNAMET for the irregularities during the popular consultation/ ballot, committed by UNAMET personnel in the monitoring works, and the unfair vote counting sessions witnessed only by pro-independence representatives. However, the protests had never been properly responded by UNAMET.

13. It is true that the pro-integration organized a demonstration demanding respond from UNAMET, which turned critical, but could be secured by the police up to the time of the popular consultation/ ballot.

14. It is true that the announcement of the popular consultation/ ballot was scheduled for September 7, 1999, but was suddenly advanced as suggested by UNAMET without clear reasons, to September 4, 1999.

15. It is true that the pro-independence won the popular consultation/ ballot.

16. It is true that there were people of the pro-independence who took shelters at the Ave Maria church compound, Suai Kovalima, since the popular consultation/ ballot was conducted up to the announcement day.

17. It is true that soon after the announcement, the people in the church repeatedly shouting in celebration, after which the priests asked them to calm down.

18. It is true that on September 5, 1999, there was a transfer of Kodak Command from the police to the TNI, after which the commandoes of the security control in Suai, Kovalima had been handed over to the TNI. But the police were still in charge of the security maintenance, so that the institutions worked together in maintaining security in Suai area.

19. It is true that there was a peace meeting at the official residence of Defendant I on September 3, 1999, to promote peace settlements between the long conflicting groups of the pro-integration and the pro-independence.

20. It is true that after the announcement of the popular consultation/ ballot, the flow of refugees going out of Suai toward the East Nusatenggara (NTT), was fast increasing, and their numbers were thousands.

21. It is true that the pro-integration group had once again stated their protests for losing the ballot and demanded response from UNAMET for their alleged frauds during the popular consultation/ ballot, but UNAMET escaped confrontation, and they even requested protection from the police and the TNI in Suai, with the assistance of the TNI and the police, all the UNAMET personnel were evacuated to Dili.

22. It is true that after the announcement of the popular consultation/ ballot, there were problems for the Muspida and the subordinate institutions, which lacked the adequate personnel in duty, transportation, and food and drinks to accommodate the exodus of refugees from Suai town, Kovalima, going to the East Nusatenggara (NTT) in Indonesian territory.

23. It is true that the problems concerning the refugees and their logistics were discussed by the Muspida of Suai, represented by Defendants I, Defendant II, and Defendant III on September 6, 1999, at around 11.00 WITA. At the time at the Defendant's house there had been people and refugees who asked for protection, while waited for available transportation.

24. It is true that Defendants I, II, and III were talking in the regent's house, when a man (oknum) named OLIVIO MORUK and his friends came and stood around the front of the house. Then Defendant I approached and asked what was the man's intention, then answered by OLIVIO MORUK that he was just looking around, and soon after that OLIVIO MORUK and his friends left the houseyard.

25. It is true that on 13.00WITA, shots from homemade firearms were heard from Ave Maria church compound, Suai.

26. It is true that Ave Maria church of Suai had the surrounding wall and a locked gate, located near Debos market, and inside there were several old buildings, including that of a convent and some newly constructed buildings, one of which was the residence of Father HILARIO.

27. It is true that on September 6, 1999 a conflict took place at Ave Maria church compound between the masses outside the compound and those taking refuge inside. The people outside the church compound had entered bringing homemade firearms, sharp weapons such as swords in their hands. Then shots and screams were heard coming from inside and outside the church, and then there was chaotic screams and cries as people run around in all directions in fear and panic.

28. It is true that Witness SONIK ISKANDAR with Defendant IV were inside the church compound trying to prevent people from entering the church. And on Defendant IV order, Witness SONI ISKANDAR fired warning shots upwards, while ordering the panic and confused crowd to disperse and break up, and then several policemen and members of the Brimob squad joined in to make a blockage with their guns crossed and their clubs ready to use to chase away people trying to get in, and also made way for those who wanted to avoid the ongoing riot in the church premises.

29. It is true that Defendant I, Defendant II, and Defendant III were outside the church compound, and requested by Brimob to avoid entrance because shots were fired at random, and the masses were in chaos.

30. It is true that Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V never entered Ave Maria church compound, and never made attacks onto the church.

31. It is true that from their position outside the church compound Defendant I coordinated with Defendant II and Defendant III to immediately put a stop to the riot. Then Defendant III ordered JEHEZKIEL BEREK as the Kapuskodalops to put a stop to the chaos and immediately start further investigation and question, while Defendant II ordered Defendant IV to immediately put an end to the conflict and evacuate the victims from inside the church compound.

32. It is true that at around 16.00WITA the firing shots had eased down. Defendant I, Defendant II, and Defendant III left the church premises. Then several people who were wounded and alive were brought to the maKodim and the mapolres to be given treatments and security protections for 1 week.

33. It is true that some bullet shells were found in the upper part of the church building and some homemade firearms and lances were scattered and also drying blood spots.

34. It is true that 27 corpses were found, consisted of men, women, and a boy, all buried on the beach of Metamauk village, Wemasa district, Belu regency, East Nusatenggara (NTT).

35. It is true that grave excavations were conducted by a team of Komnas HAM, the Public Prosecutors Office of East Nusatenggara (NTT), and team of medical forensic at the burials at the beach of Metamauk village, Wemasa district, Belu, East Nusatenggara (NTT).

36. It is true that 26 corpses were discovered and unearthed, autopsy and visum et repertum reports.

37. It is true that the corpses were brought to Dilli and were handed over to the East Timor authorities.

38. The rest of the facts would be discussed along with the verification of the public prosecutors' charges.

Considering, that the facts as stated above would be used as the basic verifications of the public prosecutors' charges on the defendants, have been orderly arranged as follows:

- Primary: article 7 b jis article 9 a, article 37, article 42 paragraph 1 sub a and b Law No. 26/ 2000. article 55 paragraph 1 to 2 of the KUHP.
- Subsidiary: article 41 jis article 7 b, article 9 sub a, article 37 Law No. 26, 2000.
- More Subsidiary:
 - Specifically for Defendant Col. Inf. Drs. HERMAN SEDYONO: article 7 b jis article 9 a, article 42 paragraph 1 sub a, b, Law No. 26/ 2000 on Human Rights Court.
 - Specifically for Defendant Col. Czi. LILIEK KOESHADIANTO: article 7 b jis article 9 a, article 42 paragraph 1 sub a and b Law No. 26/ 2000 on Human Rights Court.

- Specifically for Defendant Adjutant to the Commissioner of the Police Superintendent (AKBP) Drs. GATOT SUBYAKTORO: article 7 b jis 9 a, article 42 paragraph 1 sub a and b Law No. 26/ 2000 on Human Rights Court.
- Specifically for Defendant Maj. Inf. SYAMSUDIN: article 7 b jis article 9 a, article 42 paragraph 1 sub a and b Law No. 26/ 2000 on Human Rights Court.
- Specifically for Defendant V Maj.Inf. SUGITO: violated 7 l b jis article 9 a, article 42 paragraph 1 sub a Law No. 26/ 2000 on Human Rights Court.

Considering, that the primary charges of the public prosecutor concerning article 7 b jis article 9 a, article 37, article 42 paragraph 1 sub a and b Law No. 26/ 2000. article 55 paragraph 1 to 2 of KUHP.

Considering, that articles of the primary charges of the public prosecutors, consisted of article 1, which includes the complete elements of the formulation of the criminal acts, and part of the articles would be complemented to qualify the role of the defendants in the proven criminal acts.

Considering, that based on the order of the articles of the primary charges above, before discussing the elements in each of the articles, there should be first, answering these questions occurring as follows:

- a) Whether or not there were grave human rights violations.
- b) Who committed the grave human rights violations.
- c) Whether or not the defendants were responsible for the grave human rights violations.

Considering, that to be able to answer in the particular order, the next question could be answered only should the answer of the previous question be discovered.

Considering, that article 7 b Law No. 26/ 2000, as follows: "The grave human rights violations covers: ...b. Crimes against humanity".

The article mentioned above qualifies the term of grave human rights violations, which is the crimes against humanity, and has no elements of criminal actions in the crimes.

To understand the formulation and discussion in the mentioned article, it should be related to other articles, so that this article could be verified when the complementary articles could meet the elements..

Considering, that article 9 a Law No. 26/ 2000, as follows: "The crimes against humanity as stated in article 7 b, is an action committed as a part of widespread and systematic attack, in which was known that the attack is aimed directly towards the civilians, in the form of: a. murder...".

Considering, that he article mentioned above has the elements as follows:

1. Element of the action committed as part of widespread and systematic attack.
2. Element of the attack was known aimed directly towards to the civilians.
3. Element of the action committed in the form of murder as stated in article 340 of the KUHP.

Considering, that the above elements would be further discussed in a particular order as follows:

Ad. 1. The action committed as part of the widespread and systematic attack.

Considering, that Law No. 26/ 2000 on Human Rights Court, and its explanations has given no clear, restricted meaning on widespread attack, and therefore to be able to give the restricted meaning and understanding on the element the court has considered these matters:

- That the element of widespread means the action has national or international impacts, the action caused material, immaterial, horrifying loss, brutal action to enforce a person's political goals, which could have created a feeling of fear on a person or people, and could have involved many parties, and led to other similar events.

- In accordance with the facts revealed in court on number 25, it shows that the conflict at Ave Maria church was due to the disappointment on the result of the popular consultation/ballot announced on September 4, 1999.

- Besides the attack to the pro-independence civilians at Ave Maria Catholic Church, Suai by the pro-integration people from LAKSAUR and MAHIDI, there were also shots and burnings at the residents' houses, not far from the church.

- There were frauds during the implementation and the vote counting of the popular consultation/ ballot, in the opinion of the pro-integration group, allegedly committed by UNAMET.

- Witness DOMINGGUS DOS SANTOS MAUZINHO explained that the pro-integration group consisted of LAKSAUR and MAHIDI attacked by firing shots at the pro-independence civilians, the house, and other buildings in the church compound.

- During the trial, Witness JEHEZKIEL BEREK and Witness PRANOTO withdrew their information, as far as concerning the attack to the church, which were changed to conflict at the church compound.

- Considering, that the withdrawing of the information, the court has considered the matters as follows: that Witness DOMINGGAS DOS SANTOS MAUZINHO explained that LAKSAUR and MAHIDI groups from the pro-integration group had forced in and attacked refugees from the pro-independence group; the witness saw OLIVIO MOU and his friends wearing black T-shirts, written with words LAKSAUR and MAHIDI, carried guns and attacked and killed 3 pastors HILARIO, DEWANTO and FRANSISCO, also hurt the witness' daughter FATIMAH, and other refugees.

- On one side, there were unarmed, people in church seeking protection while on the other hand, there were pro-integration group carrying homemade firearms and sharp weapons, led to conflict with the two oppositions not in equal match in conditions and situations.

- The witnesses' withdrawing of the word "attack" by pro integration members towards pro independence group and replaced it with the word "conflict" was unreasonable.
- The witnesses were healthy and had never been proven of being under pressure or forced by anyone.
- There was no single material evidence that supported the withdrawing of the information, except the emotional doubts on the part of the witnesses, in giving their testimonies to the investigators.
- In relation to the facts revealed in court, and the testimony of Witness DOMINGGUS DOS SANTOS MAUZINHO who explained that the pro-integration group gathering in the church compound, carrying no weapons and in pain, in the court's opinion, the withdrawing and change of information of the witness against the preliminary BAP was unreasonable.
- Considering the above discussion, in the court's opinion, the incident on September 6, 1999 at Ave Maria church compound, Suai, was an attack on the part of the pro-integration who entered actively or rushed into the church compound carrying arms, and on the other part there was the defense measure performed in a more passive manner, by the pro independence people who were unarmed.
- The result of the attack was a turmoil, and the people inside the church screamed and cried, and there were victims, either wounded or dead.
- Considering, that based on the above discussion, the court decided the element of "widespread attack" has been met.
- Considering, that the element of Ad. 1 has the alternative characteristic, when the "widespread" element has been accomplished, the "systematic" element should no longer be discussed. But the court needs to explain the element of "systematic" as follows:
 - "Systematic" element means a plan that has been well arranged as a policy or the continuation of policy could be carried out directly or indirectly. Directly, the actor materializes what he/she wants or the results of what he/she wants.
 - Indirectly such as.. giving permissions or approvals, has the intention of making it happen, tolerating, alleviating or facilitating the actor to do what he/she wants. This could be achieved by coordinating or making conspiracy of an agreed policy, or allowing condition to be develop so that the actor could do something without having any obstacles, or after the actor has done what he/she wants to do, he/she makes no immediate actions to hamper the results of the actions.
- Based on the facts revealed in court, it shows that the pro-integration people led by OLIVIO MENDOZA MORUK since November 4, 1999, had intimidated the pro-independence sheltering at Ave Maria church compound, Suai.
- Sometimes between the morning of September 6, 1999, and the afternoon before the first shot was heard, there had been enough time for OLIVIO MORUK and his members to make consolidations to fully prepare the attacks.

- The facts revealed in court show the first shot on September 6, 1999, was made at around 12.00 WITA the pro-integration group consisted of LAKSAUR and MAHIDI attacked at the same time from all directions into Ave Maria church compound Suai, in which the pro-independence group were inside.
- The action of attack by the pro-integration group was the continuation of the organizations' policy.
- LAKSAUR and MAHIDI groups were the pro-integration group, and they were independent organizations outside the government structural.
- During the trial, there was no material evidence that showed the involvement of the security officers, either the police, the TNI, or Brimob in the attack to Ave Maria church compound.
- Shortly after the first shot was heard, security officers consisted of police, TNI and Brimob under the orders of each of their supervisors prevented the turmoil from spreading.
- Defendant I, Defendant II, and Defendant III came together and almost at the same time Defendant IV arrived at the scene. Then they got coordinated and Defendant II ordered Defendant IV to enter the church compound to stop the turmoil, and evacuated the refugees. Defendant III ordered Witness JEHEZKIEL BEREK as the Kapuskodalops to conduct investigation.
- After around 16.00 WITA, the shots eased down, and the turmoil had stopped. Defendant IV brought the refugees, the unhurt and the wounded ones to the maKodim for treatment and security for a week.
- The relating activities in the form of preventions and stopping turmoil, evacuations, and providing treatments for the victims at locations which were the maKodim and the mapolres for a week, were not the acts of allowing.
- Considering, that the result of the discussion on part of the elements of widespread and systematic, in the court's opinion, have answered the exception of the team of defending attorneys of the defendants, presented earlier in court.
- Considering that based on the above discussion on the Ad. 1 element "As part of a widespread and systematic attack" has been met.

. 2. The element of "the attack was known aimed directly towards the civilians".

Considering, that the element has been discussed as follows:

- Considering that in the explanation of article 9 Law No. 26/ 2000, stating that what is meant by the attack aimed directly towards the civilians, is the related actions to the civilians as the continuation of the policy of the authority, or the policy related to an organization.
- Considering, that the meaning has been in line with that in article 7 paragraph 2 of Statuta Roma, in which attacks against civilians, means actions with double characteristics on the civilians, in accordance with, or as the continuation of the state or the organization's policy.

- The facts revealed on trial points out: before the attack of the Ave Maria church compound of Suai, since early morning up to around 14.00 WITA, the pro-integration group consisted of LAKSAUR and MAHIDI had gathered around the church compound.

- Based on the fact, there was the indication that there had been sufficient time to formulate a policy of the organization or the pro-integration group to attack the pro-independence refugees.

- Witness DOMINGGUS DOS SANTOS MAUZINHO explained that the people inside the church compound were the pro-independence refugees who sought protection because they were scared and unarmed in the church compound, there had been no other targets except the scared, unarmed people.

- The refugees sheltering in Ave Maria church compound was the convincing fact that the group was categorized as civilian targets of attack, consisted of pastors, nuns, babies, children, and adults.

- Considering, that based on the above discussion, it is obvious that the LAKSAUR and MAHIDI groups in the pro-integration group had committed an attack with single target, and attacked directly to the civilians.

- Considering, that based on the above discussion the court has opinion that the element of "the attack was aimed directly toward the civilians" has been met.

Ad. 3. The element "of action conducted is in the form of murder as contained in article 340 of the KUHP".

- Considering, that article 340 of the KUHP says; "whoever deliberately, and has planned before to commit murder would be punished for planned murder and receive death penalty or life imprisonment, or a maximum of 20 years imprisonment".

- Considering, that the above article contains the element:

- a. Whoever
- b. Deliberately
- c. Was planned before
- d. Murder

- The element of a. "Whoever", was discussed as follows:

- The above element is intended to find out who was/were the person/s that committed the crime, as formulated in the particular article.

- In relation with the question number I on whether or not there had been grave human rights violation actions, therefore, to find out who the person/s was/were, there should be discussion on the element of the actions.

- The element of b. "Deliberately" was discussed as follows:

- The meaning of deliberately is an action committed by anyone with conscious that the action would have resulted in murder.

- The person's awareness of the consequences of his/their actions in relation with the intention of the possible death of other person(s) did not cause the person to stop doing it but he/she continues to do it.

- In accordance with the facts revealed in court explaining mainly that On September 6, 1999 at around 13.00 to 16.00 WITA, a turmoil occurred at Ave Maria church compound. A group of armed men outside the church compound entered the church compound.

- Witness DOMINGGAS DOS SANTOS MAUZINHO explained that LAKSAUR and MAHIDI groups from the pro-integration group entered and attacked the refugees from the pro-independence group. The witness saw OLIVIO MORUK, MERTINUS BERE, OLIVIO MOU and their friends, wearing black T-shirts with written words LAKSAUR and MAHIDI on them, and carrying firearms, attacked and killed 3 pastors Father HILIRIO, Father DEWANTO, and Father FRANSISCO, hurt the witness' daughter FATIMAH and other refugees.

- Witness SONNY SANJAYA saw OLIVIO MOU, in Ave Maria church compound, with his friends were ordered to by Defendant II to retreat, break up, and leave the complex, but OLIVIO MOU said: "No! I'll be responsible!"

- The witnesses who said they withdrew the "attack" of the pro-integration members against the refugees of the pro-independence group, and changed it to "conflict" between the pro-integration and pro-independence groups, in relation to the facts revealed in court and the testimony of Witness DOMINGGUS DOS SANTOS MAUZINHO saying the pro-independence refugees sheltering in the church compound were unarmed and scared, in the court's opinion, the witnesses' withdrawn and changes of information of the preliminary BAP were unreasonable.

- In a situation whereas on one hand, there were unarmed and scared people seeking protection in the church compound, and on the other hand, the pro-integration people entered, carrying homemade firearms and sharp weapons, therefore, the turmoil was not a conflict that indicated an equal match of situation and conditions.

- The Human Rights Ad. Hoc Court was not in the same opinion with the defending attorneys of the defendants, and the public prosecutors, who confirmed the incident at Ave Maria church as a conflict, by pointing out to the discussion of facts and witnesses in court. According to the court's opinion the incident was not a conflict, but an attack by LAKSAUR and MAHIDI groups from the pro-integration group.

- In a normal circumstances, the pro-integration group who called themselves by LAKSAUR led by OLIVIO MORUK were in full conscious that shots of homemade firearms and slashes of sharp weapons such as swords, lances or bows and arrows, at human bodies, could have resulted in deaths.

- Deliberately, due to the disappointment for losing in the popular consultation/ ballot, the LAKSAUR and MAHIDI groups with their leaders OLIVIO MORUK and OLIVIO MOU, never stop their intentions resulting in the 27 dead victims.

- Eventhough there were differences in the discussion of the element of crime acts and the facts revealed in court, the court was in the same opinion with the public prosecutors and the team of defending attorneys of the defendants in the discussion of the element deliberation of the LAKSAUR and MAHIDI groups from the pro-integration group.

- Considering that based on the above discussion, according to the court's opinion the element of "deliberateness" has been met.

- The element of "was planned before" was discussed as follows:

- The element of was planned before has the understanding that between the occurrence of idea to do the act to the execution of the act, there has been sufficient time for the actors to think carefully on how, when, or with what, the act would be executed.

- The length of time should be sufficient, meaning it should not be too instant, too restricted, or too long. The most important factor was that within the length of time, the actor of the crime had the opportunity to abort the plan, but decided to go with it instead.

- Since the announcement of the popular consultation/ ballot won by the pro-independence, the losing pro-integration group became disappointed and filed protests as stated in the facts revealed in court.

- The pro-independence group always cried out telling the pro-integration people to immediately leave East Timor, especially Suai, Kovalima, made the conflicts grew worse.

- Since the announcement of the popular consultation/ ballot, many people of the pro-independence sought refuge in Suai church because they were scared often intimidated by LAKSAUR and MAHIDI. Their numbers were more or less than 2000 people.

- Since September 5, 1999, evening, the pro-integration group had threatened people by repeatedly circling Ave Maria church compound, Suai, until morning and afternoon of September 6, 1999.

- Comparing the number of refugees and that of LAKSAUR and MAHIDI group of members that reached thousands, there is the indication that the attack by LAKSAUR and MAHIDI groups could not have been successful without the adequate estimation and plan.

- The plan or the formulation of strategy of the LAKSAUR and MAHIDI groups to attack Ave Maria church compound was due to the availability of enough time since morning through the afternoon at around 13.00WITA when the first shot was heard by many people, including the witnesses presented in court.

- There was sufficient time for OLIVIO MENDOZA MORUK, OLIVIO MOU, and his friends to prepare their equipments and weaponry, also how and when the best time was to carry out the plan, and there was also an adequate time to think it over and abort the plan, but their choice was not aborting the plan, they entered and attacked together so that thousands of masses inside the church (sic!).

- The masses inside the church were defenseless and started to ease down with the arrival of security officers from the police assisted by Brimob and the TNI joined under the directions

of Defendants I, II, and III who were outside Ave Maria church, Suai, premises, by making blockades to restrict and hamper people trying to enter the church compound, and make way for those who wanted to exit the church compound.

- Witness JEHEZKIEL BEREK explained that the turmoil took place for about 2 hours, and during that time, the officers, whose numbers were dozens, could handle the situation by making all efforts to break it up, and evacuate the wounded victims to the maKodim and the mapolres.

- Observing the length of time in which the incident took place, there are indications that the members of LAKSAUR and MAHIDI groups under pro-integration group were well organized in making the attack against people inside the Ave Maria church compound.

- Considering, that based on the above discussion, according to the court's opinion, between the occurrence of the idea to the execution of the actions, there had been sufficient time for the actors of the crime to make the plan on how the execution would be. In the court's opinion the element of "was planned before" has been met.

- The element of "murder" was discussed as follows:

- The phrase of "murder" has the meaning that in the event, there should be the action that caused death of other people except the actor.

- In accordance with the facts revealed in court, the attack of the LAKSAUR and MAHIDI groups had resulted in civilian victims from the pro-independence group who were inside the church compound, the 26 victims dead.

- With the visum et repertum reports issued by the authorized doctors No. 001/TT.3002/SK.II/XI/1999, up to No. 026/TT.3002/SK/XI/1999, each dated on November 30, 1999, as follows:

- 3 pastors namely Father HILARIO who was shot in the forehead, Father FRANSISCO SOARES who had severe cut wounds, and Father DEWANTO.

- Also 9 unidentified female

- 14 unidentified male victims.

- It is true that in the church compound after the attack, bullet shells and blood stained spots were discovered scattered around several places in the church compound.

- Considering, that the attack, the discovery of evidence such as bullet shells and dead victims in the church compound, in relations to one another, there are indications that there had been actions committed by the LAKSAUR and MAHIDI groups that caused death of other people.

- Considering that based on the above discussion, in the court's opinion the element of "murder" has been met.

Considering, that all elements contained in the article 7 b jo article 9 a have been met, therefore the elements should be considered as proven in court.

Considering, that based on the above matters, therefore the questions on number 1 and number 2 are answered:

1. It is true that there had been grave human rights violations.
2. The perpetrators were the LAKSAUR group and MAHIDI group under pro-integration group.

Considering, that on the question number 3 on: Whether or not Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V are responsible of the crime against humanity, the next article should be discussed in the primary charges in article 42 paragraph 1 which completely as follows:

"A military commander or a person who effectively act as a military commander should be responsible for the criminal acts within the jurisdictions of the Human Rights Court, committed by the troops under his effective command and control, or under his effective power and control, and the criminal acts are the results of the improper control, which are:

- a. The military commander or the person knows, or based on the existing circumstances, should know that the troops are committing, or have just committed grave human rights violations and
- b. The military commander or the person did not make proper actions within his authority to prevent or to quell the crimes or handed over the perpetrators to the authorities for further investigations, questions and prosecutions".

Considering, that the above article has the elements:

1. A military commander or a person who effectively act as a military commander.
2. Could be responsible for crimes under the jurisdiction of the Human Rights Court, committed by troops under his effective command and control, or under his authority and control.
3. The crimes are the results of improper control, which are:
 - a. The military commander or the person knows, or based on the existing circumstances, should know that the troops are committing or have just committed grave human rights violations.
 - b. And so on....

Considering:

That the elements above were discussed as follows:

Ad. 1. "A military commander or a person who effectively act as a military commander".

- Considering that based on the facts revealed in court: Defendant I Col. Inf. HERMAN SEDYONO, the regent of Kovalima regency, started in the end of September 1994, until the time during the grave human rights violations in East Timor on September 6, 1999, based on Law No. 5/ 1974, on the principles of government in function as the head of the government and the head of the regional authorities.

- Defendant I as the representative of the government was in charge in the governance, coordinating the development, and accommodating the people in all fields.

- Based on the above matters, although Defendant I was a military officer, but in his duty as the Regent, he was in function as the Head of the Government.

- Considering that based on the above discussion, in the court's opinion Defendant I had no capacity to act as a military commander or the person who effectively act as a military commander, therefore the element of Ad. 1 on the Defendant has not been met.

- Considering that the discussion on Defendant II Lieut. Col. Czi. LILIEK KOESHADIANTO was as follows:

- Based on the facts revealed in court, Defendant II was the Acting Dandim 1635/Suai, started on August 29, 1999, until the time during the grave human rights violations in East Timor on September 6, 1999.

- Defendant II was in charge of territorial accommodation to create space and conditions of Kovalima regency, and particularly based on the order of CABUT II Operation Plan/ CABUT II Operation Order issued by the Pangdam IX Udayana.

- In carrying out his main duty, Defendant II had subordinates, including Serda I GEDE SANTIKA, Sertu I WAYAS SUKA ANTARA, Pratu SONIK ISKANDAR, Serda AMERICO SERANG, RAUL HALLE, Serda ALERICO PAREIRA, and ALFREDO AMARAL. Since there was a superordinate and subordinate interrelationship, under hierarchy principles Defendant II had the effective authority and control on his subordinates.

- Considering that based on the above discussion, therefore the element of Ad. 1 has been met by Defendant II.

- Considering that for Defendant III Adjutant to the Commissioner of Police Superintendent (AKBP) GATOT SUBYAKTORO, the discussion was as follows:

- Based on the facts revealed in court, Defendant III, as a member of the Indonesian Police (Polri), was assigned as the Kapolres of Suai started in 1998 until the time of the grave human rights violations in East Timor on September 6, 1999.

- Defendant III had the main duty, as the instrument of the state to uphold the law, maintain and improve law and order, and with all of the other components of the defense and security, promote peace and order in Kovalima regency.

- Since September 5, 1999, at 19.30 WITA, Defendant III was on assignment as ordered in CABUT II Operation Order, including preparing and securing the refugee centers, gathering the refugees from throughout Kovalima regency, and securing the evacuation routes.

- Defendant III had the authority to control his subordinates as far as they were members of the Polri.

- Defendant III was not a military commander, and had no authority to control troops under his effective command; therefore the defendant was not a military commander and not a person who effectively act as a military commander.

- Considering that based on the above discussion Defendant III was not in a military category, therefore the element of an effective military commander has not been met.

- Considering for Defendant IV Maj. Inf. ACHMAD SYAMSUDIN, the discussion was as follows:

- In accordance with the facts revealed in court, Defendant IV Maj. Inf. ACHMAD SYAMSUDIN was assigned as the Kasdim 1635/Suai, started on September 1, 1998, until the time of the grave human rights violations on September 6, 1999.

- As the Kasdim 1635/Suai, Defendant IV had the duty to assist the Dandim 1635/Suai by coordinating the staff in the maKodim 1635/Suai.

- Defendant IV had troops subordinates, including Serda I GEDE SANTIKA, Sertu I WAYAS SUKA ANTARA, Pratu SONIK ISKANDAR, Serda AMERICO SERANG, RAUL HALLE, and ALFREDO AMARAL.

- With the superordinate and subordinate relationship regulated in the command hierarchy, Defendant IV was an effective military commander of his subordinate troops.

- Considering that based on the above discussion, the element of a military commander or a person who effectively act as a military commander has been met by Defendant IV.

- Considering for Defendant V Maj. Inf. SUGITO, the discussion was as follows:

- In accordance with the facts revealed in court, Defendant V Maj. Inf. SUGITO was assigned as the Danramil 1635/Suai, since 1992 until 1996, and after he was posted as the Pasi Intel Kodim 1635/Suai, he was reposted as the Danramil 1635/ Suai, since 1997 until the time of the grave human rights violations in East Timor on September 6, 1999.

- As regulated in the hierarchy line of command the post of Danramil was a military post with the authority to have an effective command on his subordinates..

- Defendant V had the duty as the assistance of Dandim 1635/Suai in making the territorial accommodation to create space and conditions in Suai, Kovalima regency and in his duty, he was assisted by his troops or subordinates.

- Based on the above discussion, therefore the element of a military commander or the person who effectively act as a military commander has been met by Defendant V.

Ad.2. The element of "responsible for the crimes within the jurisdiction of the Human Rights Court committed by the troops under his effective command and control".

Considering:

- In the discussion of the above element, the court points out the result of the discussion of article 9 a in which "it has been proven that on September 6, 1999, there were crimes against humanity, in the form of murder at the Ave Maria church compound in Suai, committed by the LAKSAUR and MAHIDI groups under pro-integration group".

- Considering that the meaning of the element of Ad. 2 the crimes in the jurisdiction of the Human Rights Court was the element of the crimes that had been discussed and proven in article 9 a which is the crimes in the form of "murder".

- Considering that to verify whether or not the element of Ad. 2 mentioned above had been met by Defendant I, Defendant II, Defendant III, defendant IV, and Defendant V, therefore it should be first answered the questions of "whether or not there have been the hierarchy line of effective command and control of Defendants I, Defendant II, Defendant III, defendant IV, and defendant V with the LAKSAUR group and MAHIDI group under the pro-integration group. On the other hand, whether or not the LAKSAUR group and MAHIDI group were the troops under their effective command and control, or under their effective authority and control".

- Considering, that the above questions have been answered as follows:

- The meaning of a person is said to have the hierarchy line of command with other people, is when there is a regulation stating that based on the official occupation, the person has the superordinate and subordinate interrelationship with other person.

- The facts revealed in court states that the LAKSAUR and MAHIDI groups under pro-integration group was an independent, self-reliant community organization, established by volunteers to support the success of the popular consultation/ ballot, and to win the pro-integration group.

- Witness DOMINGGAS explained that the LAKSAUR and MAHIDI group members wearing black, red and white T-shirts with words LAKSAUR and MAHIDI written on them, were ordinary East Timorese.

- Witness DOMINGGOS DOS SANTOS MAUZINHO explained that the LAKSAUR and MAHIDI groups did not wear the TNI, police, or Brimob uniforms.

- In accordance with the facts revealed in court, Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V said that it did not matter whoever won the popular consultation/ ballot, and it was more important that the situation was safe and controlled.

- During the trial, there was no material evidence, either letters or the testimonies of the witnesses, which indicated the existence of superordinate and subordinate relationship between the LAKSAUR and MAHIDI groups on one side, and Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V on the other.

- In accordance with the facts revealed in court, Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V knew, had good relationship, and acknowledged the existence of the LAKSAUR and MAHIDI groups in Suai, Kovalima.

- In accordance with the Constitutional Law (Hukum Tata Negara), the mutual relationships between the Defendants with the community groups such as LAKSAUR and MAHIDI was not a command relationship with the effective control of the superordinate on the subordinators; however, it was an ideal relationship of the government as the security or law enforcement officials on one hand, and the community members on the other, which in the daily activities could be in the forms of the adherence to or sometimes violations of the rules.

- Such relationship between the government and the people could not be necessarily considered as command relationship with the effective control. In other words, when the members of the community violate the law, it should not make the government responsible as the party, which has the effective command and control.

- The measures should be made by the government in case of a turmoil leading to chaos, would be immediately easing down the situation by putting it to a stop, and securing and offering solutions in coordinative and cooperative procedures with the assistance of the related officials.

- Considering that based on the above matters, in the court's opinion Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V had no command relation with or effective control on the LAKSAUR and MAHIDI groups, and the LAKSAUR and MAHIDI groups were not the troops under the effective command and control of Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V.

- Considering that based on the above discussion, the question has been answered, that "Defendant I, Defendant II, Defendant III, defendant IV, and defendant V had no hierarchy line of command with or an effective control on the LAKSAUR and MAHIDI groups under pro-integration group; on the other hand, the LAKSAUR group and MAHIDI group were not the troops under the effective command and control or under the effective authority and control".

- Considering, that with the answering of the question on the relationship between the defendants and the LAKSAUR group and MAHIDI group the main question stated on number 3 on "whether or not the defendants are responsible for the grave human rights violations", the answer is, that "the Defendant I, Defendant II, defendant III, Defendant IV, and Defendant V should not be responsible for the grave human rights violations".

- Considering, that based on the result of the above discussion, therefore the court judged that the element of Ad. 2 article 42 paragraph 1: "could be responsible for crimes committed by the troops under the effective command and control, or under the effective authority and control, has not been met by Defendant I, Defendant II, Defendant III, Defendant IV, Defendant V".

- Considering, that since one element of the article 42 paragraph 1 was not acquired, therefore the rest of the elements should not be further discussed, and article 42 paragraph 1 Law No. 26/2000 should not be legally and convincingly proven.

- Considering, that article 42 paragraph 1 Law No. 26/ 2000, as a part of the primary charges could not be proven, therefore on article 37 Law No. 26/ 2000, on the criminal procedures, and article 55 paragraph 1 to 2 of the KUHP on the actions of participation, in the court's opinion, should not be further discussed.

Considering, that Article 41 Law No. 26/ 2000 which completely as follows:

"Attempts, conspiracy or accomplice to the acts of violations as contained in article 8, or article 9 would be charged with the same charges as meant by article 36, article 37, article 38, article 39, and article 40".

- Considering that the above articles have the meaning:

1. The elements of "attempt, conspiracy or accomplice".
2. The element of "violations as stated in article 8, or article 9 Law No. 26/2000".

- Ad. 1 "Attempts, conspiracy or accomplice":

- Considering, that the element of Ad. 1 is a term or qualification of criminal acts which in the execution could not stand by its own, meaning that it should be related with the regulation of the article on standing by its on its own in the element of Ad. 2, therefore the discussion should start on the element of Ad. 2.

- In the subsidiary charges, the public prosecutors have related article 7 b with article 9a of Law No. 26/2000.

- Considering, that the result of the discussion of article 7 letter b jo article 9a of Law No. 26/2000, in the primary charges is obvious that the court judged there had been grave human rights violations with criminal acts in the form of murders committed by the LAKSAUR and MAHIDI groups under pro-integration group.

- Considering, that the result of the discussion on the primary charges as far as article 7 b jo article 9 a, in relation with subsidiary article of Ad. 2, in the court's opinion, is in mutual accord and taken over as the result of the discussion of the element of the subsidiary charges on Ad. 2, which is violations as meant by article 8 or article 9 Law No. 26, 2000.

- Based on the appointment of the above primary charges, the court judged the element of Ad. 2, which are "violations as meant by article 8 or article 9 Law No. 26/ 2000 has been met".

- Considering, that the element of Ad. 1 article 41 Law No. 26/2000 has the alternative characteristic, meaning that it would be enough that it was partly proven, and the rest should not be further discussed.

- Considering the first alternative of the sub element of Ad. 1 of "attempts" is discussed as follows:

- There is no single Law, which could define the precise meaning of attempts in article 41.

- The court appoints the events in article 53 of the KUHP as the guidance of discussion.

- Article 53 stated the acts of crime could have started but never be completed, the incomplete acts are not due to the actor's own will.

- It is clear that in the result of the discussion of the element of Ad. 2 Article 41 Law No. 26/2000, the acts of the grave human rights violations are the crimes against humanity in the form of murders are the complete acts. In the court's opinion it has not been met with the restrictions of "attempts" as meant by article 53 of the KUHP.

- Considering, that based on the above discussion, in the court's opinion the sub-element of ad.1 "attempts" has not been met.

- Considering that the second alternative of the sub-element of Ad. 2 "conspiracy" is discussed as follows:

- The explanation of article 41 Law No. 26/2000, on the meaning of conspiracy is when two persons or more have agreed to make grave human rights violations.

- The meaning of the word "conspiracy" known as ("sammenspanning" sic!) is a conspiracy to do the acts of crime.

- The crimes should be committed by at least two persons or more.

- All talks, conversations or meetings as far as they are not made for crime purpose, should not be termed as conspiracy.

- Neither a witness nor a single evidence points out that Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V had made talks with the LAKSAUR and MAHIDI groups in a certain time or at a certain place to do the crime against humanity as proven as the act of murder.

- In accordance with the facts revealed in court, Defendant I, at about 10.30 WITA talked with OLIVIO MENDOZA MORUK who was accompanied by a few of people, but the talk or discussion was not meant to do a crime.

- The facts revealed in court said that Defendant III had seen and met OLIVIO MENDOZA MORUK, known as the leader of LAKSAUR group in Suai, but the meeting was not meant to do a crime.

- Considering, that based on the above discussion, in the court's opinion the second alternative of the element of Ad. 1 on "conspiracy" has not been met.

- Considering, that the third alternative of "accomplice" is discussed as follows:

- Considering, that the meaning of the word "accomplice" was not explained in the Law No. 26/2000, therefore it is necessary to point out the meaning of "to assist" as regulated in article 56 of the KUHP as follows: "Charged as a person who assisted a crime":

- 1. e. Whoever deliberately assisted the act of crime.

- 2.e Whoever deliberately provided opportunities, efforts or information in doing the act of crime.

- Considering, that the above elements as follows:

- The element of Ad. 1 "Whoever deliberately assisted the act of crime".

- Considering, that whoever meant by the element are Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V.

- Considering, that the discussion of the element of "deliberately" the court should point out the result of the discussion of the primary charges, therefore, it is considered that it has been met.
- Considering, that the element of "assisting" in doing the act of crime in this case, should point out to a person or the defendants, or whoever involved in the act, but the person did not commit all the elements of the act of crime as committed by the perpetrator.
- Considering that a person could be considered as "assisting" or medeplichtig (sic!) is when the person deliberately assisted in a certain time or before, meaning not after the act of crime has been committed.
- Considering that the element of "deliberateness" has been met in the above primary charges, it could only take effect on the members from LAKSAUR and MAHIDI groups in doing the act of crime in the form of murders.
- Considering that therefore the element of "deliberateness" should be further discussed and pointed at Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V as follows:
 - Pointing out the restrictions of the meaning of "deliberateness" in the primary charges, therefore a person is considered to be deliberately, when the person consciously would do the act of crime, and know the consequences, or the possible consequences, but the person has never withdrawn his intentions, and still do it.
 - The turmoil at Ave Maria church compound in Suai is not an incident that had been estimated to happen by the Defendants, and they even did not know the cause or the intention of the people who started the turmoil.
 - The deliberateness in assisting the act of crime could not be applied to Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V, as they knew of the incident only after they heard shots coming from the church, in the afternoon of September 6, 1999.
 - In accordance to the facts revealed in court, the turmoil eased down and ended after Defendant IV under Defendant II orders, entered the church compound accompanied by Witness SONIK ISKANDAR to quell the turmoil, also to evacuate the refugees to be brought to the maKodim.
- Considering, that based on the above discussion, in the court's opinion the element of Ad. 1 "deliberately assisted the act of crime" has not been met by Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V.
- Considering that the element of Ad. 2 of "whoever deliberately provides opportunities, efforts or information to do the acts of crime".
- Considering, that whoever in the article is pointed at Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V, as the persons who committed "assistance".
- Considering that to justify a person based on the omission (omisi) of the acts of the person's subordinates, the person should have the necessary intention or knowledge that an omission or

have not taken any necessary and proper actions could have led to violations of law, and as the superordinate was in position or in the capability to hamper the acts of violation.

- Considering, that the elements of deliberateness providing opportunities, efforts or information in the act of crime in the article 56 paragraph 2e, could be interpreted as the material perpetrator has the initiative to request to be provided opportunities, or efforts to the person or the accomplice, in the acts of crime.

- During the trial, there is no single witness could explain, nor a material evidence could pointed out that the perpetrator, in this case were the LAKSAUR group and MAHIDI group had met and talked to request to be provided opportunities, efforts, or information to Defendant I, Defendant II, Defendant III, Defendant IV, and Defendnat V in relation to the attack to the pro-independence people in the church compound of Suai.

- In accordance with the facts revealed court, Defendant I, in the morning of around 10.30 WITA had a talk with OLIVIO MENDOZA MORUK who was accompanied by some of his friends, but the talk or brief conversation was not on requesting information or efforts to do the acts of crime.

- The facts revealed in court said that Defendant III had seen and met with OLIVIO MENDOZA MORUK, known as the leader of LAKSAUR group in Suai, but the meetings were not on requesting opportunities, efforts, or information to do the acts of crime.

- In accordance with the facts revealed in court, during the attack of the pro-integration group who rushed, at the same time, into Ave Maria church compound, Suai, Defendant I, Defendant II, and Defendant III came at the same time, stood outside the church compound, got coordinated, and ordered their own subordinates to ease down the turmoil by making blockades to hamper people from entering the church premises.

- Witness DOMINGGAS DOS SANTOS MAUZINHO saw that, while the LAKSAUR and MAHIDI groups were attacking the people in the compound, Defendant I, Defendant II, and Defendant III were outside the church gate giving orders to the TNI, the police and the Brimob to stop the turmoil.

- A moment after the arrivals of Defendant I, Defendant II, Defendant III, and Defendant IV, the situation had calmed down.

- Witness DR. MOH. FADHOLI AGUS HARYANTO explained that Defendant V, on September 6, 1999, was in Betun, looking for borrowed vehicles, and went back to Suai at around 15.00

- Witness PRANOTO explained that on September 6, 1999, the witness went home with Defendant V from Betun to Suai. In Suai, they went straight to Ave Maria church, which was already deserted, with several corpses still scattered around the place.

- Considering, that based on the above discussion, in the court's opinion it is not sufficient to say that the related activities of Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V have acquired the elements of providing opportunities, efforts, or information to do the crime against humanity in the form of murders.

- Considering, that the presence of the defendants outside the church compound were not regarded as only the passive observers without making any activities as stated by the public prosecutors in the discussion of the element of assistance in the indictments.

- Considering, that the presence of the defendants in the TKP outside Ave Maria church compound was not meant for hamper.

- Considering, that Defendant I mainly had said: "We have never imagined a turmoil or conflict would have erupted, but such incidents could possibly happen," which considered as the reference of the public prosecutors to decide that the defendants did the passive acts of accomplices, should be discussed as follows:

- The incidents of amoks, turmoils, attacks, conflicts, or other similar incidents, should not be determined on whether or not there were predictions or imaginations of the incidents.

- Defendant I, as the regent of Suai, besides getting involved to ease down the turmoil at Suai church compound, Defendant I had made adequate efforts to promote peace and mediate conflicts, before and after the popular consultation/ ballot, such as organizing several meetings on peace, including socializing the result of the peace agreements signed on September 3, 1999, provided food aids at Father HILARIO residence, accommodated the refugees' necessities at the church when they suffered lack of water, and accommodated people taking refuge in Betun, East Nusatenggara (NTT).

- The activities of Defendant I were the acts of consideration to help the people in need.

- Considering, that what stated by the public prosecutors in the indictments as the acts of neglect or the acts of a accomplice in the crime against humanity was in contradiction to the facts revealed in court. Therefore, in the court's opinion the element of Ad. 2 "of providing opportunities, efforts or information in the acts of crime", has not been met by Defendant I.

- Considering, that the reason of the court to judge that Defendant II had become the accomplice in the acts of crime by providing opportunities, efforts or information, which allow situation in Suai town to get non-conductive (sic!), and did not make any necessary steps to prevent, the reason would be discussed as follows:

- The non-conductive situation was, however, due to the exodus of the refugees to be evacuated, who needed shelters all around Suai.

- Within Suai, there were occurring conflicts between the pro-independence and the pro-integration groups, which had been going for a long time. But every time it occurred it was mediated by peace solutions.

- In accordance with the facts revealed in court, Defendant II, as the Acting Military District Commander had made the activities as required by his superordinates, including assisting Polri in maintaining security during the popular consultation/ ballot, advising the pro-independence and pro-integration group to accept whatever result of the popular consultation/ ballot, working together with the police in safeguarding the evacuations of UNAMET personnel, and preventing the angry pro-integration protesters from attacking UNAMET, for their alleged frauds during the popular consultation/ ballot.

- Defendant II was actively involved in organizing the meeting to promote peace on September 3, 1999, at the residence of Defendant I.
- Defendant II had made preventive measures and had accommodated the refugees at the maKodim for a week.
- Considering, that based on the above matters, in the court's opinion the public prosecutors' argument was not in accordance with the facts of what Defendant II did, either before, or after the turmoil at Suai church compound.
- Considering, that based on the above discussion, in the court's opinion the element of Ad. 2 "deliberately providing opportunities, efforts, or information to do the acts of crime" has not been met by Defendant II.
- Considering, that the argument of the public prosecutors that Defendant III did not take adequate action to prevent the turmoil at Ave Maria church compound, Suai, would be discussed as follows:
 - Before, during and after the popular consultation/ ballot Defendant III had made certain activities, including involving in those to ensure the success, safe and smooth popular consultation/ ballot.
 - Defendant III assigned his officers to guard several places, including BKO of Brimob officers posted near Ave Maria church in Suai, before the September 6, 1999, attack.
 - Defendant III was involved in the efforts to mediate conflicts between opposition groups by promoting peace.
 - Defendant III came to Ave Maria church, Suai to prevent the turmoil from spreading. Then ordered Witness JEHEZKIEL BEREK to make further investigations and questions.
 - Defendant III was actively involved in the evacuations of refugees in Suai town especially the refugees in the Ave Maria church.
 - Defendant III actively involved with the TNI in the security measures of evacuating UNAMET staff to Dili.
- Considering, that based on the above discussion, therefore the argument of the public prosecutors was in contradiction with the facts revealed in court, and therefore in the court's opinion the element of Ad. 2 of "deliberately providing opportunities, efforts or information to do the act of crime" has not been met by Defendant III.
- Considering, that the argument of the public prosecutors saying that Defendant IV never predicted the clashes, never heard of the escalation of conflicts, never assigned either TNI or Polri officers at Ave Maria church compound would be discussed as follows:
 - In accordance with the facts revealed in court, Defendant IV, with his troops assisted by the Polri maintaining security during the popular consultation/ ballot.

- Defendant IV, before, during, and after the popular consultation/ ballot was actively involved in the evacuations of refugees.
- On September 6, 1999, Defendant IV and his subordinates went to Ave Maria church, Suai to prevent the turmoil from spreading.
- Defendant IV and his subordinates evacuated refugees from Ave Maria church compound, Suai to the maKodim.
- Considering, that based on the above discussion, the argument of the public prosecutors was not in accordance with the facts revealed in court, therefore in the court's opinion the element of Ad. 2 of "deliberately providing opportunities, efforts or information to do the acts of crime" has not been met by Defendant IV.
- Considering, that the argument of the public prosecutors saying Defendant V had ignored his duty by making no necessary measures to prevent the crime at Ave Maria church compound, Suai. Defendant V had allowed the LAKSAUR and MAHIDI groups to attack Ave Maria church, Suai, would be discussed as follows:
 - Based on the facts revealed in court, Defendant V with his officers joined in and assisted the police in maintaining the security during the popular consultation/ ballot, and the evacuations of refugees from Suai to Betun, East Nusatenggara (NTT).
 - On September 6, 1999, at around 06.00 WITA, Defendant V with permission from Defendant IV and acknowledgement from Defendant II went to Betun to look for borrowed vehicles to transport refugees.
 - Defendant V with Witness PRANOTO found 27 corpses of the victims at Ave Maria Church compound on September 6, 1999, around 17.30 WITA. And were loaded on the vehicles and covered them with canvas.
 - Defendant V and Witness PRANOTO, MARTINUS BERE, and several members of the pro-integration group made burials for the victims on Metamau beach, Wemasa subdistrict East Nusatenggara (NTT).
 - Defendant V was in Betun since morning through the afternoon of September 6, 1999. It was impossible to make preventive measures on the turmoil at Ave Maria church, Suai.
 - It could not be said that he had allowed the incident at Ave Maria church in Suai to happen, as the defendant did not know that it happened.
- Considering, that based on the above discussion, in the court's opinion the argument of the public prosecutors was not clarified in court, therefore the element of Ad. 2 of "deliberately providing opportunities, efforts, or information to do the acts of crime" has not been met by Defendant V.
- Considering, that based on all the above considerations, it is clarified that the element contained in article 41 Law No. 26/ 2000, in the subsidiary charges has not been met. Therefore the subsidiary charges are legally and convincingly not proven and Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V are free of the subsidiary charges.

Considering, that in relation to the not proven primary and subsidiary charges, therefore, the More Subsidiary Charges would be discussed:

- Considering that the More Subsidiary Charges specifically for Defendant I violates article 42 paragraph 2 jis article 9 a, article 37 Law No. 26/ 2000 on the Human Rights Court should be discussed as follows:

- Considering the discussion of the More Subsidiary Charges in Article 9 a Law No. 26/ 2000, The court should point out the result of the primary charges, therefore the articles should be clarified as acquired, meaning that there had been grave human rights violations in the form of murders committed by the LAKSAUR group and MAHIDI group.

- Considering, that to find out and answer "whether Defendant I could be made responsible of the more subsidiary charges", there should be discussion of article 42 paragraph 2 sub a, b Law No. 26/ 2000, related in unity in the subsidiary charges.

- Considering, that article 42 paragraph 2 Law No.26/ 2000, completely as follows:

- "A superordinate, police or other civilians, is criminally responsible of the grave human rights violations committed by the person's subordinates under the person's effective authority and control, because the superordinate does not conduct any proper control on the subordinates, which are:

a. The superordinate knows, or deliberately neglects the information which obviously points out that the subordinate is committing or has just committed grave human rights violations.

b. The superordinate does not conduct any adequate actions within the person's authority to prevent or quell the actions, or hand over the perpetrators to the authorities for further investigations, questions and prosecutions".

- Considering, that the above article has the elements as follows:

1. A superordinate, a police or other civilians.

2. Criminally responsible of grave human rights violation committed by the person's subordinate under the person's effective authority and control.

3. Because the superordinate does not make proper control on the subordinate, and it is true that the superordinate knows, or deliberately neglects information which obviously shows that the subordinate is committing or has just committed grave human rights violations.

4. Because the superordinate does not conduct any proper control on the subordinate, which is taking the adequate and necessary actions within the person's authority to prevent or quell the crime, or hands over the perpetrators to the authorities for further investigations, questions and prosecutions.

- The element of Ad. 1. A superordinate, a police or other civilians.

- The word a "superordinate" means that the person has a higher ranked status, and has members or staff members who are the person's subordinates.
- A person, who has subordinates, shows that the person has the authority to give orders to the subordinates.
- The words "either a police or other civilians" mean that the superordinate could be a policeman or a member of civil servants.
- Based on the facts revealed in court, Defendant Col. Inf. Drs. HERMAN SEDYONO was assigned as the regent of Kovalima, since the end of September 1994 throughout the time of the grave human rights violations in East Timor on September 6, 1999, which under Law No. 5/ 1974, on the principles of the government in function as the head of the government and the head of the regional authorities.
- As the representative of the government, Defendant I was responsible of the government, coordinating the development, and accommodate the people's life in all fields.
- Based on the above matters, it is clear that eventhough Defendant I was a military officer, but in carrying out his duty as a regent in charge of the local government, he was not a policeman, but a civil servant.
- Considering, that based on the above discussion, in the court's opinion Defendant I was a civil superordinate, therefore the element of Ad. 1 of "a superordinate, police or other civilians has been met".
- The element of Ad. 2 of "criminally responsible for grave human rights violations committed by his subordinates under his effective authority and control":
- Considering, that to prove whether the above element of Ad. 2 was acquired by Defendant I as a civilian superordinate, therefore should be first answered, a question which is;
 - "Whether there was a hierarchy line of order of the superordinate and the subordinates with the effective authority and control, between Defendant I and the LAKSAUR group and MAHIDI group who had been proven guilty of making grave human rights violations in the form of murders; on the contrary, whether the LAKSAUR group and MAHIDI group were the subordinates under the effective authority and control of Defendant I".
- Considering, that the next question as discussed in the primary charges which is: "Whether the Defendant I could be responsible for crimes of grave human rights violation that has been proven".
- Considering, that the above question to be answered as follows:
 - A person is said to have a hierarchy line of order with other person based on the official status of the person with the other, when there is a vertical superordinate and subordinates interrelationships.

- The facts in court revealed that the LAKSAUR group and MAHIDI group from pro-integration group were self-reliant organizations established by volunteers to support the security maintenance during the popular consultation/ ballot to win the pro-integration.
- Witness DOMINGGAS DOS SANTOS MAUZINHO explained the members of LAKSAUR group and MAHIDI group who wear black, red and white T-shirts with words LAKSAUR and MAHIDI written on them, were ordinary people of East Timor.
- Witness DOMINGGAS DOS SANTOS MAUZINHO explained that LAKSAUR and MAHIDI groups never wore the TNI, the police, or Brimob uniforms.
- In accordance with the facts revealed in court, Defendant I said that it did not matter whoever won the popular consultation/ ballot, it was more important that the situation was safe and in control.
- During the trial, there was no single evidence, either a letter or the testimony of a witness that points out a superordinate and subordinate interrelationship between the LAKSAUR group and MAHIDI group on one hand, and Defendant I as the civil supervisor on the other.
- The facts revealed in court said that Defendant I knew, had good relationships, and was well aware of the existence of LAKSAUR and MAHIDI organizations in Suai, Kovalima.
- In accordance with the Constitutional Law which regulate good and mutual relationships between the defendants and the LAKSAUR group of people and MAHIDI group of people were not due to the hierarchy line of order with the effective control of the superordinate to the subordinate, and vice versa. But it was an ideal relationship between the government as the security and law enforcement authorities on one hand, and people in the community on the other, which in the daily activities could be in the forms of adherences to or violations of the rules. Such acquaintance between the government and the people could not be necessarily said to have a command relation with the effective control. In other words, when the members of the community with various characteristics violate the law, therefore the government could not be responsible as the party, who has the effective control of command.
- The actions should be taken by the government in case of an occurring turmoil leading to chaos, would be making appropriate measures to calm down the situation, trying to stop the turmoil, and offering coordinative and cooperative solutions with the assistance of related officials and authorities.
- Considering, that based on the above matters, therefore in the court's opinion Defendant I, and the LAKSAUR group and MAHIDI group had no order or command link as the superordinate to the subordinate under the effective authority and control, and vice versa. The LAKSAUR group and MAHIDI group were not the subordinators under the effective authority and command of Defendant I.
- Considering, that the question on the relationship of Defendant I with the LAKSAUR group and MAHIDI group has been answered, therefore the main question on "whether Defendant I could be held responsible for the grave human rights violations" has also been answered; and the answer is that "Defendant I could not be held responsible of the grave human rights violations".

- Considering, that based on the above discussion, therefore in the court's opinion the element of Ad. 2 Article 42 paragraph 2 as follows: "criminally responsible for the grave human rights violations committed by his subordinates under his effective authority and command", has not been met by Defendant I.

- Considering, that since one of the elements of article 42 paragraph 2 under Law No. 26/ 2000, was not acquired, therefore the rest of the elements should not be further discussed, and article 42 paragraph 2 under Law No. 26/ 2000, should be considered legally and convincingly not proven.

- Considering, that that article 42 paragraph 2 under Law No. 26/ 2000, as a part of the More Subsidiary Indictment specifically for Defendant I was not proven, therefore on article 37 of Law No. 26/ 2000, regulating the criminal procedures, in the court's opinion, should not be further discussed.

- Considering, that in the discussion on the command responsibility in the court's opinion, should comply with the expectations of the defending attorneys in their exception discussing the public prosecutors' charges in the case.

- Considering, that the result of the discussion on the command responsibility as far as the argument of the team of defending attorneys, the court observed, has been adequately discussed, considered, and answered in accordance with the judgment as contained in the intermediate decision.

- Considering, that based on the above consideration, in the court's opinion the More Subsidiary Indictment specifically for Defendant I should be declared free of the More Subsidiary Charges specifically for Defendant I.

- Considering, that the More Subsidiary Charges specifically for Defendant II, violated article 7 b jis 9a, article 42 paragraph 1 sub a and b under Law No.26/2000, on the Human Rights Court should be discussed as follows:

- Considering the court, in its discussion on the articles in the More Subsidiary Charges should only point out the result of the discussion on the Primary Charges above.

- Considering, that the result of the discussion of the Primary Charges was legitimately and convincingly not proven, therefore the Secondary Subsidiary Charges specifically for Defendant II, should be also legitimately and convincingly not proven.

- Considering the Primary Charges have been legally and convincingly not proven, therefore the More Subsidiary Charges specifically for Defendant II, should be legally and convincingly not proven and Defendant II should be declared free of the More Subsidiary Charges specifically for Defendant II.

- Considering, that the More Subsidiary Charges specifically for Defendant III, violated article 7b jis 9a, article 42 paragraph 1 sub a and b under Law No. 26/2000 on the Human Rights Court, should be discussed as follows:

- Considering, that the court, in discussing the articles in the More Subsidiary Charges should only point out to the result of the discussion in the Primary Charges.

- Considering, that the result of the discussion was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant III was legally and convincingly not proven.

- Considering, that the argument which made Defendant III legally and convincingly not proven guilty of the charges in this court, was not due to the transfer of Kodal Command as argued by the team of defending attorneys of the defendants in the exception (eksepsi), but it was because the result of the discussion on the elements of the articles charged by the public prosecutors was not enclosed with supportive evidence; although the arguments were different, but The Human Rights Ad. Hoc Court was in the same opinion with the team of attorneys of the defendants that what Defendant III did was not enough to make him responsible for crimes.

- Considering, that the result of the discussion in the Primary Charges was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant III should be declared legally and convincingly not proven, and Defendant III should be free of the More Subsidiary Charges specifically for Defendant III.

- Considering, that the More Subsidiary Charges for Defendant IV, violated article 7b jis 9a, article 42 paragraph 1 sub a and b, under Law No. 26/ 2000, on the the Human Rights Court should be discussed as follows:

- Considering, that that the court, in discussing the articles in the More Subsidiary Charges should just point out to the result of the Primary Charges above.

- Considering, that the result of the discussion in the Primary Charges was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant IV should be declared legally and convincingly not proven.

- Considering, that the discussion in the Primary Charges was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant IV should be declared legally and convincingly not proven, and Defendant IV should be free of the More Subsidiary Charges specifically for Defendant IV.

- Considering, that the More Subsidiary Charges for Defendant V violated article 7b jis 9a, article 42 paragraph 1 sub a and b under Law No. 26/ 2000, on the Human rights Court should be discussed as follows:

- Considering, that the court, in the discussion on the articles in the More Subsidiary Charges should only point out at the result of the discussion of the Primary Charges above.

- Considering, that the result of the discussion of the Primary Charges was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant V should also be declared legally and convincingly not proven.

- Considering, that the result of the discussion about Defendant V Col. Inf. SUGITO, was considered answering all arguments presented in court by the team of attorneys of the defendants in the exception (eksepsi), which is the defendant could not be responsible for the actions charged by the public prosecutors.

- Considering, that the result of the discussion in the Primary Charges was legally and convincingly not proven, therefore the More Subsidiary Charges for Defendant V should be also legally and convincingly not proven, therefore Defendant III should be free of the More Subsidiary Charges specifically for Defendant V.

Considering, that based on the result of the discussion of all charges of the public prosecutors, it is clear that the Primary Charges, the Subsidiary Charges, and the More Subsidiary Charges were all legally and convincingly not proven, therefore Defendant I, Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V should be declared free of all charges of the Ad Hoc public prosecutors.

Considering, that since the defendants were declared free of all charges, therefore it would be the rights of Defendant I, Defendant II, Defendant III, Defendant IV and Defendant V to be rehabilitated through Human Rights Ad Hoc Court.

Considering, that the court's financial charges should be imposed to the state, and the material evidence presented in court would be determined under the order later.

Considering, that the court, before getting into the order of the court's decision, should declare the matters as follows:

Considering, that Exception presented by the team of attorneys of the defendants, in the court's opinion, had been sufficiently discussed and considered either in the intermediate decision or in the final judgment.

Considering, that the Replik of the public prosecutors or the Duplik of the team of attorneys of the defendants only contained repetitions of the explanations of arguments of each of the party, therefore the court observed the matters were sufficiently discussed.

Considering, that the intention of Defendant III on changing his information during the trial due to the fact that in giving his testimonies Defendant III was directed by the investigation officers, could not be accepted by the court, as the defendant, a Kapolres should know the consequences of giving the directed information in BAP, therefore the defendant's information in the BAP should be considered as valid in court.

- The court read testimonies of 4 witnesses as requested by the public prosecutors as included in the court's BAP, enclosed on the case file.

- The testimony of Witness TRIMO SUNGKOWO, who had never been sworn/ under oath, was only partly confirmed by the defendants, and the rest was not responded. The witness' information read in front on the court, though the witness was never sworn/ was not under oath, could be used as evidence in the case when in accordance with the material evidence presented in court.

- The testimonies given under oath by each of the witness; Witness TOBIAS DOS SANTOS, Witness FRES DA COSTA, and Witness ARMINDO GRANADEIRO, read in front of the court, however, were all denied by the defendants as far as it concerned the involvement of the defendants in the riot in the church compound, Suai.

- Due to the denials by the defendants, the weight of evidence was significantly reduced, so they could not be used as the matter of consideration, which implicate the defendants, but in favor of them instead.
- The witnesses who withdrawn the testimonies during trial with no adequate reasons, indicated that the witnesses could have lied in their testimonies.
- The public prosecutor was obviously hesitant in the discussion and authentication of the More Subsidiary Charges for Defendant I, as indicated on the prosecutor's writings of the articles in the Subsidiary Charges and More Subsidiary charges, specifically for Defendant I
- Therefore the prosecutors could not reach the authentication stage of the More Subsidiary Charges therefore the occurring confusion in the application or the order of the articles could not be immediately discovered, or be discussed.

Considering:

- Considering, that the court considered what printed in the order of this judgment has been based on the adequate legal grounds, and considered precise and fair, and has not exceed the authority of the Human Rights Ad Hoc court.
- Considering, that faults in the charges of crime against humanity should be based on legal reasons and reasonable judgments of the judges, and not on mysterious considerations, or prejudices of the press, on the Defendants.
- Considering, that to release them without legal process would surely insult those who have died and make those who are still alive skeptical.
- Considering, that in accordance with religious norms, a religion rules: "Avoid the execution of punishments (hudud) as long as there is a 'subhat' or confusion that make the judge in doubts."
- As the defendants were declared free of all charges, therefore the financial charges of this court is imposed to the state, and the defendants would be granted rehabilitation with the inclusion of the phrase rehabilitation in the order of this judgment below:

Recalling and observing all rules and regulations, including Article 7 b, article 9 a, article 37, article 41, article 42 paragraph 1 and 2 Law No. 26/ 2000; Article 156, article 191 paragraph 1, article 194, article 197 of the KUHAP; Article 14 paragraph 1 of Goernment.Regulation (PP) No. 27, 1983, and other related rules and regulations.

The court:

I. Declared the defendants, namely: Defendant I, Col. Inf. Drs. HERMAN SEDYONO; Defendant II, Col. Czi. LILIEK KOESHADIANTO; Defendant III, Adjutant to the Commissioner of the Police Superintendent (AKBP) GATOT SUBYAKTORO; Defendant IV, Maj. Inf. ACHMAD SYAMSUDIN; Defendant V, Maj. Inf. SUGITO were legally and convincingly not guilty of committing crimes as stated in the primary, subsidiary, and secondary subsidiary charges.

II. Free Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V of all charges as stated in the primary, subsidiary and secondary subsidiary charges.

III. Restore the rights of the Defendants in ability, status and dignity.

IV. Impose the financial charge of the court to the state.

V. Declare material evidence, namely:

a. material.

1. 7 (seven) pieces of plastic mats
2. 1 (one) piece of green ribbon cloth
3. 1 piece of pink curtain
4. 1 pair of white and black skirt and blouse
5. 1 piece of red, silk table mat
6. 1 piece of white and brown skirt
7. 1 piece of white shirt
8. 1 piece of child's dress
9. 1 pair of gray trousers
10. 1 piece of batik cloth
11. 1 piece of wheat bag
12. 1 piece of blue checkered sarong
13. 1 pair of brown sandals
14. 1 piece of purple skirt

b. Letters

Reports on the grave excavations No. TT. 3002/SK.II/XI/1999, on November 30, 1999, on the result of the excavations of the unidentified graves on November 25, 1999, which unearthed 26 bodies with enclosed visum et repertum reports No. 001/TT.3002/SK.II/XI/1999, up to No. 026/TT.3002/SK/XI/1999, each dated on November 30, 1999.

Returned to the Attorney General Office of the Republic of Indonesia to be used as evidence in other cases.

Thus decision was made in the meeting of the Panel of Judges of the Human Rights Ad Hoc Court on Wednesday, August 14, 2002, with the panelists:

1. CICUT SETYARSO, SH, MH, as the head of the panelists.
2. ANDRIANI NURDIN, SH, member
3. ABDURRAHMAN, SH, MH, member
4. MUHAMMAD GUNTUR ALFIE, SH, MH, member
5. Prof. Dr. RACHMAD SYAFEI, MA, member

In accordance with the decision of the Head of the Human Rights Court at the Central Jakarta District Court No. 03/Pid.HAM/Ad Hoc/2002/PN Jakarta Pusat on February 21, 2002.

The decision was read at the open court on Thursday, August 15, 2002, by the Head of the panel of the Ad Hoc judges, with the members of the panel of Ad Hoc Judges, assisted by LINDAWATI SARIKIT, SH, as the clerk of the court (Panitera), and attended by DARMONO, SH, MM and DJOKO JAUHARI, SH, as the Ad Hoc Public Prosecutor,

attended by Defendant I, Defendant II, Defendant III, Defendant IV, and Defendant V, with the team of attorneys of the defendants.