Watch INDONESIA!

DEUTSCHE KOMMISSION JUSTITIA ET PAX

Bernd Häusler

Justice for the Victims

A Legal Opinion on the Indonesian human rights trials concerning the crimes committed in East Timor in 1999

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Justice for the Victims

Alex Flor, Monika Schlicher, Petra Stockmann
Watch Indonesia!

East Timor or Timor-Leste, the world's youngest state, obtained its independence on May 20th, 2002. This was preceded by five centuries of Portuguese colonial rule, a few days of independence in 1975, immediately followed by almost 25 years of occupation by the mighty neighbor Indonesia, which annexed the island half as its 27th province after a military invasion. Between September 1999 and May 20th, 2002, East Timor was under the United Nations Transitional Administration (UNTAET).

The altered international balance of power after the end of the Cold War and the political changes in Indonesia in May 1998 provided the opportunity for the referendum, in which the population made a landslide decision for the separation from Indonesia on August 30th, 1999. The victory, however, was bought dearly. Already several months earlier, pro-Indonesian militias had started a terror campaign against the civilian population. The militias acted as henchmen for the Indonesian military, by which they had been established and equipped. In Liquiça, Dili, Los Palos, Suai und Oecussi, they committed massacres, which evoked an international outcry. Besides this, there were countless cases of murder, rape, intimidation and many other atrocities. Once the pro-Indonesian side had to realize its defeat, the violence reached its peak. The Indonesians quickly retreated, while the militias destroyed large parts of the island half, forcing hundreds of thousands to flee into the neighboring West Timor. At least one thousand people were killed during those days.

"Justice for the victims" is the motto, under which the demands for bringing the perpetrators to justice can be summarized. Human rights organizations, churches, welfare organizations and other societal groups in many countries, including Indonesia and East Timor, were urging to bring the persons responsible to Court. The variety of their concepts and strategies met at the common opinion that only an international human rights tribunal would guarantee fair proceedings. Also a 5-member Commission of Inquiry, which visited East Timor in November and December of 1999 mandated by the United Nations (UN), came to the same conclusion. This commission, which was headed by Sonia Picado and in which also the former German Minister of Justice, Dr. Sabine Leutheusser-Schnarrenberger, participated, recommended the establishment of an international human rights tribunal in the region.[1]

The resistance on the part of the Indonesian Government and the lack of support by the international community, however, caused the establishment of an international tribunal to recede into a dim distance, even though the UN at least formally leaves this

[1] United Nations, OHCHR, Report of the International Commission of Inquiry on East Timor to the Secretary General, UN Doc. A/54/726 or S/2000/59, January, 2000;
http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.54.726,+S.2000.59.En?OpenDocument

option open to the present day[2]. Instead, Indonesia's suggestion to initiate legal proceedings against a number of suspects within the scope of its national jurisdiction was accepted for the time being. For this, however, the necessary legal foundation had to be created at first, which finally took place by the adoption of the Law No. 26/2000 on Human Rights Courts. With this Law, which was widely embraced as a step into the right direction, and the implementation in form of the main proceedings before the ad-hoc Human Rights Courts opened in March 2002 in Jakarta, Indonesia broke new ground. Due to its inexperience as well as the general domestic conditions in Indonesia, doubts regarding the reliability of the proceedings remained. Prominent suspects, like the former Commander-in-Chief of the Armed Forces and Minister of Defense Wiranto, the former chief of the intelligence service, Zacky Anwar Makarim as well as the Commander-in-Chief of the militias, João Tavares, could not be found on the list of accused contrary to the recommendations of the Commission of Inquiry KPP-HAM, which had been appointed by the Government. Only 18 people were indicted, none of whom was remanded into custody.

Due to these conditions, Watch Indonesia! felt the need to initiate a trial observation and to commission the present legal opinion in cooperation with the German Commission Justitia et Pax and a panel of supporters consisting of Misereor, missio Aachen and the Human Rights Desk of Diakonia, the Social Services Agency of the Protestant Church in Germany. The focal point of this legal opinion was the question: *"Are the international standards met by the criminal proceedings regarding the events in East Timor in 1999, which were instituted before the Human Rights Court in Jakarta in March 2002 or are the same only 'mock trials', in order to avoid an ad-hoc tribunal as threatened by the international community?"*

With Attorney at Law Bernd Häusler, Vice President of the Berlin Bar Association and its Human Rights Commissioner, an experienced trial lawyer could be engaged for this task. As a "man of practical experience", who also has a comprehensive theoretical knowledge – especially regarding international criminal law – and experience as trial observer at proceedings in different countries, who is interested in human rights issues, but at the same time always cautious not to lose the objective view of a lawyer, he succeeded in presenting a legal opinion, which is an informative and exciting reading matter even for people who are interested, but laymen in legal affairs. With many examples from international case law – from the Nuremberg Trials to the Yugoslavia Tribunal – Häusler proves that the term *"international legal standards"* is more than questionable and, therefore, there is no reason to display arrogance towards the Indonesian judiciary. But is Indonesia also willing and able *"genuinely to carry out the investigation or prosecution?"* A negation of this question is according to Article 17 of the Statute of Rome reason for prosecution by the International Criminal Court[3].

The legal opinion is intentionally limited to the view of a lawyer, who carefully avoids drawing conclusions that are politically judgmental. Also legal political issues are mentioned only marginally. So, the opinion is limited to e.g. the conclusion that the politically predetermined limitation of the temporal and geographical jurisdiction of the

[2] In Article 16 of the Security Council Resolution 1272 (1999) of October 25th, 1999, UN Doc. S/RES/1272 (1999), the Security Council requested that the persons responsible for the atrocities should be brought to justice.

[3] A prosecution of the atrocities committed in East Timor in 1999 by the International Criminal Court (ICC) is for other reasons not under consideration. Anyhow, the establishment of an international ad-hoc human rights tribunal for the investigation of these cases could refer to Article 17 of the Statute of Rome.

Court, which will be discussed later, is irrelevant from a legal point of view, because it would have been the obligation of the Court, according to its duty of inquiry to investigate all relevant facts and documents – thus also exceeding the predetermined geographical and temporal framework. The legal opinion, however, is not asking the question why the corresponding requirements have been set on the part of the Government in the first place and – even more important -, why the Court imposed these requirements also on itself and, by doing so, violated its own duty of inquiry.

The legal opinion furthermore critically deals with the assessments of the ad-hoc trials, as they were made by renowned organizations, such as amnesty international, the International Crisis Group or Human Rights Watch. In Häusler's opinion, many of the criticized issues do not withstand a more thorough legal analysis. They are rather the result of a point of view, which is using the Anglo-American legal culture as a basis, while the Indonesian judicial system is closer to the continental European legal culture as far as the issues in question are concerned. As so far probably the first and only analysis by an author from this legal tradition, the legal opinion is of special significance. Freed from the "ballast" of irrelevant or secondary points of criticism, as they have been brought forward by a number of observers, the fact that has been identified by Häusler as a considerable shortcoming of the ad-hoc trials becomes even more important: the almost complete lack of evidence in form of written documents.

Before we go into detail regarding the focal points of criticism of the legal opinion and discuss further questions, we have to look back at the aforementioned motto *"justice for the victims."* How shall the term *"justice"* be understood? The point should definitely not be to bring disagreeable representatives, e.g. of the military, behind bars, unless their guilt has been proven beyond doubt. The measuring rod for justice is not the number of convictions or the length of the respective prison term. It certainly is undisputed that a defendant must be acquitted when proven innocent or due to lack of evidence. Besides the problem that some will find it difficult to accept such acquittals or sentences that are considered too mild, demand for provability creates a fundamental problem, to which we will return later.

Independent from the sentences, it is important for the victims that the truth is unearthed. The committed crimes must be called by their name. When during the trials in Jakarta already the indictments were based on the theory that it had been a civil-war-like conflict in East Timor in 1999, during which the security forces inexcusably neglected to prevent certain assaults (crime by omission; i.e. *omission* instead of *commission*), so this may be without legal relevance as explained in the present legal opinion. Because the crime by omission in the form of failure to adequately supervise subordinates is not to be judged any less than the actively committed crime. The civil war scenario, however, was a slap in the face for the people affected, who had experienced the defendants as masterminds of the terror campaign, which was systematically carried out by the militias[4] as the executing bodies. A rape victim may feel the same way, when her tormentor is accused of the belittling charge of "non-marital cohabitation" – and with this, a shadow of the guilt is falling back on the victim of the

[4] The term "militias" has been largely avoided in the indictments as well as during the course of the trials. Instead, it was talked about *Pam Swakarsa* (civil defense corps) and similar groups, whose existence is legally covered in Indonesia. The obvious conclusion to derive a responsibility of the authorities from exactly this, however, remained only rudimental. As an alternative, the term "pro-integration groups" (*kelompok pro-integrasi)* was used, from which no conclusions regarding a responsibility on the part of the Government could be drawn. Though some witnesses stated that the pro-integration groups had been financed from the official budget of the communities (APBD).

offense.

Not only the people of East Timor have a right to find out the truth, but also many thousands of victims of military operations and of state arbitrariness all over Indonesia. Even though the ad-hoc trials for the atrocities in East Timor may not directly become a model for possible future trials, due to their special international significance, they still held the chance to break taboos regarding certain questions about the perpetration of offenses and action patterns, which also would have been of importance for Aceh, Papua and other regions. The ad-hoc trials could have acted as a signal for the coming to terms of gross human rights violations elsewhere if they had unearthed the truth.

Yet, the truth about the events in East Timor is generally known, at least as far as the principle is concerned. Given the known facts, to say this is no contempt of the presumption of innocence, especially as no statement is made regarding individual guilt. It makes a difference, however, whether this truth is also officially accepted or not. This is not only important regarding the consequences, such as the sentencing, the claim for indemnification, etc., but above all also regarding the principal question, whether a state admits to crimes that have been committed in its name. The assumption that it is easy for a state, which has overcome a dictatorship, to openly name the sins of the preceding regime is, as we know, not only wrong for Indonesia. There are only few examples worldwide, where this was the case, one of these was the condemnation of the Nazi-regime in Germany. But even here, the readiness to plead guilty has its limits, as the discussion about the role of the Wehrmacht (German armed forces during the Third Reich) clearly demonstrates.

Considering the severe shortfalls in many other states, can and may the international community force a sovereign state like Indonesia to uncover human rights violations that have been committed in its name? This in particular given the fact that this state is a geo-strategically important regional power, with a large population and of considerable economic importance? And considering that this state can do nothing better than coquetting with its sensitivity as regards any interference in its *"internal affairs"*?

Governments may have difficulties with an answer to this. For representatives of civil society, however, there is no reason to subject fundamental universal values to real-political considerations. The protection of human rights is such a universal value, which must be demanded in Indonesia as well as anywhere else in the world.

On various occasions, also the question comes up, whether the coming to terms with the past is the job of the Court or if the same could not be carried out much better within the framework of a truth commission. A truth commission, however, cannot be an alternative to legal proceedings, but only a supplement to it. The Indonesian Law on Human Rights Courts also provides for the formation of a truth commission. Given the view on history as presented during the ad-hoc trials, however, there is little reason to believe that this still to be formed commission will be able to live up to its task. Human rights activists in Indonesia even fear that here only the good name of the commission in South Africa is alluded to, in order to gain international recognition. Possibly, the truth commission should only serve to create a loophole, with which the conviction of perpetrators may be avoided in favor of a *"consequence-free"* reconciliation process[5].

[5] Compare Alex Flor: „Sand in die Augen gestreut" (Dust Thrown in the Eyes), in: *Indonesien-Information* No. 3/2000, p. 16

Neither the ad-hoc trials nor the formation of a truth commission would have been thinkable without international pressure. The deployment of the UN mandated International Force for East Timor (INTERFET) to East Timor on September 20th, 1999, had clearly shown to Indonesia that the patience of the international community can not be taxed indefinitely. Indonesia was forced to respond to the resolutions of the fourth Special Session of the UN Commission on Human Rights (UNCHR) in September 1999, which had been summoned especially due to the East Timor crisis, as well as to the resolution of the UN Security Council on October 25th, 1999, unless it wanted to risk having to put up with further unpleasant consequences. Knowing that the international pressure would ease as soon as East Timor stopped hitting the headlines, Indonesia counted on a strategy of playing for time, accompanied by small, well-dosed steps of coming around, but without ever considering a radical departure from the existing political line. This strategy was successful. The adoption of the Law No. 26/2000, which paved the way for the establishment of an ad-hoc Court and a truth commission, was sufficient to avert a condemnation at the 57th regular session of the UNCHR in March 2001[6]. And on March 18th, 2002, exactly four days before the start of the 58th session, the two first trials eventually opened in Jakarta; at that early point of time, the Commission was, of course, unable to make any assessments as to the quality of the same. Literally last minute, President Megawati had signed the last two decrees necessary for the proceedings one day before the start of the trials[7]. It can be expected that Indonesia and/or East Timor will hardly be on the agenda of the UNCHR in the future, in spite of the rather dissatisfactory course and outcome of the trials.

That the establishment of the ad-hoc Court was not quite as voluntary can also be realized from the political debate in Indonesia. Politicians saw themselves torn between national thinking and the awareness of the international expectations. Only a short time before the adoption of the Law No. 26/2000 by the Parliament (DPR), the People's Consultative Assembly (MPR) enacted an amendment to the constitution, which rules out retroactive application of legal regulations[8]. All 500 members of the DPR are among the 700 members of the MPR. Thus, exactly the same MPs have agreed to fundamentally contradictory regulations within only a few months! Therefore, it was feared at first that, for their being interpreted as unconstitutional, the ad-hoc trials for East Timor would never take place[9].

Another piece of evidence for the lack of interest in a comprehensive clarification of the events are the aforementioned geographical and temporal limitations included in the Presidential Decrees No. 53/2001 and No. 96/2001. The same provide that the Human Rights Court is only authorized to examine and to try gross human rights violations which had been committed in Dili, Liquiça and Suai in April and September 1999. With this, severe cases like the massacres in Los Palos and Oecussi as well as the expulsion of several hundred thousand people across the border to West Timor were excluded[10]. Especially if Häusler's argument proves to be correct that these limitations

[6] Chairman's Statement on East Timor, 57. Session of the UN Commission on Human Rights, 4/20/2001
[7] Peraturan Pemerintah (PP) No. 2/2002 (Witness Protection Regulation) and PP No. 3/2002 (Compensation Regulation)
[8] Compare Article 28 I (1) of the Indonesian Constitution UUD 1945
[9] Compare Alex Flor: „Sand in die Augen gestreut" (Dust Thrown in the Eyes), in: *Indonesien-Information* No. 3/2000, p. 16
[10] At first, the temporal jurisdiction of the Court was even limited to offenses committed only after the referendum on 8/30/1999. Upon the pressure by the international community, President Megawati then extended the period to under investigation to the month of April.

are from a legal point of view without relevance due to the Court's obligation of inquiry, it must be asked why these regulations have been decreed in the first place – and why all parties involved in the trials strictly adhered to the same. This can only be explained with the assumption that from the beginning there had been the intention to avoid that any systematic nature of the crimes becomes evident. With this, however, the substance of the principally very deserving Law on Human Rights Courts is taken *ad absurdum*, because one premise, which distinguishes gross human rights violations or more precisely: crimes against humanity, in definition from regular crimes, is the existence of a *"widespread"* or *"systematic"* attack against any civilian population.

Trial observers of the Jakarta-based legal aid organization ELSAM pointed out that the term *"widespread" (meluas)* attack had been translated incorrectly already in the law and thus it was, in their opinion, also incorrectly used in the indictments[11]. The indictment considered the premise of a *"widespread"* attack fulfilled e.g. by the fact that the conflict in the church of Liquiça expanded to some buildings in the neighborhood. As an argument for the *"systematic"* nature of the attack it was reasoned that the different groups of the attacking militias found enough time between the early morning hours and noon to agree on joint proceedings. This is absolutely contrary to the actual meaning of these terms taken from the Rome Statute as they were interpreted e.g. during the trials conducted under the UN Administration in East Timor for the same offense complex[12].

It is quite similar with another notion taken from the Rome Statute, which is the criminal responsibility of a superior due to the element of crime of omission. Crimes by omission were the main count of indictment in all trials. But the Attorney General's Office and the Court proved to be unable to treat these elements of crime of omission in the sense of *"white collar crimes"*, which could definitely be considered as active. So, ultimately, again the "conventional" active commission of a crime by the defendant was investigated and evaluated, which was not the actual subject matter of the indictment before the Human Rights Court, because it could have been heard before a regular criminal Court. The terminology confusion went so far that e.g. in the case of the accused militia leader Eurico Guterres, evidently active acts (such as the call for the committing of atrocities) were squeezed into the construct of the element of crime of omission *"lack of supervision"*, in order to be able to bring the case as gross human rights violation before the ad-hoc Court[13]. The punishment of regular offenses, which were partially determined and proven in the course of the trials, however, was not within the jurisdiction of the ad-hoc hoc Court[14]. It is generally doubted that there will be any trials before regular criminal Courts for these offenses.

Ultimately, this means that with the Law on Humans Rights Courts, which follows the

[11] Compare ELSAM*, Progres Report V, Putusan Bebas Pengadilan HAM ad hoc Timtim: Peluang Pembelajaran Yang Gagal,* Jakarta, 8/19/2002, p. 7

[12] "East Timor's entire territory was considered as one big crime scene, which made it possible to view hundreds of individual human rights violations – homicides, rapes, destructions and expulsions – in their entirety. With this, a widespread and systematic assault upon the civilian population could be proven, of which the individual human rights violations were a part, with which the perpetrators intended to put pressure on the population, so they would vote out of fear for an autonomy within the Indonesian state at the referendum." Quoted from: Marco Kalbusch: „Friedenssicherung durch Recht: Die Verfolgung schwerer Straftaten in Osttimor" (Securing Peace through Justice: The Prosecution of Serious Crimes in East Timor), in: *Vierteljahresschrift für Sicherheit und Frieden (S+F)* (Quarterly for Security and Peace) 4/2002; Kalbusch refers to the verdict of the District Court of Dili on 11th December 2001: The Prosecutor v. Joni Marques & others, case No. 09/ 2000, paragraph 686, verdict.

[13] Human Rights Watch: *Justice Denied for East Timor*, New York, 12/20/2002

[14] Compare e.g. the hiding of corpses by the defendant Sugito, chapter B 5 of the present legal opinion.

Rome Statute in central issues, standards were defined, which justice could not or would not meet. The higher the standard, the more certain the plaudit of the international community would be. But also the more certain that the own justice would not be able to meet this standard.

The main question, by which the trials must be assessed, is, to what degree it was, or could have been, successful to conceive the gross human rights violations that were committed by the militias as part of a systematically planned military strategy. This is exactly where the Court failed.

In the meantime, most of the 18 defendants have been sentenced. Ten out of 14 defendants were acquitted, among them the former Chief of Police Timbul Silaen as well as the five defendants in the trial Herman Sedyono and others, with whose cases the present legal opinion will deal in detail. The militia leader Eurico Guterres was sentenced to the minimum penalty of ten years in prison. The former Governor of East Timor, Abilio José Soares, the former District Military Commander of Dili, Lieutenant Colonel Soedjarwo, the former Police Chief of Dili, Lieutenant Colonel Hulman Gultom, were sentenced to three to five years in prison, sentences, which all remained below the minimum penalty.

The present verdicts in the cases of Timbul Silaen as well as Herman Sedyono and others acknowledge that there have been gross human rights violations. Contrary to the tenor provided in the indictments, the Court saw also that these had been targeted "attacks" against civilians and by no means *"clashes"* of groups with different opinions. But as *"attackers"* and therefore as perpetrators, however, *"pro-integration groups"* were made out, which were not under the command or control of the defendants, for which reason the latter were not at fault[15].

The questions for the legitimacy of the acquittals and of the individual guilt of the defendants can be discussed controversially. But the question is of fundamental importance – far beyond Indonesia and East Timor – how states, state agencies as well as their representatives can be held responsible for their actions, which were carried out by seemingly independent forces. In the different conflicts in Indonesia it becomes more and more obvious that militias, armed civil defense corps or criminal groups are increasingly operating, where previously a direct intervention of military or police would have been the norm. Irregular, case-by-case formed proxy forces are of an instrumental nature and are not considered to be actual members of the military[16]. They are always put to use when the official state agencies want to wash their hands of it. Indonesia is no individual case in this matter – just to mention for example Colombia or the death squads feared in many other Latin American countries. The increased appearance of such non-state actors may be a perverted result of an increasing "acknowledgement" of human rights. The existing instruments of international human rights policy are cleverly used by the masterminds of the proxy forces. This way, representatives of Governments and military maintain their status as acknowledged dialog partners in the diplomatic circles, such as the UNCHR, who cannot be harmed.

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[15] Compare *Putusan No. 02/Pid. HAM/Ad Hoc/2002/Pengadilan Negeri Jakarta Pusat, 15th August 2002, and Putusan No. Reg. Perkara : 01/HAM/TIM -TIM/02/2002*, 8/15/2002

[16] Compare Ingo Wandelt: „Familienbande – Eine kleine Einführung in die Tiefenstruktur der TNI" (Family Ties – A Small Introduction into the Subsurface Structure of the TNI), in *Indonesien-Information* No. 3/2000, p. 52

Thus, it would be necessary, not only with regard to Indonesia and East Timor, to prove that the militias were actually under the command of the Indonesian military, in order to make the responsibility for actions by a state in such cases once more a topic on the international agenda. This was not even attempted during the ad hoc trials in Jakarta.

Häusler is right to criticize the almost complete nonexistence of written documents, which could prove this, as the main shortcoming of the trials. The assumption that substantial written materials, such as military position reports, etc. exist, was openly confirmed by General Adam Damiri during his questioning as witness. Naturally, it must be asked at this point, why these materials were not used during the trials.

Already a look at the report of the Commission of Inquiry KPP-HAM[17] shows that this Commission obviously had a number of quite important documents in their possession, which were handed over to the prosecution according to the mandatory procedure. As an example, only the so-called Garnadi document shall be mentioned here. The same is a letter by retired Brigadier General H.R. Garnadi to his employer; Garnadi worked at the time as assistant of the Coordinating Minister for Politics and Security for the Team for the Security of the Implementation of the Popular Consultation on the Special Autonomy in East Timor (P4OKTT). In this letter dated July 3rd, 1999, – i.e. two months before the execution of the "scorched earth policy" – the securing of the retreat *"with a possible destruction of vitally important facilities or objects"* for the case that the referendum would turn out to the disadvantage of Indonesia is mentioned as a procedure that could be considered[18]. The authenticity of the document was disavowed towards the media by Government agencies as well as by Garnadi himself, but Garnadi admitted that his signature was authentic[19]. An explanation, why this document was not introduced to the trial – and its submission for authentication was also not requested by the Court – may be due to the fact that the "scorched earth policy" was not a subject matter of the trial due to the temporally and geographically limited jurisdiction of the Court. But even this dubious reason would not even begin to explain, why practically no written documents were presented at all.

But even in East Timor, where the interests are different, the investigators have difficulties to provide the required evidence for the existence of a chain of command between the Indonesian military and the executing militias. Wandelt reports about the analysis of documents of the militias (not of the military!) in East Timor: *"A variety of relationships with the Indonesian military could be proved, but not that the militias were under the command of the military."*[20]. Robinson writes about the analysis of the documents examined in East Timor: *"I think it is quite likely that there are no written plans at all, and that the search for a documentary ‚smoking gun' will ultimately prove to be fruitless."* And furthermore: *"… the analysis here suggests that hard evidence of official planning is unlikely to come from documents, and indeed may never have been*

[17] Compare Annex 1C
[18] *The report of the Politics and Security Team in Dili*; Secret Indonesian government document; Memo Number: M.53/Tim P4-OKTT/7/1999, July 3, 1999 (Copy in English translation is in hand of the authors)
[19] *Menyimak Kontroversi "Dokumen Garnadi" Bumihanguskan Timtim*, Antara, 1/3/2000
[20] Compare Ingo Wandelt's unpublished speech manuscript for the speech "Linguistic Argumentation: Possibilities and Limits of the Analysis of Military Documents for the Criminal Prosecution in Cases of Human Rights Violations, Considering East Timor 1999 as Example", which was held (in German language) on 1/16/2003 at the Oriental Seminar of the University in Cologne

explicitly stated in documentary form" [21].

However, according to Robinson, missing documents do not necessarily have to mean that the excessive violence has been incidental: *"A second possibility is that the violence was not the product of an explicit plan or command, but was at least in part the result of a deeply embedded system of knowledge, discourse, norms, and behaviour within the TNI – a system I have called a culture of violence. The existence of that culture of violence – which entails an almost reflexive, though constantly changing, understanding of a certain language, technology, and repertoire of violence and terror – arguably means that no explicit order or plan was necessary in order to trigger the actions that were observed. In other words, TNI soldiers and police deployed in East Timor – whether they were in the territorial structure, the sectoral structure, or newly deployed under the auspices of martial law – were arguably operating according to a well-established modus operandi"* [22].

In principle, this thesis comes quite close to Häusler's remarks in chapter C 2 e)dd)bbb) about the *"esprit de corps"* widely present among the military. Apart from the question, whether the nonexistence of a plan or command is at risk to come into conflict with the necessary premise of a *"systematically"* committed offense, it must be considered, how the described *"culture of violence"* or the *"esprit de corps"* can be proven as causative for certain violations and by a specific defendant and become relevant regarding criminal proceedings. Is Article 42 of the Law No. 26/2000 sufficient, which says, following Art. 28 of the Rome Statute, that, as Häusler summarizes it: *"[…] the failure to act of the unaware superior in cases, in which he must have known about the atrocities at the applicable point of time under the prevailing circumstances shall be treated like that of the knowing superior".* Or asked more generally: Are the existing instruments of international criminal justice and human rights protection sufficient to hold the initiators of covert military operations responsible?

Given the fundamental importance of this problem, it could have been expected that the international community would be keen to optimally use at least the instruments available to them. Instead, due to their passive demeanor, they must take a share of the responsibility for the miserable failure of some of the worldwide first trials, at which the main legal principles provided in the Rome Statute were practically tested. While the UN missions in East Timor are often presented as models of success by the states involved, the same states showed and still show little interest to present also the legal prosecution of the crimes committed in 1999 as a paradigm. There is not only a lack of political pressure, but also of active support for uncovering these crimes. According to the *Sydney Morning Herald*, the Defense Signals Directorate (DSD) of the Australian intelligence service has recordings of the radio and intelligence communications of the Indonesian military from the time of the East Timor Crisis in 1999[23]. Unfortunately, it is not known that Australia made any efforts to submit this evidence at the trials. It is also

[21] Geoffrey Robinson, 2002, "The fruitless search for a smoking gun. Tracing the origins of violence in East Timor", in: Freek Colombijn and J. Thomas Lindblad (eds.), Roots of Violence in Indonesia, Institute of Southeast Asian Studies, Singapore, p. 254, quoted in Wandelt, loc. cit.
[22] Compare ibid. p. 273f
[23] Compare Hamish McDonald: "Spy intercepts confirm government knew of Jakarta´s hand in massacres", *Sydney Morning Herald*, 3/14/2002; compare also Watch Indonesia!: „Ost-Timor: Australien hält Beweise zurück" (East Timor: Australia Holds Back Evidence), Press Release, Berlin, 3/26/2002, http://home.snafu.de/watchin/IntelAussie.htm

not known that the international community made any attempts suggesting to the prosecutor and the Court to summon some of the many UN members, election observers or journalists, who were working in East Timor at the time, as witnesses[24]. And the efforts in cooperation with UNTAET/UNMISET to present witnesses from East Timor turned out to be quite difficult for several reasons, e.g. due to insufficient witness protection. In addition to this, summoned witnesses had to bear their own travel expenses[25].

Case presentation and sentencing were almost exclusively based on the testimonies of the witnesses that appeared at the trial. Due to the given circumstances, the same were mostly members of police and military, who partly were directly dependent on the defendants. Some of the witnesses were indicted in parallel proceedings and, thus, understandably anxious not to incriminate themselves. The list of the witnesses heard in the different trials is broadly identical. ELSAM points out a numerous other irregularities regarding the summoning and questioning of the witnesses[26], which can, however, not be discussed here in more detail. The also by other sides often criticized low number of victims from East Timor, who appeared as witnesses, is probably only a secondary aspect, as hardly any clarification could be expected from them regarding the existence of a chain of command between military and militias.

In contrast to this, the questioning of another witness would have been of great interest: Olivio Moruk, the former leader of the *Laksaur* militia. Moruk was designated as one of the 19 defendants in the ad-hoc trials, but was killed in Atambua, West Timor, under unsolved circumstances only a few days after the Attorney General's Office made this public. His death was the cause of severe assaults on the part of the militia members, who had found accommodation in West Timor, one day later, on September 6th, 2000, during which three members of the office of the UN High Commissioner for Refugees (UNHCR) were killed[27]. Indonesian human rights activists assume that Moruk was killed by members of the military, because he had signaled willingness to testify regarding the masterminds of the militia terror.

Is this just one of the many conspiracy theories that are very popular among almost all political and ideological circles in Indonesia? The investigation of these circumstances before a Court would in any case have been suited as a signal against spreading such conspiracy theories.

The failure of the Indonesian justice must be seen also in this connection. Judges and prosecutors are well aware of the almost unlimited power of the military, and therefore, susceptible to intimidations, which are often expressed indirectly. There is, of course, only speculation about the many levers to which the justice is exposed in concrete cases. Nevertheless, two events should be pointed out as examples, which probably were well suited to dampen the courage of the justice for relentless investigation. To be mentioned are the discovery of a powerful bomb on July 5th, 2000, in the office building of the Attorney General Marzuki Darusman, who was in charge of the investigations

[24] The comprehensive publicly accessible video and audio materials, such as TV reports, etc., cannot be used as evidence according to Indonesian law. It would have been an option, however, to summon the originators of such recordings as witnesses.
[25] Compare ELSAM: *Progres Report III, Monitoring Pengadilan HAM ad hoc*, Jakarta, 6/13/2002, p. 8
[26] Ibid.
[27] Human Rights Watch: *Indonesia Must Act on West Timor Killings*, Press Release, 9/6/2000

regarding the East Timor proceedings at the time[28], as well as the mysterious circumstances surrounding the death of his successor, Baharuddin Lopa on July 3rd, 2002, in Saudi Arabia[29]. Both had the reputation of pushing the proceedings ahead in a very diligent manner.

Given such circumstances, it cannot be expected that Indonesia is able to come to terms with the past and exercise justice by itself. If the vicious circle of impunity consisting of a weak justice, powerful interest groups that influence the same, the fueling of fear and the hurrying obedience of the justice cannot be broken, the truth and *"justice for the victims"* will not be achieved. To these victims belong many more people than the victims of violence and the survivors of the terror in East Timor. Also Indonesian judges and prosecutors may be among them.

Berlin, February 2003

[28] See the AP report about this: "Indonesian Police Say Unexploded Bombs Of Military Origin", dated 7/6/2000. The discovery of the bomb that would have been powerful enough to destroy parts of the office building and the files inside was preceded by the explosion of a smaller bomb a day earlier, on 07/04/2000, on the first floor of the office building. The explosive came from a factory run by the Indonesian military in the city of Bandung, about 180 km south-east of Jakarta.

[29] See the report of the *Jakarta Post* about this, „Lopa dies of heart failure", dated 7/4/2001. Lopa was Minister of Justice and Human Rights. Before that, he had been the Indonesian Ambassador in Saudi Arabia until February 2001. He had been appointed Attorney General, effective 06/01/2001, this still by Wahid. He died of a heart attack in Riad. His unexpected death caused many speculations, about which the *Jakarta Post* reported in its 7/5/2001 issue („No plan for autopsy on Lopa, says govt"). In this connection, also his predecessor Darusman was quoted, who – just like Lopa – assumed to be at a general risk of an attack in this position. Out of fear of being poisoned, neither of them had meals served in the offices and both only ate food they had brought from home.

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Berlin, 29th November 2002
Reg.-No. **278/02BH01**

Legal Opinion

Regarding the Question

Are the international standards met by the criminal proceedings regarding the events in East Timor in 1999, which were instituted before the Human Rights Court in Jakarta in March 2002 or are the same only "mock trials", in order to avoid an ad hoc tribunal as threatened by the international community?

S t r u c t u r e :

Part A:

Task and Approach

1. Task:

a) Clients:

The clients are Watch Indonesia! e.V. and the German Commission Justitia et Pax, together with a panel of supporters consisting of Misereor, missio Aachen and the Human Rights Desk of Diakonia, the Social Services Agency of the Protestant Church in Germany, with Watch Indonesia! as the executing organization.

Watch Indonesia! is an association that has been entered in 1994 into the register of associations of the Municipal Court Charlottenburg in Berlin under VR14.809 Nz, and which considers itself as a discussion forum for topics about democracy, human rights and environmental protection in Indonesia and East Timor. The association made it its task to sensitize the public and political decision-makers in Germany for the human rights violations in Indonesia and East Timor, to make a contribution to the strengthening of civil society and to work towards a peaceful solution of regional conflicts. Here, the association closely cooperates with non-Governmental organizations in Indonesia and East Timor.

The German Commission Justitia et Pax is a specialized office of the Catholic Church for issues regarding development policies, peace and human rights. As the “round table” of the facilities of the Catholic Church, which work in the international sector, Justitia et Pax works – in cooperation with external experts – on selected topics and tries to start a dialogue with those responsible in Parliament and Government. Besides the political dialogue work, the mission of the organization consists in the second instance in the exchange and educational work into the church-affiliated panel of supporters.

Together, the commissioning organizations have campaigned as advocates and partners for the right of East Timor’s people to self-determination and for the termination of the gross human rights violations, which resulted from the Indonesian occupation of the country. With solidarity campaigns, media and information work, they made efforts to bring the East Timor conflict as well as the human rights violations in Indonesia more into the public eye.

With representatives of the Ministry for Foreign Affairs, the Ministry for Economic Cooperation (BMZ) and Members of Parliament, they have held a political dialogue and promoted more consideration of East Timor in German foreign policy towards Indonesia. In order to support the population of East Timor, who had been helplessly subjected to the terror campaigns of the militias during the 1999 United Nations sponsored referendum for solving the conflict, the clients participated with 10 observers in an international election process observation.

Since then, the clients committed themselves with all suitable measures on the international and the national political level to the prosecution of the perpetrators and the persons responsible for the numerous massacres and destructions that took place in East Timor. They request an international tribunal for the crimes against humanity committed in East Timor in 1999, in case Indonesia does not adequately comply with this task, which it was assigned by the UN. Besides this, they support the comprehensive

coming to terms (*Aufarbeitung*) with the human rights violations to achieve peace and reconciliation through the work of a Truth Commission.

b) Agent:

The agent is an attorney at law and notary public in Berlin, where he has been working without interruptions since 1975 as an attorney and since 1989 also as notary public. Since 1991, he is in the board of directors of the Berlin Bar Association and has been their authorized representative for human rights since 1997. In May 2001, he created a committee for human rights for the Berlin Bar Association. Due to his work as human rights representative, he was forced to deal with the trial standards of other countries and, among other things, conducted trial observation in Turkey. As attorney, he defended representatives and officials of the former German Democratic Republic against the accusation of so-called Government crimes (e.g. killing of refugees at the German-German border) during trials caused by the German Unification. Already before that, he had the opportunity to gain experience in the field of criminal proceedings with an intelligence background and the corresponding influence of the intelligence services on the judiciary.

c) Task:

Due to the above mentioned work, Watch Indonesia! e.V. has a good relationship with Indonesian non-Governmental organizations, especially with such, which are working in the field of human rights. But Watch Indonesia! also maintains good relations with the corresponding church and state facilities, such as Komnas-HAM, the national human rights commission in Indonesia, or with the Indonesian Bishops' Conference and their human rights representative.

Out of this work by the client, the concern evolved that the proceedings conducted before the Human Rights Court in Jakarta since March 2002 may not be serious trials or only may have an alibi function towards the international community, which is insisting on a legal proceedings. Before the background of this field of work and operations of the client, the question

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arose, which shall be addressed in the present legal opinion.

d) Limitations of the Task:

The task was specifically given to a practitioner, because the trial observance and its evaluation were intended to be in the foreground. Therefore, the focal point of the examination was not actually the comprehensive law-comparing study of academic dimensions, which could not have been accomplished by one person in such a short period of time besides the daily routine of an attorney. It was rather imperative to bring in experience in criminal proceedings and to incorporate it in the evaluation of the behavior of the parties involved in the trials. The inquiry request – especially the first part – still

required necessarily a comparison with international standards and where the same seemed dubious, with national standard. This was performed within the scope available to a practitioner as far as required by the trial observation.

e) Overtaking Events:

Due to documents regarding one of the trials that were still outstanding, the legal opinion could not be completed on schedule – which was mid-June 2002. Once the documents were on hand, there was another delay, because of a planned vacation. Therefore, the completion of the opinion was overtaken in the 33rd week by the proclamation of the sentences in all three observed trials. It would not have made sense not to discuss this development, but not all the written reasons for the decisions were available by the time of the opinion's completion. Thus, only limited comments were possible. Naturally, the corresponding conclusions in part B item 5. are therefore relatively brief and the resulting evaluations in part C item 5. are only preliminary.

2. Approach and Method:

a) Preparation of the Trial Observation:

For the preparation of the trial observation, an overview of the political and legal development of the East Timor problem and by this, of the history of Law No. 26/2000 (Law on Human Rights Courts) was compiled using prevalent literature. The thorough study of this law, which was available in an English work copy, followed as well as a comparison of the standards contained therein with trial standards of other countries. The last step of the preparation was the thorough study of the three indictments in the original, which were available in the original version by the time the task was placed in April 2002 and of which client had prepared a German work copy.

b) Realization and Documentation of the Trial Observation:

The focal point of the inquiry is the evaluation of one trial day of each of the three proceedings that had been pending before the Human Rights Court in Jakarta since March. For this purpose, the agent attended between May 2nd and May 10th, 2002, one trial day of each of the three proceedings that were pending at the time. The agent, who does not speak the Indonesian language, was accompanied by an interpreter, who simultaneously translated to German. The interpreter as well as the agent continuously took notes about the witness statements and other events relevant to the trial. Besides the translation required in this case, such a method is the usual standard in countries like Germany, which do not use written minutes in criminal trials. In addition to this, the agent dictated together with the interpreter at the end of each trial day a memory record on a common dictation tape using the aforementioned notes. The tape was transcribed in Germany and afterwards once more reviewed by the agent and the interpreter.

c) Accompanying Discussions and Inquiries:

Accompanying the trial observations, the perceptions made there were discussed with representatives and attorneys of Indonesian NGOs and other institutions, in order to prevent comprehension problems and misunderstandings resulting thereof as well as to gain some background understanding.

d) Methodological Considerations:

It is understood that from the observation of only one – and for that matter, any – trial day, no general evaluation of the respective complete proceedings can be derived, especially regarding its concrete outcome. But this was also not subject to evaluation. It rather was to be clarified, whether the respective Court had the requisites on hand to proceed properly and adequately and whether these requisites were actually put to use.

The first part of the task, the question about the legal possibilities and the fundamentals of proper and adequate judicial actions, can at first also be determined on the basis of the general legal position, so it is not depending on the extremely limited observation time. Regarding the second part of the task, it can be assumed that a Court of law would not change its method of working on a daily basis. Thus, it basically should not be objectionable to draw conclusions from a Court's method of working on a specific trial day regarding its general method and approach.

It has to be added that the trial observation had not been announced in any way and, in fact, should not have been known. Thus there was no reason for any of the three observed Courts to act differently than usual on those specific trial days, which were attended by the agent. During the observation, however, attention was paid to possible clues for an otherwise different behavior of the Court. Any such clues should then be determined and included into the evaluation.

e) Structure of the Legal Opinion:

The opinion is divided into a descriptive, an evaluative and a concluding part. It is understood that also every description already contains evaluating elements. This fact shall not be denied by the partition herein. When this partition is nevertheless adhered to, this is done as provided below:

In the descriptive part (Part B), only so-called found facts are described, which constitute the actual foundation of the opinion. These found facts consist of legal facts, i.e. an account of legal regulations as well as of the determination of actual events, especially regarding the behavior of the parties involved in the trial. In the evaluative part (Part C), these facts are evaluated with regard to the task of the requested opinion. Due to the differentiated result that the opinion reaches in the evaluative part, it appeared to be essential to submit a conclusive part (Part D) with thoughts regarding further actions.

f) Enclosures to the Legal Opinion:

In order to keep the opinion legible, the descriptive part mainly contains accounts of the found facts only in a summarized form or in extracts, especially regarding the legal regulations, the indictments and the trial minutes. In order to make the agent's conclusions regarding the found facts comprehensible to the reader, the respective complete versions are attached to the opinion.

Also for legibility reasons, it was principally abstained from explaining specific Indonesian terms and abbreviations, especially official titles, within the text. An explanation can be found in the also enclosed "List of Abbreviations and Explanations", which is sorted alphabetically as well as by topic.

Part B:

Descriptive Part

1. History of the Creation of an Indonesian Law about the Establishment of a Human Rights Court:

a) Colonial Initial Situation:

Today's Indonesia, which consists of an archipelago of about 17,000 islands, was a Dutch colony until World War II started. Regarding the island of Timor, there was the uncommon situation that only the western part was under Dutch rule, while the eastern part of the island was a Portuguese colony (see map **Appendix 1A**).

At the beginning of WW II, the entire area was occupied by Japan. Towards the end of WW II, also the Japanese occupation ended. Within the increasing power vacuum, the forces for an independent Indonesia became stronger, resulting in the foundation of the independent Republic of Indonesia on August 17th, 1945, in those regions that used to be under Dutch colonial rule.

The territory of East Timor, which was still under Portuguese administration, was not affected by this.

b) Power Vacuum at the End of the Portuguese Rule:

Starting in 1974, the collapse of the Portuguese military dictatorship became apparent and with this also the end of Portugal's colonial rule in the overseas colonies, including East Timor. With the overcoming of the Portuguese military dictatorship and the transition to a democratic constitutional state, the respective independence movements in the former Portuguese colonies, like Angola or Mozambique, prevailed. In East Timor, however, the power vacuum that was caused by the political change in the Portuguese mother country was used by the Indonesian Republic, which occupied this former Portuguese colony obviously against the will of the majority of the population and tried to annex it.

c) Liberation Movement and the New York Agreement:

A liberation movement, which advocated East Timor's independence, resisted from the beginning the Indonesian rule that had not been internationally acknowledged. But only when President Suharto resigned, a situation arose, which made an end of the conflict seem possible. Early 1999, President Habibie finally agreed to hold a referendum on the political future of the region.

In April 1999, atrocities were committed against the population of East Timor, especially in those regions, where the independence movement received strong support by the population. Alarmed by this, the international community pressed for the immediate cessation of military and other violent measures to be accounted for by the Government and demanded a peaceful solution of the conflict. On May 5th, 1999, the so-called New York Agreement was signed, in which Indonesia committed itself to conduct a referen-

dum under the administration of the United Nations about the future status of East Timor (**Appendix 1B**).

d) The Referendum and its Consequences:

After being postponed several times due to the tense security situation, this referendum was finally held on August 30th 1999. East Timor's remaining a part of the Indonesian Republic with a concurrent granting of an extensive autonomy was put to the vote. In case of a rejection of this proposal, the only consequence left would have been the formation of an independent state of East Timor. All people involved were well aware of this consequence, even though East Timor's independence was not explicitly put to the vote as an alternative. The remaining of East Timor in the Indonesian Republic was rejected in a landslide of over 78%, by which the people voted for an independent state.

Upon publication of the result of the referendum, violence arose again. Gross human rights violations and atrocities were committed against the East Timorese people. The foreign members of the UN Administration were evacuated downright head over heals.

After the return of the UN troops and facilities under Australian leadership at the end of September 1999, the situation calmed. After a transitional period, during which an own administration was formed with UN assistance and further elections took place, East Timor became fully independent on May 20th, 2002.

e) Demands of the International Community for Criminal Prosecution:

A special session of the UN Commission on Human Rights summoned exclusively for this purpose, which, due to the committed atrocities, put it into the hands of the Secretary General of the United Nations to dispatch a 5-member commission of inquiry. This commission, in which also the former German Justice Minister, Dr. Sabine Leutheusser-Schnarrenberger, member of the Menschenrechtsausschuss des Deutschen Bundestages (Human Rights Committee of the German Parliament), participated, visited East Timor during November and December 1999 and recommended in its final report the establishment of an international ad hoc tribunal in the region in order to bring the perpetrators of the gross human rights violations to justice[30].

Finally, the international community requested the Indonesian Republic to establish a national Court of law, which would investigate the events and, if required, to try the respective cases. For the case that the Indonesian Republic did not comply with this, the international community threatened with the establishment of an ad hoc tribunal just like for Ruanda or the former Yugoslavia[31]. This threat was emphasized by a four-month embargo on weapons exports and military cooperation with the European Union[32], whose expected extension, however, did not take place. Even more pressing for Indonesia was the immediate discontinuation of the military support granted by the US, which continues to this day and is based on the so-called Leahy Amendment[33]. According to

[30] United Nations, OHCHR, Report of the International Commission of Inquiry on East Timor to the Secretary General, UN Doc. A/54/726 or S/2000/59, January, 2000;
http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.54.726,+S.2000.59.En?OpenDocument
[31] Monika Schlicher and Alex Flor, Ost-Timor – Der bittere Sieg (East Timor – The Bitter Victory), in Jahrbuch Menschenrechte 2001 (Yearbook Human Rights 2001), Frankfurt/Main, 2000
[32] Council Common Position 1999/624/CFSP of 16 September 1999 concerning restrictive measures against the Republic of Indonesia
[33] Section 572 of the Foreign Operations Appropriations Act for fiscal year 2002 (HR 2506), in renewal of the decisions already made in 1999 (HR 3194)

the same, military support cannot be granted, until after the expected trials have led to a satisfactory conclusion.

Therefore, on November 23rd, 2000, the Republic of Indonesia passed with Law No. 26/2000 on Human Rights Courts. The option of extending the criminal prosecution in accordance with this law also to events that took place before the adoption of the law, this upon recommendation of the Parliament (DPR) by decision of the republic's president in accordance with this law, has been utilized. In spite of the existence of this newly established Human Rights Court, the international community kept renewing its threat regarding the establishment of an international ad hoc tribunal, whenever they received the impression that the criminal prosecution seemed to stall.

f) Indonesia in Transition:

The aforementioned development, however, would not be completely described without a look at the internal changes in Indonesia during the past few years. Already in the beginning of the 1990s, the national human rights commission Komnas-HAM was founded. Although up to the more or less forced resignation of the former President Suharto Indonesia showed severe deficits with regard to democracy and the rule of law, the members of Komnas-HAM displayed a considerable amount of courage already during those times, producing amazing results. With Suharto's resignation on May 21st, 1998, also a strengthening of Indonesia's democratic forces and of those groups, which were interested in human rights issues, took place. Even though those forces could not prevent the atrocities in East Timor, they were still strong enough to urge for immediate arrangements to investigate and resolve the crimes in East Timor. This way, it was possible for Komnas-HAM to appoint a commission of inquiry for this purpose, which was dispatched to East Timor.

This commission, KPP-HAM, consisted partially of members of the national human rights commission Komnas-HAM and partially of "external" member, who had been appointed by Komnas-HAM. Based on this commission's investigations, Komnas-HAM came to the conclusion that the Indonesian military leadership was mainly responsible for the crimes committed in East Timor. Komnas-HAM named at least 33 mostly military leaders as persons responsible, among them 6 generals, one of whom was General Wiranto, who, at the time, was the commander-in-chief of the Indonesian armed forces. Komnas-HAM demanded as consequence – in agreement with the international community – the establishment of a human rights tribunal and recommended a continuation of the investigations they initiated by the Public Prosecutor's Office. For the details it is referred to the summary of the KPP-HAM report (**Appendix 1C**).

2. The Legal Regulations:

With Law No. 26/2000 on Human Rights Courts, dated November 23rd 2000, (**Appendix 2A**), not only an ad hoc Court is established. This new Court is rather a complete and permanent instance, which basically has jurisdiction over human rights violations. The following details have to be noted in this regard:

a) Subject Matter Jurisdiction:

The term of Human Rights Court is defined in Article 1 of Law No. 26/2000. According to the same, gross human rights violations are tried before this Court. In Article 4, it is expressively repeated that it is the duty of the Human Rights Court to hear and try gross human rights violations. Article 5 ties in with the so-called personal principle and subjects

also all human rights violations, which were committed abroad to the jurisdiction of the Indonesian Human Rights Courts, as long as they have been committed by an Indonesian citizen.

There are more details regarding the term human rights violation below in connection with the description of the elements of crime.

b) Temporal Jurisdiction:

Principally, the Court has jurisdiction over human rights violations, which have been committed after the law became effective. Deviating from this, however, also human rights violations, which had been committed before the law became effective, can be prosecuted under certain conditions (Article 43, Para. 1 of Law No. 26/2000). According to Para. 2 of the same provision, there are two requirements for this: A corresponding decision by the state's president as well as a corresponding decision by the Parliament (DPR).

On this basis, the decision of the President (Keppres) No. 53/2001 was passed, with which the establishment of ad hoc Human Rights Courts in Jakarta were ordered, for the criminal prosecution of the human rights violations, which had been committed in East Timor after the referendum on August 30th, 1999, and in Tanjung Priok in September 1984. With Keppres No. 96/2001, dated August 1st, 2001, Keppres No. 53/2001 was amended insofar, as the prosecution concerning East Timor, on the one hand, was limited to offenses in the districts Dili, Liquiça and Suai, but on the other hand, was to be extended time-wise to offenses during the month of April 1999. The prosecution of the human rights violations in Tanjung Priok remained effective.

Both decrees were confirmed by the DPR.

This made the prosecution of human rights violations as covered by Law No. 26/2000 which have been committed during April 1999 and after August 30th, 1999, in Dili, Liquiça and Suai possible through the Human Rights Court to be established in Jakarta.

c) Geographical Jurisdiction:

The Human Rights Courts are not forming a separate legal branch, but constitute special Courts (arbitration bodies, chambers), which are affiliated to the ordinary jurisdiction (Article 2). According to this, every Court of a provincial capital - in Jakarta, every district Court, shall be equipped with the corresponding Human Rights Courts (Article 3) - whereas this shall happen first in Central Jakarta, Surbaya, Medan and Makassar (Article 45 Para. 1).

The jurisdiction of the Court in Central Jakarta covers the districts of Greater Jakarta and the provinces of West Java, Banten, South Sumatra, Lampung, Bengkulu, West Kalimantan and Central Kalimantan; the jurisdiction of the Court in Surabaya covers the provinces East Java, Central Java, the Special District of Yogyakarta, Bali, South Kalimantan, East Kalimantan, West Nusa Tenggara and East Nusa Tenggara; the jurisdiction of the Court in Makassar covers the regions of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, the Moluccan Islands, the North Moluccan Islands and West Papua; the Court in Medan covers the region of North Sumatra, the Special District of Aceh, Riau, Jambi and West Sumatra (Article 45 Para. 2).

The procedural rules in the Articles 31 et sqq. of Law No. 26/2000 provide for a three-step procedure, from which follows that corresponding Human Rights Courts must also be established at the appellate Courts and the supreme Court.

d) Composition of the Courts:

The composition of the Courts is regulated in chapter IV, which includes the Articles 10 to 33 and which deals with procedural issues of the investigative proceedings as well as with the trial. Under systematic aspects, it is deemed more reasonable to discuss the composition of the Courts separately from the procedural issues.

Article 27 stipulates that the Human Rights Court of first instance consists of five persons. Two of those shall be professional Judges; three shall be appointed additionally. A professional Judge is presiding over the trial (Article 27). The additional Judges are appointed for five years; a total of at least twelve such Judges must be appointed per Court; they are appointed by the president per recommendation of the president of the Supreme Court (Article 28). These Judges must be citizens of the Republic of Indonesia, must belong to a religious community, be at least 45 years of age, must have a university degree in law or another, comparable legal qualification, must be mentally healthy, respected, fair and of good character, must be loyal to the *Pancasila* and the Constitution of 1945 and have knowledge in the field of human rights (Article 29).

The following principles are combined under the term *Pancasila*:
I. *Ketuhanan Yang Maha Esa*, Believe in the One God;
II. *Kemanusiaan yang Adil dan Beradab*, Just and Civilised Humanity/Humanism;
III. *Persatuan Indonesia*, Indonesian Unity;
IV. *Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan*, Rule of the People Guided by Wisdom in Deliberation/Representation;
V. *Keadilan Sosial bagi Seluruh Rakyat Indonesia*, Social Justice for the Whole Indonesian People.

The term *Pancasila* has in Indonesia a similar standing as the “free democratic constitutional structure (*freiheitlich demokratische Grundordnung*, FDGO) in Germany.

For the appellate Court (Article 32 Para. 2 and 3) and the supreme Court (Article 33 Para. 2 and 3), corresponding regulations can be found, however, regarding the supreme Court with the requirement that a minimum of three ad hoc Judges must be appointed and that these must be at least 50 years old.

e) The Elements of Crime:

Law No. 26/2000 divides all human rights violations that are crimes according to this Law into two groups – genocide on the one hand and crimes against humanity on the other side (Article 7).

aa) Genocide:

According to Article 8 of Law No. 26/2000, each of the acts listed below is defined as genocide, when it is committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group:

(a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;

(c) Creating conditions of life that would lead to the physical extermination of the group in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of a particular group to another group.

bb) Crimes against Humanity:

Crimes against humanity include all acts, which are committed as part of a widespread or systematic attack directed against civilian population (Article 9). Offenses are

(a) Murder;
(b) Extermination,
(c) Enslavement,
(d) Enforced eviction or movement of civilians,
(e) Arbitrary appropriation of the independence or other physical liberty in violation of international law;
(f) Torture,
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy and forced sterilization or any other similar form of sexual violence;
(h) Terrorization of a particular group or collectivity on political views, race, nationality, ethnic origin, culture, religion, gender or other grounds that are universally recognized as impermissible under international law,
(i) Enforced disappearance of persons
(j) The crime of apartheid.

cc) "Severity" of the Human Rights Violation:

But according to Articles 1, 4 and 5 of Law No. 26/2000, only the "gross" human rights violations shall be avenged by the Human Rights Courts. Article 1 Para. 2 of Law No. 26/2000 explicitly indicates the offenses punishable according to this law as "gross" human rights violations.

dd) War Crimes and War of Aggression:

The Law does not say anything about war crimes and the element of crime under international law of war of aggression.

ee) Punishments:

Differently than in German criminal law – and probably also than in most of the European criminal laws -, only the descriptions of the elements of crime can be found in Article 8 and 9, but not the punishments. These are regulated separately in chapter VI of Law No. 26/2000 (Article 36 to 42). But in this chapter also regulations regarding different forms of perpetration can be found.

The punishments range – depending on the offense – from five years in prison to a life sentence or death penalty. Offenses according to Article 8 as well as 9 a, b, d, e or j are threatened with death penalty or imprisonment. The minimum penalty is 10 years, the maximum imprisonment is for life (Article 36 and 37). For the crimes named in Article 9 c) and f), a penalty range of five to 15 years can be found (Ar-

ticles 38 and 39). For all further offenses (Article 9 g and h), the penalties range from 10 to 20 years of imprisonment (Article 40).

ff) Participation in Crimes:

In Article 41 of Law No. 26/2000, it is explicitly regulated that the attempt of as well as aiding and abetting the offenses named in Articles 8 and 9 are avenged according to the Articles 36 through 40 – i.e. just like the actual act. This also applies to the conspiracy to commit such offenses.

gg) Extension of the Elements of Crime to Superiors:

A special extension of the elements of crime regulated in the Articles 8 and 9 of Law No. 26/2000 ensues from Article 42 Para. 1. According to this, also the military superior, under whose actual authority and supervision subordinates committed a crime according to this law, is criminally responsible. Persons, who act like military leaders are assimilated in status to military leaders.

For this, it is required
- that, given dutiful exercise of his supervision authority, the superior knew or should have known of the impending or already perpetrated violations of the law and

- that he omitted to act in a manner required by his authority in order to prevent the offenses, or to immediately stop already started criminal acts or to subject perpetrators to criminal investigation, inquiry and prosecution.

Article 42 Para. 2 extends the aforementioned criminal responsibility also to all law enforcement superiors as well as all to superiors of the civil administration.

Article 42 Para. 3 refers to the range of punishment of the Articles 36 through 40.

f) Proceedings before the Human Rights Court:

The proceedings before the Human Rights Court are regulated in the Articles 10 et sqq. Here, also provisions regarding pretrial detention can be found. With regard to the task of this legal opinion and to the fact that none of the defendants had been detained, it is abstained from discussing the detention regulations here.

The proceedings are divided into three steps:
- the *fact-finding proceedings* by the Human Rights Commission

- the *preliminary investigation* by the Public Prosecutor

- the *trial* before the Courts

aa) Fact-finding Proceedings before the Human Rights Commission:

Principally, inquiries regarding human rights violations shall first be initiated by the National Human Rights Commission. In individual cases, the same can summon an ad hoc team (Article 18). The competences of this Commission are primarily:

- to carry out inquiries and questionings,
- to summon and hear witnesses,
- to view the locus in quo,
- to appoint and hear experts,
- to provide the parties involved with the possibility to render statements (Article 19).

It must be pointed out that the Commission may also demand the submission of the documents required for the inquiry.

In case, the Commission comes to the conclusion that gross human rights violations took place, they shall hand the matter over to the Public Prosecutor's Office (Article 20).

After release to the Public Prosecutor's Office, Article 25 grants a special status to the Human Rights Commission. According to this, the same may, at any point of time, request a written statement by the Attorney General regarding the state of the investigation and prosecution in the respective cases of human rights violations.

bb) Preliminary Investigation by the Attorney General:

With the release to the Public Prosecutor's Office, the Attorney General is responsible for further investigations, which have to be led by him (Article 21). The Attorney General may appoint special Public Prosecutors just for carrying out the investigations (Article 21). The investigations must be completed within 90 days, counted from the receipt of the inquiry results of the Human Rights Commission. The presiding Judge of the Human Rights Court may extend this period by another 90 days.

After the completion of the investigations, the prosecution is also conducted by the Attorney General, who may appoint special Public Prosecutors in these matters, like already previously for the investigations (Article 23). The prosecution must be completed in less than 70 days, counted from the receipt of the investigation result (Article 24).

cc) Trial before the Courts:

The individual proceedings for gross human rights violations shall be heard and tried before the Human Rights Court of first instance within a period of 180 days (Article 31).

In case of appellate proceedings, the appellate Court has only 90 days for completion (Article 32 Para. 1). A 90-day limit for the proceedings exists also for the proceedings on appeal before the supreme Court.

dd) Application of the Indonesian Law of Criminal Procedure:

According to Article 10, the Indonesian Code of Criminal Procedure, which, by the way, also differentiates between fact-finding proceedings and preliminary investigation, is applicable, unless otherwise regulated by the law.

g) Victim and Witness Protection:

Article 34 principally grants victim and witness protection to the victims and witnesses, however, without details on how this has to take place. Article 34 Para. 3 commits the Government to create further regulations in this regard.

Article 35 provides that every victim of human rights violations can also demand indemnity, restitution and rehabilitation. The Human Rights Court shall include a corresponding decision in its sentence (Article 35 Para. 2). The Government may pass further regulations also for this partial aspect (Article 35 Para. 3). The Government exercised this option by passing the regulations PP No. 2/2002 and PP No. 3/2002 on March 13th, 2002.

h) Truth and Reconciliation Commission:

Article 47 provides for the formation of a truth and reconciliation commission for gross human rights violations, which had been committed before the law became effective. The same shall be established by law. To date, there is nothing known about the establishment of such a commission.

3. Charges Filed to Date:

At the outset of 2002, three charges were brought and later accepted by the Human Rights Court in Jakarta. Trials for the same were conducted starting from mid-March 2002. One charge was brought exclusively against Soares, the former Governor of East Timor, and the second against Silaen, the then Chief of Police of East Timor. The third charge was brought against four military leaders and one police head, who were on duty in East Timor at that time. Since mid-March 2002, individual trials are being conducted once a week against the defendants in three separate proceedings before the Human Rights Court in Jakarta. Further proceedings were instituted after the period of observation ended.

Given below are the accusations made in the individual charges:

a) Charge against Abilio José Osorio Soares, the Former Governor of East Timor:

The charge against Soares in his capacity as the former Governor of East Timor is based on the following:

Under the jurisdiction of the accused as Governor, gross human rights violations took place in the form of numerous murders and atrocities, whereby the accused did not exercise the control on the subordinates directly under his command and charge in a consistent and dutiful manner. In particular, he had completely failed to prevent the acts of atrocity or to put an end to the atrocities already underway or to bring the culprits of the atrocities already committed to criminal prosecution.

This accusation is based on the following five incidents:

(1) The massacre of a group of civilians, who were obviously supporting independence, committed by a so-called pro-integration group in the Church of Liquiça on April 6th, 1999, where the civilians had sought refuge and in which 22 persons were killed and 21 others severely injured.

(2) The massacre of a group of civilians, who were obviously supporting independence, by a so-called pro-integration group on the premises of Manuel Viegas Carrascalão in Dili on April 17th, 1999, where the civilians had sought refuge and in which 12 persons were killed and 4 others severely injured.

(3) The massacre of a group of civilians, who were obviously supporting independence, by a so-called pro-integration group on the premises of the diocese in Dili on September 4th and 5th, 1999, where the civilians had sought refuge, in which 46 persons were killed.

(4) The massacre of a group of civilians, who were obviously supporting independence, by a so-called pro-integration group on the premises of Bishop Belo in Dili on September 6th, 1999, where the civilians had sought refuge, in which 10 persons were killed.

(5) The massacre of a group of civilians, who were obviously supporting independence, by a so-called pro-integration group in the Ave Maria Church in Suai on September 6th, 1999, where the civilians had sought refuge, in which 27 persons were killed.

These crimes, as far as they happened after the so-called New York Agreement of May 5th, 1999, were committed by members of groups, the formation of which was induced by the accused earlier. After the New York Agreement, the accused had invited all the provincial regents and Bupatis to a meeting in Dili, during which he called upon the invited guests to form organizations in their jurisdiction which would support the "integration" (remaining) of East Timor in the Republic of Indonesia. For the "protection" of these organizations, at the same time security organs staffed with ordinary people - the so-called Pam Swakarsa (paramilitary units/militia) – should be formed in accordance with Law No. 20/1982. On the basis of this order given by the accused, respective groups and paramilitary units were formed in all regions of East Timor, which were financed from the budget of the respective districts and municipalities.

Based on these facts, the charge assumes the criminal responsibility of the accused in accordance with Article 42 Para. 2 (a) and (b) as well as 7 (b), 9 (**a**) and 37 under Law No. 26/2000 (Law on Human Right Courts) and Article 42 Para. 2 (a) and (b), 7 (b), 9 (**h**) and 40 of Law No. 26/2000.

Article 37 of Law No. 26/2000 provides for the death penalty or imprisonment for duration from 10 years to life, for crimes committed as defined by Article 9 (**a**). It pertains to crimes against humanity as defined by Article 7 b, which are committed through widespread and systematic ***k i l l i n g*** of civilians. Article 42 Para. 2 a and b also hold the civil servant responsible under criminal law for such types of human rights violations if he does not exercise the adequate control over his subordinates or absolves them of criminal prosecution.

Article 40 provides for a sentence of 10 to 20 years for crimes against humanity as defined by Article 9 (**h**) of Law No. 26/2000, i.e. where it does not pertain to killing, but to widespread and systematic ***p e r s e c u t i o n*** of a group on political, racial, cultural or religious grounds or based on the nationality, ethnic origin or sex of the members of this group.

For details, please refer to the "work translation" of the concerned charge **(Appendix 3A)**.

b) Charge against Timbul Silaen, the Former Chief of Police for East Timor:

The charge against Silaen in his capacity as the former Chief of Police for East Timor is supported on the same facts as in the previous charge against Soares mentioned under items (1), (2) and (4), i.e. the three massacres described there under the corresponding numbers also form the basis here. This bill of indictment, however, mentions the number of dead in the massacre on September 6th, 1999, on the premises of Bishop Belo as 13, while in the bill of indictment against Soares only 10 deaths related to this massacre have been claimed.

In addition to this, the Chief of Police is also charged with the following:

- destruction of the office building of UNAMET in Dili on September 4th, 1999, in which one person was injured,

- setting fire to the buildings of the diocese in Dili on September 5th,1999, in which two persons were killed.

According to the charge, Silaen is responsible for these incidents under criminal law, since he did not exercise control over the subordinates directly under his command and charge in a consistent and dutiful manner. In particular, he completely failed to prevent the atrocities or put an end to the atrocities already underway and to bring the perpetrators of the atrocities already committed to criminal prosecution.

This responsibility under criminal law is supported by Article 42 Para. 2 (a) and (b), Article 7 (b), Article 9 (a) and Article 37 of Law No. 26/2000 as well as Article 42 Para. 2 (a) and (b), Article 7 (b), Article 9 (**h**) and Article 37 of Law No. 26/2000.

For details, please refer to the “work translation” of the concerned charge **(Appendix 3B)**.

c) Charge against Drs. Herman Sedyono, Liliek Koeshadianto, Drs. Gatot Subiyaktoro, Ahmad Syamsudin and Sugito:

This charge is based on the abovementioned massacre on September 6th, 1999, in the Ave Maria Church in Suai.

Drs. Herman Sedyono is subjected to criminal prosecution because of his position as former regent (Bupati) of the district of Covalima, in which the Church of Suai is located. The charge against Liliek Koeshadianto is based on his former position as a responsible military district commander (Dandim 1635 of Suai), while Drs. Gatot Subiyaktoro’s responsibility under criminal law is justified based on his position as the Chief of Police (Kapolres) of Covalima. Ahmad Syamsudin is held responsible under criminal law as the acting Chief of Staff of the military district of Covalima. The charge against Sugito is brought in his capacity as military commander in Suai.

Individually the accused are charged with the following conduct:

On the day of massacre at around 9:00 AM, before the actual atrocities were committed in the Church of Suai, members and leaders of the pro-integration Laksaur militia had assembled in the office of the accused Sedyono, who was also present there, when the office obviously served as a meeting place. At that time, the accused Koeshadianto and Subiyaktoro were also present with the accused Sedyono. From there, the militia went to

the Church of Suai, where the supporters of independence had taken refuge, which was known to all.

The accused Sedyono, Koeshadianto and Subiyaktoro also proceeded to the Church of Suai, where they arrived just as the violence started. The accused Koeshadianto certainly ordered the accused Syamsudin to mobilize all necessary forces in order to bring the situation under control. The accused Syamsudin put all the forces under his command into action, who, however did nothing to separate the parties fighting against one another, but rather sided with the supporters of integration. They at least allowed them to have their way. As a result, at least 27 people were killed, including three Catholic priests. The accused Sugito had the corpses of the victims loaded in vehicles in order to have them buried in the Tetun region of West Timor.

On the basis of these facts, the charge regards the responsibility of the accused under criminal law per Article 7 (b), 9 (a), 37 and 42 Para. 1 (a) and (b) of Law No. 26/2000 as justified.

Subsidiarily, the charge also assumes the abovementioned offences to be punishable as defined by Article 41 of Law No. 26/2000, whereby, however, it is not clear whether this has been committed in the form of instigation or of being accessories or of having gathered to commit a crime (conspiracy).

Subsidiarily, the accused Sedyono is accused of having committed the above mentioned offences as defined by the committing form of Article 42 Para. 2 – firstly, by having helped in the formation of paramilitary units and secondly, by neglecting or suppressing information regarding the impending unrest.

Subsidiarily, the accused Koeshadianto is accused of not having taken any measures although he was present at the site of incidence and is thus considered punishable under Article 7 (b), 9 (a) and 42 Para. 1 (a) and (b) of Law No. 26/2000.

The accused Subiyaktoro is subsidiarily charged that he did not take any preventive measures in his capacity as the Chief of Police of the precinct of Suai despite being officially aware of the culminating situation. Furthermore, he is accused of not having given orders to prevent the actual acts of violence in and around the Church of Suai. Finally, he is also accused that after the incidence he did not take any measures to initiate criminal proceedings against the culprits. He thus becomes punishable under Article 7 (b), 9 (a) and 42 Para. 1 (a) and (b) of Law No. 26/2000.

Subsidiarily, the accused Syamsudin is charged of having established the militia and of not having restrained the enlisted members of the Indonesian military, who were subordinate to him and over whom he had the direct power of command, in their crimes. Thus, he is punishable under Article 7 (b), 9 (a) and 42 Para. 1 (a) and (b) of Law No. 26/2000.

Subsidiarily, the charge brought against the accused Sugito is that, despite being present at the site of the incidence and being an eyewitness to the atrocities, he did not take any action against them besides not having helped the injured or rescued the victims. Thus, he is punishable under Article 7 (b), 9 (a) and 42 Para. 1 (a) and (b) of Law No. 26/2000.

For details, please refer to the “work translation” of the concerned charge **(Appendix 3C)**.

4. Observation of the Individual Trials:

The hearing against Silaen was observed on May 2nd, 2002, the one against the 5 accused Sedyono, Koeshadianto, Subiyaktoro, Syamsudin and Sugito on May 7th, 2002, and the one against Soares on May 8th, 2002.

a) Fundamentals:

The same organizational structure and process culture was observed for all three proceedings. In this respect, the following common report can be made on all three proceedings:

aa) Court:

In compliance with the legal provisions, the bench comprised five Judges with one presiding Judge for all the three hearings. Whether these Judges fulfilled the legal requirements, could not be ascertained through self-perceptions and investigations. However, no circumstances arose or incidents took place, which could have justified this doubt.

bb) Attorney General's Office:

In each of the three trials, the Attorney General's Office was represented by two trial attorneys. It was not possible to ascertain whether the respective department heads and authors of the accusation were also represented. However, considering the way in which the right to question was exercised and the conduct of the Court and defense against the representatives of the Attorney General's Office, it gave the impression that they were quite familiar, at least in parts, with the subject matter, and knew their way around. The trial attorneys from the Attorney General's Office were also supported by two to three assistants.

cc) Counsel for the Defense:

Each accused was represented by several counsels for defense. In most cases, the number of attorneys actually defending an accused in the Courtroom was above three. In some cases, the accused had six, seven or eight Defense Attorneys. It was also noticeable that some attorneys were defending more than one accused.

dd) Clerk of the Court:

The minutes of the proceedings were recorded by two Clerks of the Court.

ee) Seating Arrangements:

The seating order was arranged as is customary in a continental European style inquisition process. In the front sat the Court, at a slightly elevated level. To the left of the Court – as seen from the spectator gallery – sat the representatives of the Attorney's Office and in front of them – i.e. to the right side of the Court – sat the Defense Attorneys and next to them the accused. The above mentioned part of the hall was separated from the other part of the hall, which was somewhat similar in size and was meant for the public with about 100 seats using the usual barrier of table-height placed in front of the tables of the Judges. At the center of the square formed by the three groups taking part in the process and the barrier, sat the

witness. A peculiar feature concerning the Court clerks was that they sat at a separate table behind the Judges.

ff) Records of the Proceedings:

The following could be ascertained regarding the records of the proceedings:

All participants of the proceedings clearly received the same package of files, which was available in the form of photocopies. It was about as thick as a packet of writing or photocopier paper with 500 sheets. Thus, we can estimate the documents contained in the bunch of files to be about 500 to 600 sheets. The sheets had photocopied matter only on one side, since all participants of the proceedings could be seen using the blank backsides of the copies for notes and comments as a result of the happenings in the Court, particularly the statements made by the witnesses. When the Defense Attorneys were questioned during the break, they revealed that the files contained the records of the proceedings. According to them, each participant of the proceedings in a particular case was given the same package of files; there were no other documents.

gg) Hearing of Evidence:

All three trials were at the stage of hearing of evidence. On all three days of hearing, witnesses were heard, partly with a concurrent introduction of evidence. The questioning of the witnesses was carried out in principle in the following manner:

After each witness took the oath according to his religion, he was first questioned by the Court. However, contrary to German criminal procedure, the witness had at the beginning no opportunity to give a coherent account about his perceptions. Rather the hearing was carried out with the help of abundant targeted questions by the presiding Judge to start with. This was followed by questioning by the associate Judge and then, the ad hoc Judges. After this, the representatives of the Attorney General's Office were given the right to interrogate. The final questioning was by the Defense Attorneys. This procedure occasionally took place in two rounds, i.e. the Court conducted a second round of questioning of the same witness, after all participants of the proceedings had had the opportunity to question the witness once. In the second round, too, all participants of the proceedings were allowed to question the witness once again in the above mentioned sequence.

It was observed that the participants of the proceedings regularly utilized every opportunity to exercise their right to questioning. Only in two or three cases this was waived. Thus, each witness was thoroughly questioned several times about the individual actions and sequence of events - first by the Judges of that Court and then by other participants of the proceedings.

hh) The Public:

The maxim of open trial was followed without any restrictions. No admission or security checks were conducted. With an ambient temperature of 30-33 degree Celsius, the participation in the trial in a Courtroom without any air-conditioning was bearable to all only because all windows and doors were wide open all the time. Moreover, the doors led to a half-open arcade on the outer side of the building. Therefore, there was continuous ventilation. Also, people were coming and going constantly, but the Judges were apparently completely undeterred by this. Regardless of this, they continued with their work.

Since there was no admission or security check, there was also no registration for visitors. One could see that sympathizers of the accused – i.e. soldiers in uniform and in civilian clothes – as well as critical observers – representatives of NGOs in particular – were constantly present. A female journalist of the English-language Indonesian newspaper, Jakarta Post, who gave detailed report of the proceedings daily, was also present throughout. For some time, an Australian Judge, who represented a British organization of Judges, was present with an interpreter.

In addition to this, two to three television teams were constantly present in the Courtroom, who were not subjected to any restrictions. These teams repeatedly changed their positions. Photographs were taken as well using a flashlight during certain phases of the proceedings – e.g. while a witness was taking oath. The Judges present or the public did not seem to be irritated by this at all.

One day, a demonstration took place in front of the Court building related to some other proceedings, regarding questions pertaining to labor legislation, which concerned all employees of a company. For some time, this demonstration moved even inside the Court building. Hence, a large number of demonstrators not only stood in the arcade in front of the hall, but also sat in the hall, where the proceedings in question were being held. The Court remained unaffected even by this.

b) The Individual Trial Days:

Below is a report on the individual trial days:

aa) Trial against Timbul Silaen on May 2nd, 2002:

These proceedings were directed against Timbul Silaen, the former Chief of Police of East Timor. For details of the accusations, please refer to the respective submissions of the concerned charge (see part B item. 3 lit. b)).

On the date fixed on May 2nd, 2002, originally three witnesses from East Timor were called, who, however, they did not appear. This obviously had been expected, since three further witnesses – all former police officers from East Timor – were called, who actually appeared. However, on this day only two of the three witnesses were heard in a thorough questioning of each. There was no time left for questioning the third witness on this day. He was called on some other day. The witness Lt. Col. Adios Salova was heard regarding the incidents in the Church of Liquiça on April 6th, 1999, during the pre-noon session and the witness Lt. Col. Hulman Gultom was heard regarding the incidents at the premises of Manuel Carrascalão in Dili on April 17th, 1999, and at the site of the diocese on September 5th, 1999, in the afternoon session. The witnesses made mainly the following statements:

aaa) Testimony of Lt. Col. Adios Salova:

(1) The witness Salova stated that at that time he was the Chief of Police in Liquiça. He had nearly 100 policemen under his control. Already since the beginning of April 1999, there were disputes between two villages in the vicinity of Liquiça. One of the concerned villages was Dato, with Jacinto as the Mayor. Jacinto and a majority of the village population were in favor of independence for East Timor. According to the estimate of the witness, the

strength of supporters of independence and the supporters of integration in both the villages as well as in that region was almost equal.

(2) Disputes had already arisen on April 3rd and 5th, 1999. On both days, it had been possible to resolve the tension or at least to reduce it by the sending police forces. As the disputes flared up again on April 6th, 1999, the witness had sent 5 policemen to the village of Dato, who, however, were unable to straighten things out as they were threatened by Jacinto, the Mayor. As a result of the disputes, a majority of the population from both the villages fled to Liquiça and were there placed in 13 different locations in all. One of these places was the Church of Liquiça. It was, however, impossible for the witness to offer sufficient protection to the refugees since their being scattered in 13 different places had led to even his forces being split up. So he had called for reinforcements.

(3) As the witness heard of the disputes in resp. in front of the Church of Liquiça, he pulled 40 people together and sent them there. There were nearly 2000 refugees in the Church. The number of besiegers was approximately 3000. The militia leader Eurico Guterres from Dili was also amongst the besiegers; thus, it was clear that the besiegers were supporters of integration. The witness did not wish to make any statements about the refugees. These were the general “population”.

(4) Then, negotiations took place between the besiegers and refugees about the handing over of Jacinto and his people. The police conducted the negotiations on behalf of the besiegers and the priest Rafael dos Santos represented the refugees. The refugees refused to hand over Jacinto, but were ready to surrender their arms.

(5) Around noon, the reinforcements arrived and the witness from then on had around 100 policemen at the place of action.

(6) Suddenly, a shot was fired from the Church. The witness himself did not hear this shot since he was present at the place of action only between 8.00 to 9.00 o’clock. He then went to the Kodim (military district command), which was only about 50 m from the Church. That the bullet was fired from the Church, was reconstructed later on the basis of the point of entry of the bullet. After the first shot, more shots were fired. The police forces sent by him also opened fire. In the evening, he himself counted five dead and around 25 injured at the place of action. He had given orders to arrest the culprits. The inquiries regarding the perpetrators were, however, conducted by the command for investigation of the superior level Polda (police force with jurisdiction over the entire East Timor with the head office in Dili). On April 7th, 1999, eleven persons were taken into custody.

bbb) Testimony of Lt. Col. Hulman Gultom:

(1) The witness Gultom stated that he was the Chief of Police of Dili at the time in question. He had nearly 230 policemen under his control. In addition he also had about 100 Kamra people under his command. These Karma people were supposed to have offered additional security services. According to the witness, the 230 police officers were distributed among the police headquarters in Dili, other police stations and posts, the harbor and

airport; a part of the police force was also assigned the task of protecting the members of UNAMET.

(2) Only the police and military were allowed to carry arms. Of course, many people also carried arms illegally. However, the witness conducted around 1,000 raids along with UNAMET and confiscated arms.

(3) On the morning of **April 17th, 1999**, a ceremony of the previously founded Aitarak was held on the premises of the Governor; Aitarak belonged to the pro-integration camp and was probably the best-known militia in East Timor. Following an appeal from the flag, the members of the group were supposed to be sworn in. Since it had been anticipated that Falintil would attack the ceremony, the witness had already received orders to offer police protection during this event. He had deployed nearly 200 policemen. The ceremony was over by 11.00 AM without any incidents worth mentioning. He himself did not participate in the event, but had stationed himself nearly 150 m away. The Aitarak people were not armed. In any case, he had not seen any weapons.

(4) Later, Carrascalão called the police for help. His house had been attacked by Aitarak members. The witness stated that he had not been able to receive this message himself, since he was at that time busy with some other operation in Balige, another area of the city. However, he immediately saw to it that a police unit was dispatched to Carrascalão's house. This also happened without any delay. The task force went there in their police cars. The trip must have taken approx. 5 to 10 minutes.

(5) Then, he himself also went to Carrascalão's house. When he arrived there, he found 11 dead and two injured. One of the injured subsequently succumbed to the injuries.

(6) M 16 guns, which are normally used only by the military, were also used during the attack. The victims appeared to have died as a result of stab wounds, blows and bullet wounds. However, no details could be ascertained, particularly regarding which victims had what type of injuries. On that day itself, he had the house sealed.

(7) In the period that followed, 7 persons were arrested and 3 out of these were remanded to judicial custody.

(8) He had not been prepared for the attack on Carrascalão's house. He had anticipated an attack by the Falintil. He had not reckoned with the actions of Aitarak.

(9) Regarding the incidents on **September 5th, 1999**, the witness stated that the situation in September was completely different than the one in April 1999. The protection of UNAMET members and the two UNAMET buildings had priority. Similar protection was also offered to Bishop Belo. He first had sought refuge with the police and then fled to Australia.

(10) On September 5th, 1999, it had come to a stage, when the police forces under the witness had been on duty for days together, as a result were very tired and thus unable to cope up any longer. At that time, total chaos prevailed. There were areas that were beyond every control.

(11) He himself was not present when the dispute arose at the headquarters of the diocese. Even his police forces were engaged elsewhere. He had, for example, to send 50 more policemen to the harbor for the protection of the refugees there. On this day, he had only 25 policemen left.

(12) He learnt on the wireless that members of the Aitarak had assembled in front of the premises of the diocese. He immediately sent eight of the remaining 25 policemen there.

(13) On this day, hell had broken loose in the city. The reason for this was the declaration of the referendum results. The supporters of integration and autonomy were completely disappointed with the results. Rumors of vote-rigging were making rounds. There had not been any information about the possibility of the premises of the diocese being the target of attacks.

(14) Then the witness himself proceeded to the diocese. On arriving there, he saw that the building that was already set afire was still burning. He himself saw two dead and one injured.

(15) His people had fired warning shots. As a result, the culprits stopped their further actions. Due to their intervention the certain death of 42 people was prevented. From the report of the policemen present at the place of action the witness knew that the culprits had used firearms. However, these were self-made weapons.

(16) From his side, the witness did everything in his power to prevent the incidents. He was prepared for his own death.

The questioning of the witness ended at 4:30 PM. Since there was no time left, the questioning of the third witness was adjourned.

The complete minutes of the main proceedings are given in **Appendix 4A.**

bb) Trial against Drs. Herman Sedyono and Others on May 7th, 2002

These proceedings are directed against Herman Sedyono, the former Bupati of Covalima, and four other accused from the military and/or police force. The topic is the massacre in the Church of Suai at the beginning of September 1999. For details, please refer the corresponding indictment (Part B Item 3. Lit. b)).

On the day of the proceedings, May 7th, 2002, five witnesses were called, out of which two were heard during the pre-noon session and the third in the afternoon session. The witnesses were Police Inspector Sudarminto, the police official Julius Basabae and Mr. Philipus Kanakadja. In essence, the witnesses made the following statements:

aaa) Testimony of the Police Inspector Sudarminto:

(1) The witness Sudarminto explained, that he was a member of the mobile brigade or Brimob in the NTT province to which West Timor also belongs. He was not related to the defendants, he also did not know any of them personally.

(2) In September 1999, he was transferred to the border between West and East Timor for reinforcement. His area of operation had been Wemasa in the Belu district in West Timor. It was one of his tasks to disarm persons who had fled East Timor and taken refuge in West Timor. The operation had the name “Operation Komodo”.

(3) The influx of refugees had, however, constantly grown, especially after the referendum. It had, therefore, not at all been possible to check up on all people. The persons, who had been found with arms, had also not been disarmed; rather had merely registered the arms.

(4) He remembered a convoy with three vehicles. One of the vehicles had been a van, another a cross-country vehicle, and the third had been a truck. Persons, who were partly in civilian clothes and partly in military uniform, but without rank insignia, belonged to this convoy. It had been his impression that at least some of them had been military members.

(5) When he had noticed the convoy, he had informed the Kapolsek, who also arrived then and took the matter into his hand.

(6) This convoy was carrying corpses, which were then buried at the sandy beach of Wemasa. He had learnt from a person in military uniform, who belonged to the convoy, that there was war in Suai, but it was not possible to bury the victims there. This was supposed to be been done in Wemasa.

(7) The people from the convoy had asked the Kapolres for plastic-sacks for the corpses, which were also made available to them then.

(8) Several pits had been dug. The witness could, however, no longer tell how many these were, since he had arrived only at the time of the burial of the last group. This group consisted of Catholic priests.

(9) The place of burial had not been a graveyard but rather a place where fishermen came together regularly and worked.

(10) The burial had by no means been carried out in a secret manner, rather quite openly and with religious rites, whereby the Muslims performed the rites as per Islamic customs, the Catholics as per Catholic customs. Being a Muslim, he himself had prayed according to the Islamic rites.

(11) At that time the graves could be recognized from the shape of the ground since they stood out against the sandy beach.

(12) The corpses had later been exhumed. However, only three had been found.

(13) At the end of the questioning, the witness was reminded that he should take another close look at the five defendants, which he had not done till then. Only after that he should answer the question whether he recognized anyone of them. Even after that, the witness stuck to his reply that he did not recognize any one of the defendants.

bbb) Testimony of the Police Officer Julius Basabae:

(1) The witness Basabae stated that he was Kapolpos in Wemasa at the time in question.

(2) On the morning of September 7th, 1999, he had seen three vehicles including a truck going towards the beach. He reported this and then drove together with the Kapolsek to the vehicles. This convoy included more than ten persons, who were partly dressed in civilian clothes and partly in uniforms. Some also had arms, which were self-built arms, though. They had claimed to come from Suai. Something dreadful had happened there. The 27 corpses that they carried with them could not be buried there. They did not give any reasons for this. The burial was therefore supposed to take place at the beach in Wemasa.

(3) Out of the 27 corpses, 17 were men, the others women and children. They had been ordinary people. The three priests, Hilario, Francisco and Dewanto, one of whom he had known personally, had been among the men. He had come to know the names of the others during the course of the investigation.

(4) He and his people had seen the corpses from close proximity. All had still been dressed. However, the clothes had shown bloodstains, whose cause and origin he had not been able to determine.

(5) Only two of the three vehicles had license numbers. He had noted them down. After that, the witness read out the license numbers from notes he had brought along.

(6) The burial of the 27 corpses had lasted approximately two hours. It had taken place without any secrecy and according to Christian rites. The Muslims present had prayed according to Islamic rites. The dug-out pits had been approximately one meter deep. Men and women had been put into separate graves.

(7) The graves were made recognizable by crucifixes. The crucifixes had been produced from flotsam or wood lying around.

(8) The witness then talked on the basis of the exhibits that were shown to him, which consisted of diverse textiles – mainly sheets – stored in a box. He explained that he had already seen these textiles once at the time of the burial; he could, however, not say whether they were identical with these, in any case they had been of the same type.

(9) At the end of his testimony, the witness hummed and hawed around. The presiding Judge could elicit from him that he had come from West Timor, thousands of kilometers away, at his own expense and requested for the refund of travel expenses. The request was granted by the Attorney General's Office. Finally, the witness said that he was frightened because of his testimony before the Human Rights Court and felt threatened. During his testimony, the witness was visibly close to tears several times. The questioning ended at about 1:45 PM.

Then there was a lunch break, after which the third witness, Kanakadja, was supposed to have been heard. But this questioning could not be observed, due to other prior commitments.

The complete minutes of the main proceedings are given in **Appendix 4B.**

cc) Trial against Abilio José Osorio Soares on May 8th, 2002:

These proceedings are directed against Abilio José Osorio Soares, the former Governor of East Timor: For details of the accusations, please refer to the above elaboration concerning the corresponding bill of indictment (see Part B Item 3. Lit. a))

On May 8th, 2002, Major General Adam Damiri, the former regional commander of the military region of which East Timor was a part, and Mr. Mathius Maia, at the time the mayor of Dili, were heard.

aaa) Testimony of the Witness Adam Damiri:

Following is the summary of the testimony of the witness Damiri:

(1) **Regarding the military organization** the witness explained:

(1a) At that time, he had been the Commander-in-Chief of the territorial command of the region to which also East Timor belonged. He was directly responsible to the Commander-in-Chief of the Armed Forces, General Wiranto, from whom he also received his commands.

(1b) As the Kamra in case of the police, the military had the Wanra. It is a type of armed civilian group that is supposed to be armed whenever required, with arms discarded by the military.

(2) **Regarding the nature of reporting in the military**, the witness explained that he was continuously kept informed about any important happenings by the Danrem. He did not remember the content of these reports any longer. He had also received daily reports from the Danrem. These reports, however, had only been summaries of the daily reports of the 13 Kodims. If there was something conspicuous in the daily report, he had given appropriate instructions, for example, to arrest people or to help refugees etc.

(3) **Regarding the New York Agreement** and the role that was given to the military after it, the witness explained:

(3a) The tripartite Agreement of May 5th, 1999, involving Indonesia, Portugal and the UN regarding the holding of a referendum in East Timor was admittedly known to him. He had, however, not read it. He had restricted himself to awaiting the instructions of his superiors as a result of the Agreement at that time. Within the framework of the tripartite Agreement, the military had to provide secondary support only.

(3b) The New York Agreement had obliged the military to conduct itself in a neutral manner. The task of the military had been to ensure the holding of the referendum and to guarantee the safety.

(3c) During the whole time, there had been no breaches of military duties. Not a single disciplinary proceeding had been initiated.

(4) **Regarding further peace efforts** the witness reported that at that time peace-committees (so-called KPS) had also been set up, which were composed of representatives of all sides, including representatives of Komnas-HAM and Falintil as well as representatives of Pro-Integration groups and Pro-Independence groups. Government representatives also belonged to it.

(5) **Regarding preventive measures** the witness explained:

There had been sporadic clashes and similar incidents everywhere. He knew about the incidents in Liquiça and Suai only from the reports. Because of these sporadic clashes he had made a contingency plan so that not everything would go off course. The Muspida was no longer functioning by then.

(6) **Regarding disarming operations** the witness explained:

(6a) One could gather from the reports of the Korems that there had been repeated disarming operations by the military. However, it was always the integration supporters only and not the independence supporters who were disarmed. Particularly, no action was taken against the Falintil. All disarming operations had always been aimed only at integration supporters.

(6b) He had also had no information about possession of arms through reports from the secret service. The secret service had been severely handicapped in its work due to bad weather.

(6c) Independence supporters who had attracted attention due to possession of arms and as troublemakers had never been taken to Court. Also nothing happened to independence supporters who came from the mountains in order to plunder and to destroy state property. Even murderers of policemen and the vote rigger Belo had not been taken to the Court.

(6d) The attempt to collect the arms must therefore be assessed as a failure altogether. As a whole, however, the military had been reasonably successful. As there had been many quiet weeks. Even the referendum itself had proceeded quietly.

(7) **Regarding the events of April 17th, 1999,** on the premises of Manuel Carrascalão the witness explained that he had also received a report about that. He remembered that there had been 12 dead in that incident. From the report, he also knew that a refugee-camp had existed on the premises of Carrascalão and it had come to clashes between integration supporters and independence advocates. He had been able to infer from the report that beating and stabbing weapons, but no firearms had been employed. Also only the number of the dead, but not their names had been mentioned.

(8) **Regarding the confrontations in Suai** the witness explained that there had been a dispute between two villages over a water-source that had started to dry up. The integration supporters were supposed to have been adversely affected by it. Finally, the independence supporters had fled to the church in Suai.

(9) **Regarding the events on the 4th, 5th and 6th of September 1999** as well as the preceding developments, the witness explained:

(9a) Vote rigging had been the reason for the unrests. The military should have been consulted even at the time of setting up the polling stations, which, however, did not happen. The election had been manipulated through the unilateral selection of the sites. The referendum results had also been falsified through the regulation of access to the polling stations and other impairing regulations.

(9b) UNAMET had not been neutral either. This had been evident from the fact that UNAMET had employed only supporters of the independence movement as local manpower. When refusing applications of persons with different attitudes, other reasons for refusal, for example, insufficient knowledge of English language, were given as an excuse. The polling stations had also been selected unilaterally and had mostly been set up in strongholds of the independence movement. The root of the problem had lain there.

(9c) He did not know the reasons why the referendum results had been made public early. It had been claimed that it had happened because the votes were counted faster than expected.

(9d) The police had been allowed to carry arms, but had not been allowed to come closer that 100 m from the polling stations. The military had not been allowed to carry arms.

(9e) He had also received reports on the occurrences on the 4th, 5th and 6th of September 1999, particularly on the incident on the premises of Bishop Belo. It could be inferred from it that a part of the house of Bishop Belo had been burnt down and that there had been some dead. The reason had been that refugees had retreated to that complex; they had, however, come face to face with the integration supporters. Furthermore, ballot boxes had still been at the complex. This had quite provoked the integration supporters. He had read nothing in the report about ballot boxes. He knew about this only from hearsay.

(10) **Regarding the military measures on the 5th and 6th of September 1999** as well as in the following period the witness explained**:**

(10a) He had suggested to General Wiranto to delegate the entire responsibility for the security in East Timor to him. This had also happened with effect from September 5th, 1999. On September 7th, 1999, the responsibility had been withdrawn from him again since the emergency that had arisen on the September 5th, 1999, no longer existed. He had the sole supreme command over all facilities in East Timor merely for 28 hours, that is from the evening-hours of September 5th, 1999 until the early morning hours of September 7th, 1999.

(10b) After that a *military* emergency had been declared, which had the consequence that certain military deployments had been allowed then onwards. All power and responsibility had been with the military; Kiki Syahnakri had been the commander in charge. This military emergency had lasted until the end of September or beginning of October, until INTERFET arrived.

(10c) From a certain time onward, no functioning state authority whatsoever existed.

(11) **Regarding the cooperation with the defendant** the witness explained:

(11a) His relationship with the defendant had been limited to coordination tasks. He had not been a member of the Muspida (body for coordination between military and civil administration). The communication between him and the Governor took place either directly over telephone or indirectly through subordinates.

(11b) The defendant had not turned to him, the witness, with the request to guarantee the safety; this had not been necessary, either, since the defendant had himself prevented the worst. Among others, he had negotiated a peace agreement with Bishop Belo on April 21st, which even Xanana Gusmão had accepted.

(11c)The witness confirmed that the defendant could not have made the intelligence reports of the police vanish, because he had not received the same.

(11d)The defendant had done all his best.

During the testimony of the witness, numerous military members of diverse branches and ranks were present in uniform as well as in civilian clothes. The testimony of the General was during its polemic parts accompanied at least partly by a response in agreement from his followers gathered in the hall.

The questioning ended at about 12:10 PM. Then there was a lunch break.

bbb) Questioning of the Witness Mathius Maia:

Due to other prior commitments, the questioning of the witness Mathius Maia could not be observed.

The complete minutes of the main trial can be found in **Appendix 4C**.

5. Verdicts:

In the 33rd calendar week, (first instance) verdicts were passed in all the three proceedings. Except Soares, all defendants were acquitted. The defendant Soares was sentenced to a three year imprisonment.

As regards the conviction of the former Governor Soares, one could read in the media that the low penalty was justified with the hint that from the now independent East Timor it had also been signaled, that the aspired for reconciliation justified the leniency towards the perpetrators.

As far as English summaries of the verdicts in the proceedings against Silaen and Seydono and others were available, they are based either entirely on the testimonies of the witnesses (verdict against Seydono and others) or predominantly on testimonies of the witnesses (verdict against Silaen, that names only two documents). The verdicts deal with three fundamental questions, namely

- Were there gross human rights violations?
- Who were the perpetrators of these human rights violations?
- Can the defendant/s be held responsible for these incidents?

In all cases, the Court assumed that deliberately committed gross human rights violations took place, that were committed by members of "Pro-Integration Groups", particularly by Laksaur and Mahidi (as in the verdict against Seydono and others). Nevertheless, the defendants were not responsible for this. The incidents had not been predictable to wit. Thus, they could not have taken any precautions. Moreover, a punishable omission would have required that the inactivity had happened with the intent and the will to allow the gross human right violations to happen. There is a lack of even such mental elements of the offense. As far as gross human rights violations had been committed in the presence of the defendants, they had not remained idle. Also after the events, criminal prosecution has not been thwarted; particularly the defendant Sugito has not made himself punishable by taking part in the burial of the 27 victims from Suai in Wemasa. Also here, there is a lack of the mental element of the offence, since the defendant had had no knowledge of the preceding human rights violations.

6. Meetings with Representatives and Attorneys of Different Indonesian NGOs, with Representatives of Indonesian, Foreign and International Institutions as well as with Foreign Correspondents Working in Jakarta:

The presence in Jakarta between May 2nd and May 11th, 2002, was used for conducting interviews with representatives – including attorneys – of Non-Governmental Organizations (NGO) in Indonesia, with representatives of Indonesian, foreign and international institutions as well as with foreign correspondents working in Jakarta. The goal of these interviews was to establish background knowledge in order to

- avoid misunderstandings and misinterpretations during the observation of the proceedings and
- be able to relate the results of the observation to the Indonesian realities as regards the judicial system.

A large part of these conversions took place in confidence. Therefore the individual sources must not be quoted here. Also for this reason, the results of these conversations are not sorted according to the sources, but rather have been reproduces in a summarized manner according to the content.

a) The Indonesian criminal trial system is fundamentally an inquisition-based system as it predominantly exists in continental European law.

b) Issuing of subpoenas to the witnesses was carried out by the Public Prosecutor's office, whose duty it was to present the investigated witnesses during the main trial; in the inquisitional system these witnesses include the witnesses for prosecution as well as those for defense. Independently from this, the Court could also subpoena witnesses that it considered important or who only emerged during the main trial. Even in such cases, however, the "technical" process of subpoenaing was carried out by the Public Prosecutor's office.

c) As far as non-appearance of witnesses from East Timor before the Court so far was concerned, it was due to the fact that there was still no corresponding arrangement between Indonesia and East Timor, especially regarding the costs connected with it and questions related to the protection of witnesses. However, these matters were under negotiation, assisted by the international community. One could reckon with a solution soon.

d) In principle, a literal recording is carried out by the recording clerk/s. In practice, however, the records often contain gaps and errors.

e) Representatives of international organizations doubted the abilities, especially the character suitability of Indonesian Judges. In this context, it was suspected that every Indonesian Judge was corrupt in the end. Coincidently one could read in a news item that appeared during the period under review in a Jakarta daily that all members of the criminal division of a Court in North-Sumatra had been arrested, because they were suspected of having let a whole gang escape by accepting bribes. On the other hand, legal representatives of domestic NGOs reported, that they had given up initiating law suits for their political knock-on-effect alone. They rather attached importance to initiating proceedings only when they had a chance of success.

f) Military records, i.e. military reports from the different command levels regarding the incidents in East Timor at that time, certainly existed. This is quite evident from the military organization-structure. The same applies also to police records. At that time, the police had still been organized as a part within the military. Such records had also been secured and should be in the hands of the Attorney General's Office.

Reports, messages and correspondence etc. regarding the incidents at that time had also existed within the civil administration. These records contained also details of the financial support to the militias, the supply of arms for militias, the training camps for the militias by the military as well as corresponding lists of participants.

Due to previous irregularities in the district Liquiça, a commission of inquiry from Jakarta had been present there from April 1st to April 30th, 1999. There was an investigation report about the working of this commission. Since the massacre of Liquiça had also taken place during this investigation period, the details regarding that are also to be found in the investigation report.

Surely, such records had been available to KPP-HAM during the investigations. Such records had provided a reason for questioning the witnesses. All records that KPP-HAM resp. Komnas-HAM had obtained had also reached the Attorney General’s Office.

Also the Australian troops had taken the remaining records and documents of the Indonesian authorities with them at the beginning of their deployment within the framework of INTERFET.

g) The Indonesian military was a state within a state and was also even today largely economically independent. Only approximately 20 - 30% of the military expenditure was covered from the state budget. The military managed the balance and thus the predominant part of the military expenditure through its own businesses such as for example an inland civil aviation company. This statement was confirmed by a news item in the newspaper Jakarta Post dated June 11th, 2002. It said that according to Juwono Sudarsono, former Defense Secretary, only 30% of the military expenditure came from the state budget. The balance came from profits from approximately 250 businesses of the military.

h) Domestic as well as foreign representatives expressed that Indonesia was a society going through a time of transformation. This process was by no means over. Also, there was a lack of the necessary stability. The danger therefore still existed at that time, that the progress made in the area of democracy and rule of law would be reversed. It was therefore important to support this stabilization process towards democracy and constitutional state under the rule of law.

Part C:

Evaluation

0. Initial Remarks:

The question posed by the client, whether the trials before the Human Rights Court in Jakarta for the events in East Timor in the year 1999 meet the international standards, implies that such standards exist. The **I**nternational **C**riminal **T**ribunal for the Former **Y**ugoslavia (ICTY)[34] and the Rome Statute of the **I**nternational **C**riminal **Court**[35] (ICC) offer themselves as standards. The standards contained in these statutes, however, are not identical. And the statute of the ICTY has frequently changed due to repeated amendments[36].

The aforementioned applies even more regarding the "Rules of Procedure and Evidence" that were issued for the respective statutes, which currently exist only as draft[37] for the ICC – even though it is very probable that they are soon approved by the international community[38]. It has to be added that the Rules of Procedure and Evidence of the ICTY are controversial, particularly as they are frequently adjusted to the Court's requirements, which totally contradicts Continental European ideas – which will be addressed in detail later on – especially regarding the separation of powers. Even within the ICTY it is debated which standards must be set for the "Rules of Procedure and Evidence"[39].

The same also applies to the "Elements of Crimes" [40], with whose help the respective elements of crime have been put into more concrete terms.

Furthermore, the Federal Republic of Germany has already implemented the principles of this statute regarding Article 17 of the Rome Statute into national law[41]. The reason for this is Article 17 Para. 1 lit. a), according to which the prosecution by the ICC is not permitted when a State Party has already initiated criminal prosecution. Excluded, however, is the case in which a State Party is "unwilling or unable genuinely to carry out the investigation or prosecution", in other words, performs only mock trials to prevent the suspects from being punished. As the Federal Republic of Germany is considered as one of the driving forces of bringing the Rome Statute about[42], it does not seem to be against the system to use these standards as well.

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[34] The Court has been established by the Resolution No. 827 of 05/25/1993. The abbreviation ICTY should be commonly used by now. The official name of the court, however, is: International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia.

[35] The Statute was first adopted at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 07/17/1998 – UN Doc A/CONF.183/9. The statute became effective on 07/01/2002, after being ratified by more than 60 states.

[36] Such as by Resolution 1166 of 05/13/1998, Resolution 1329 of 11/30/2000 and Resolution 1411 of 05/17/2002

[37] United Nations, Report of the Preparatory Commission for the International Criminal Court Part I – Finalized draft text of the Rules of Procedure and Evidence

[38] This means the states, which have ratified the statute in the meantime.

[39] So, e.g. a part of the chambers of the first instance of the ICTY considers the application of the European Convention on Human Rights (ECHR) as well as the corresponding jurisprudence of the European Court of Human Rights as imperative for this and assumes that a person arrested on the basis of an arrest warrant by the ICTY must be brought before a judge immediately, i.e. within 72 hours, while other chambers of the same court do not acknowledge this standard, which, in individual cases, has led to the person not being brought before a judge until two or three weeks have passed.

[40] United Nations, Report of the Preparatory Commission for the International Criminal Court Part II – Finalized draft text of the Element of Crimes, PCNICC/2000/1/Add. 2 of 2nd Nov. 2000

[41] Law on the Implementation of the International Criminal Code of 06/26/2002, BGBl. Part I, Page 2254

[42] Hans-Peter Kaul, Der Internationale Strafgerichtshof: Das Ringen um seine Zuständigkeit und Reichweite (The International Criminal Court: The Struggle for Its Competence and Scope); in Bochumer Schriften zur Friedenssicherung und zum Humanitären Völkerrecht (The Bochum Scripts on Securing Peace and on Humanitarian

Especially for this reason, it can be expected that the standards set by the Federal Republic of Germany will be more or less adopted by the other States Parties. These future national standards of the States Parties probably will become a part of that, by which the international standards are determined.

Besides this, there is another important reason to consider the implementation into the German international criminal law. Generally, there are two groups of very different legal systems, which have led to totally different approaches and concepts especially in the respective national criminal justice systems: On the one hand, there is the Continental-European and on the other hand, the Anglo-American legal system[43]. The criminal justice system in Indonesia is – due to the previous Dutch colonial rule – a more European style criminal justice system, which is rather comparable with the distinctive Continental-European system of the Federal Republic of Germany than with the systems of the ICTY and the ICC, which are at least combinations of both and, therefore, have very strong Anglo-American features.

As mentioned above in Part A, the focal point of the task was the trial observation. Therefore, a comprehensive and fundamental legal comparison of the trials before the Human Rights Court in Jakarta, before the ICTY and the ICC as well as of the trials that will take place in Germany cannot be expected. But there are law-comparing comments to the extent necessary for the evaluation of the insights gained at the trial observations.

Furthermore, it must be noted in advance that the first part of the question of this task is understood to that effect, whether the "found facts" raised in Part B justify the assumption that Indonesia "is able" according to Article 17 Para. 1 lit. a) to "genuinely" prosecute the atrocities committed in East Timor in 1999. A "being-able-to" requires the availability of the corresponding investigation materials and the coming to terms with them legally through appropriate and sufficient legal regulations. The issue of sufficient materials is discussed below under item 1., the issue of the appropriate and sufficient legal regulations under item 2.

Correspondingly, the second part of the question of this task is interpreted to that effect, whether the mentioned "found facts" justify the valuation that Indonesia also is "willing" according to Article 17 Para. 1 lit. a) to prosecute the human rights violations in question. Here, three subjects of investigation intrude: Content of the bills of indictment, discussed below under item 3., course of the main trial, under item 4., and verdicts, under item 5.

1. The Importance of the Work of the National Human Rights Commission Komnas-HAM:

Already from the abridged report by KPP-HAM, attached to this legal opinion (**Appendix 1C**) which was compiled under the responsibility of Komnas-HAM, concrete criminal acts can be seen, which can be associated with individual offenders. This, of course, applies even more to the full version of the report[44].

The political importance of this report and the work of Komnas-HAM can not be underestimated. It must be pointed out that Komnas-HAM already started its activities at a time before it

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International Law), Volume 35, Völkerrechtliche Verbrechen vor dem Jugoslawien-Tribunal, nationalen Gerichten und dem Internationalen Strafgerichtshof (Crimes under the Jus Gentium Before the Yugoslavia Tribunal, National Courts and the International Criminal Court), Berlin, 1999

[43] These terms are oriented at the local classification of the systems, while the terms "civil law state" and "common law state" follow the form of the content of the terms. Due to the fundamental difference of both systems, it is referred to the explanations regarding Part C Item 3. lit. a) below.

[44] http://www.jsmp.minihub.org

was assigned a special task by the enactment of Law No. 26/2000 regarding trials before the Human Rights Court that was still to be established. Thus, Komnas-HAM acted at that time on the basis of its general competence to investigate, determine and document human rights violations in Indonesia. This must be pointed out as a special characteristic in international comparison because only few states have such an institution. In a state, whose society is currently experiencing a democratic transformation, this cannot be valued highly enough.

With the coming into effect of Law No. 26/2000, the part Komnas-HAM plays in trials on human rights violations has been regulated separately. Due to the participation of Komnas-HAM in such proceedings, it is referred to the detailed explanations of Part C Item 2. lit. f) bb). But in the context that is of interest here, it must be noted that the human rights violations described already in Komnas-HAM's abridged report go far beyond a plain general description of the atrocities. Concrete crimes are stated that can also be attributed to individual persons. This applies even more so to the full report. Therefore, the Komnas-HAM reports are an excellent basis, which actually forces the Attorney General to enter into investigations. The high accuracy of the details and the precision of the information in the reports make it rather unlikely that in any of the cases the suspicious facts could not be substantiated to a degree that is sufficient to base an indictment on it.

Another assessment would only be possible if subsequently important circumstances would appear, which could significantly exculpate the individual suspect. Such circumstances, however, have not been established to date.

Besides the fact that in addition to the pressure by the international community obviously also the activities of the National Human Rights Commission regarding the events in East Timor have been important for the creation of Law No. 26/2000, the main value of the reports is that after they had been widely made public it would not be comprehensible anymore if the Attorney General did not indict the more than 30 suspects, who are mentioned by name in these reports. To which degree the indictments would be proven true during a later trial is another question, which cannot be answered until the hearing of evidence is completed and only under the consideration of the principle in dubio pro reo.

2. Evaluation of the Legal Regulations:

With Law No. 26/2000, the Republic of Indonesia has - in spite of some shortcomings in the Law - created a legal instrument for the prosecution of human rights violations, which contains some remarkable regulations, but also has certain weaknesses. Besides this, the Law is also remarkable, because many legal systems do not have any comparable statute[45].

Essential parts of the law are similar to the corresponding regulations of the Rome Statute, often even literal translations of the latter. The following details have to be noted in this regard:

a) Subject Matter Jurisdiction:

The subject matter jurisdiction of the Court is restricted in two directions: On the one hand, there is only a jurisdiction for the cases of genocide and crimes against humanity regarding the so-called jus gentium elements of crime[17]; and on the other hand, any jurisdiction for other offenses is missing.

[45] The Federal Republic of Germany did not complete this step until 06/26/2002 – see Fn. 12. Already before this, Belgium had created legal regulations, which permitted the criminal prosecution of offenders, who were suspected of a crime against humanity or of the crime of genocide. Other national regulations are not known, but cannot be ruled out.

[17] The Charter of the International Military Tribunal of Nuremberg knew three crime categories:

aa) Limitation to the Elements of Crime of Genocide and Crimes against Humanity:

In contrast to the Charter of the International Military Tribunal (Nuremberg Tribunal), to the Statute of the ICTY and also to the Rome Statute of the International Criminal Court, Law No. 26/2000 is limited to genocide and crimes against humanity, which are both elements of crime under international criminal law. The other elements of crime which are named in the statutes that were used as comparison, war of aggression and war crimes, are not mentioned.

This limitation would not be a severe shortcoming of the legal regulation if the events in question were to be considered as internal conflicts. In that case, the various elements of crime of war crimes, and especially not the element of crime of war of aggression, would not be necessary in order to prosecute the injustice committed in this connection by the state. This assumption, however, would require that this territory had become Indonesian national territory with the Indonesian invasion in 1975, e.g. through occupation. An acquisition through occupation, however, is possible only, when the previous occupant of the territory was willing to abandon the territory in question[18]. But in the case of East Timor, there are considerable doubts about this. Already the fact that also the UN considered it as necessary to include Portugal as former colonial power into the New York Agreement indicates that the representatives of the highest jus gentium body did not assume a cession of territory by Portugal in the year 1975 or at least considered such a cession of territory as rather questionable. If following this aspect, interstate conflicts would have to be assumed in the case of East Timor.

But in the existing context, this issue does not require a conclusive clarification. Because even when an interstate conflict would have to be assumed, the limitation to the elements of crime of genocide and crimes against humanity would only be a deficiency if war crimes had been committed or even a war of aggression had taken place in connection with the events that are relevant here. This is, however, not the case.

On the other hand, it cannot be assumed that the elements of crime of genocide and of crimes against humanity are restricted only to internal conflicts. The history of development of these regulations proves the opposite. So, according to the Nuremberg Statute, a crime against humanity was supposed to be punishable only if it was committed “against any civilian population before or during the war” (Article 6 lit. c). Thus, the realization of this crime presupposed the most severe interstate conflict.

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(1) Crimes against the peace, according to Aricle 6 lit. a, (2) war crimes according to Article 6 lit. b, and (3) crimes against humanity, according to Article 6 lit. c, wheras the jurisdiction of the Military Tribunal only existed for crimes of the third category, when these crimes were committed in connection with an crime of the two other categories.
Compared to this, the Statute of the International Criminal Court for the Former Yugoslavia names four categories, which are:
(1) Gross violations of the Geneva Convention of 1949, according to Article 2, (2) violations of the laws or customs of war, according to Article 3, (3) genocide, according to Article 4 and (4) crimes against humanity, according to Article 5. If the categories (1) and (2) are combined under the main category of “war crimes”, only three categories remain, whereas the category of the crimes against the peace – category (1) of the so-called Nuremberg Statute – is omitted and the category of genocide is added.
These approaches were further developed by the Rome Statute of the International Criminal Court in a manner that now all previously appeared four crime categories are mentioned which are: (1) Genocide, according to Article 6, (2) crimes against humanity, according to Article 7, (3) war crimes, according to Article 8, and (4) crimes of aggression, according to Article 5 lit. d, whereas the last category should correspond to the first category of the Nuremberg Statue.

[18] Kay Hailbronner, in Völkerrecht (in International Law), edited by Wolfgang Graf Vitzhum, 2nd Edition, 2001, Berlin – New York, III Rd.No.132

Therefore, in summary it can be said that the offenses in question are typical not only for internal, but also for occupied territories and thus are also typical for interstate conflicts. The elements of crime of genocide and crimes against humanity, which have been adopted into Law No. 26/2000, are sufficient for a prosecution. The obvious regulatory goal of this law was to create and provide a pragmatic instrument for criminal prosecution, in order to avenge the atrocities – independent of the question, whether the conflicts in East Timor were internal or interstate conflicts. These requirements are met by Law No. 26/2000.

Just for clarification, it must be pointed out that, at the time, it was not the goal of this Law to accomplish the implementation of the ICC Statute into national law. Because at that time, the Statute was not just not in effect, but it even could not be foreseen whether it would ever become effective. The actual concern was to avoid the ad hoc tribunal, with which the international community had threatened in the case that the incidents in East Timor would not be prosecuted in an appropriate and sufficient manner. For these purposes, the adoption of the two elements of crime of genocide and crimes against humanity was sufficient. Without any doubt, the Law was not supposed to be limited to the incidents in East Timor (and the case of Tanjung Priok, 1984), but should also allow for the punishability of similar cases in the future, no matter whether they could be classified as internal or interstate in character. For this reason, also amnesty international's criticism[19] of the Law, which assumes the implementation of the ICC Statute, missed the point, even if it is deemed desirable that the ICC Statute were implemented into national law after its coming into effect on July 1st, 2002, by as many State Parties as possible.

bb) Missing Jurisdiction for Other Offenses:

Another cause for concern could be that there is only jurisdiction for the special elements of crime that are specifically named in the Law. A consequence of this limitation will be that offenses, which during the trial turned out not to be human rights violations or genocide according the Law, cannot be prosecuted by the special Human Rights Courts that have to be established according to the Law. In such cases, the proceedings would then have to be terminated before these Courts in some way and then continued by the Courts of general jurisdiction. It would also be possible that a part of the offenses prosecuted during the trial turn out to be human rights violations, while another part turns out to be of general criminal nature. In such cases, the proceedings would have to be split.

Such a danger of splitting seems to be rather small regarding the catalogue of initial offenses as listed in Article 9 a) to j). The most common forms of human rights violations by military, militias and police should be included.

But the committing of these initial offenses does not yet constitute a human rights violation. The offenses only qualify for this if they are committed as part of a widespread or systematic attack directed against the civilian population. This connection is a definitional element, this means that without the respective evidence, there is no human rights violation even in case of murder and, therefore, the jurisdiction of the Human Rights Court with the aforementioned consequences is not given.

[19] AI Index: ASA 21/005/2001

It is obvious that such a regulation is not economical as far as the proceedings are concerned. But this is only the smaller disadvantage. More gravely weighs the fact that in a case as assumed above, the initial impression is given that the offender or the offenders would get away with it. A correction that takes place during regular proceedings at a later point of time is often not or not sufficiently noticed by the public. This can very well considerably disrupt or even stop the process of strengthening the constitutional state under the rule of law in a country which, like Indonesia, is in the course of transformation.

But this argument must be considered as two-edged before the background of the current condition of the Indonesian justice. Because then it would have suggested itself to confine oneself to substantive or adjective regulations and to leave the avengement of gross human rights violations to the regular criminal Courts. Then, a splitting with the aforementioned unfavorable consequences would not have been able to take place. However, in view of the partially not really unproblematic condition of the Indonesian judiciary, a prosecution of these cases by regular criminal Courts should possibly be avoided. This assumption seems to be justified by the regulations for the composition of the respective sentencing body. For the details, it is referred to the explanations below in C. 2. d). Under the aspect of having only Judges conduct these highly sensitive proceedings who have proven themselves in the field of human rights, the principally questionable limitation of the subject matter jurisdiction is still acceptable.

b) Temporal Jurisdiction:

There are no concerns in as much as Law No. 26/2000 only becomes effective after its publication (Article 51). Criminal prosecution according to this Law can only be carried out with regard to such offenses that were committed after this Law took effect. However, Article 43 also allows the prosecution of offenses committed before the law took effect if the President expands the jurisdiction of the Court correspondingly, this on the recommendation of Parliament (DPR) and by means of a Presidential Decree (Keppres).

The President made use of this option by means of Keppres No. 53/2001 and No. 96/2001, restricted geographically to East Timor and limited temporally to the month of April 1999 and the time after the referendum. Both the legal provisions as well as the resolutions made based upon it, generally raise the problem of the prohibition of the retroactive effect of law (retroactivity) (aa). In connection with this are also problems that result from the creation of an ad hoc Court (bb). Finally, the exclusion of the months of May through August 1999 requires discussion (cc).

aa) Prohibition of Retroactivity:

It can generally be assumed that the principle of ***nullum crimen, nulla poena sine lege*** has found acknowledgement and is effective worldwide. This principle demands that a deed can only be considered an offense and subsequently be prosecuted if it was already punishable under the law at the time it was committed. This prerequisite certainly exists for several forms of committal in terms of Article 8 and 9. To be included here would be killing respectively murder, rape, bodily injury, wrongful deprivation of personal liberty, coercion, torture, etc. Also found alongside the same, however, are elements such as extermination (Article 9 b), enslavement (Article 9 c), terrorization (Article 9 h), enforced disappearance of persons (Article 9 i) or the crime of apartheid (Article 9 j), which were undoubtedly not regulated under previous Indonesian criminal law, even if parts of these offenses could be

subsumed under one or the other criminal law standards already applicable. The problem of retroactivity, however, would have particular impact with regard to Article 42. Special forms of committal by so-called "behind the scenes masterminds“ are regulated there. This provision expands the scope of criminal responsibility. Due to the particulars, the following elaboration refers to Part B Item 2 lit. d) dd). The problem of retroactivity can therefore not be ignored.

aaa) Prohibition of Retroactivity and International Law:

In contrast to the Anglo-American legal system, which is strongly characterized by case law, the legal traditions on the European continent are based considerably on the codification of legal precepts. The basic principle under discussion here is part of that. Historically, it may be the case that this has not been codified in all Continental European legal systems in earlier times. At the latest with the European Convention on Human Rights (ECHR), which was not only signed but also ratified by nearly all Eastern European states, this basic principle, stipulated in Article 7 of ECHR[20], applies as codified law in all of Europe.

The popular reply to this Continental European concern from the ranks of the Anglo-American legal sphere is that the secret of international law and the Anglo-Saxon system is precisely the fact that it does not depend on a formal law; but the law is rather to be developed on a case to case basis.[21]. The conflict resulting from this already existed when the Nuremberg Military Tribunal was established. Remarkably, during the negotiations on the London Treaty, which among other things involved the establishment of the Nuremberg Tribunal, the representative of France, who had suffered greatly under Germany in the Second World War, turned against retroactive punishability from the perspective of retroaction being impermissible. The criminal offense of a “crime against peace” had not existed; nor could one create it retroactively[22]. He was confronted at that time by Sir David Maxville Five from Great Britain. One would certainly show the other the meaning of international law during the proceedings[23].

Since that time, the conflict between the Continental European and the Anglo-American legal systems on this legal aspect has eased, as a result of two reasons:

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[20] The ECHR was first signed by 15 states on 11/04/1950. The Federal Republic of Germany ratified it on 08/07/1952. All 32 states of the Council of Europe have meanwhile acceded to the Convention. Article 7 of the ECHR states:

(1) No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at that time when it was committed nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed.

(2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.

[21] Kempner, Erinnerungen (Memoirs), Frankfurt/Main, 1986, S. 214

[22] M. Sherif Bassiuni, Das “Vermächtnis von Nürnberg“ (The "Legacy of Nuremberg"). Eine historische Bewertung 50 Jahre danach - Strafgerichte gegen Menschheitsverbrechen (A Historical Evaluation 50 Years Afterwards – Tribunals for Crimes Against Humanity), published by Gerd Hankel and Gerhard Stuby, Hamburg, 1995, page 15 ff, page 18; M. Sherif Bassiuni is Professor of Criminal Law and, amongst others, Director of the International Human Rights Law Institute at DePohl University in Chicago as well as President of the International Association of Penal Law.

[23] loc. cit.

For one, the necessity of the ability to punish genocide and crimes against humanity has meanwhile been acknowledged as consensus under international law. This results from countless resolutions by the UN General Assembly[24], with which the principles of Nuremberg connected with the demand for the creation of a code with explicitly formulated elements of crime have repeatedly been affirmed. The latter has been accomplished in July 1998 with the Rome Statute on the International Criminal Court. Because the Statute was not put into force until after the 60th ratification in April 2002 with effectiveness beginning on July 1st, 2002, however, the implications for the legal question to be here clarified, which lies chronologically before that time, should be without significance. In any case, one could say that even before the Rome Statute was put into force, consensus existed under international law insofar that for any offense named in the Nuremberg Statute committed within the last decades the respective perpetrator can no longer invoke the prohibition of retroactivity clause[25].

Otherwise, offenses against conventions of war especially apply as customary international criminal law[26].

On the other hand, the problem of prohibition of retroactivity can also be approached from a natural law perspective. This line of argument has been employed for example during the proceedings concerning the injustice committed by the state in the former German Democratic Republic. The German Federal Supreme Court[27] thereby largely followed the arguments of Radbruch[28], which he already developed shortly after WW II in order to bring to justice Nazi perpetrators. According to this, certain gross violations of law are already identifiable as injustice from a natural law point of view and are therefore accusable. Given the severity of the crimes against humanity, a legal positivistic approach would have to be of secondary importance in comparison with the demand for justice justified with natural law. This line of argument was adopted by the German Federal Constitutional Court.[29].

Although this notion was developed in connection with the so-called *Mauerschützenprozesse* ("Wall Guard Trials“) – and therefore in connection with homicides – it is certainly also always applicable to other offenses when it concerns gross violations of human rights. Below the threshold of “gross”, however, there are significant concerns to retroactively develop punishability solely out of natural law arguments alone against the basic principle of

[24] For example: Resolutions 95 (I) und 96 (I) from 12/11/1946; 177 (II) from 11/21/1947; 260 (III) from 12/09/1948; 488 (V) and 489 (V) from 12/12/1950; 687 (VII) from 12/05/1952; 897 (IX) and 898 (IX) from 12/04/1954; 1186 (XII) and 1187 (XII) from 12/11/1957; 2338 (XXII) from 12/18/1967; 2391 (XXIII) from 11/26/1968; 2583 (XIV) from 12/15/1969; 2712 (XXV) and 2713 (2713) from 12/15/1970; 2840 (XXVI) from 12/18/1971; 3074 (XXVIII) from 12/03/1973.

[25] Compare Kai Ambos, Nuremberg Revisited – Das Bundesverfassungsgericht, das Völkerstrafrecht und das Rückwirkungsverbot (The Federal Constitutional Court, International Criminal Law and the Prohibition of Retroactivity), Strafverteidiger 1997, Page 39ff.

[26] Meinhard Schröder, Verantwortlichkeit, Völkerrecht, Streitbeilegung und Sanktionen im Völkerrecht (Responsibility, International Law, Settlement of Conflicts and Sanctions in International Law), published by Wolfgang Graf Vitzthum, Berlin, 2001, Page 569

[27] For example: BGH NJW 1994, 2708ff., 2709 = BGHSt 40, 241ff. in further development of BGH NJW 1993, 141ff., 144; Starting point are deliberations of Radbruch in SJZ 1946, 105, 107 on the legal coming to terms with Nazi injustice

[28] Radbruch, Gesetzliches Unrecht und übergesetzliches Recht (Statutory Injustice and Super-Statutory Law) in Gesamtausgabe Bd. 3 Rechtsphilosophie III (Complete Edition Volume 3, Philosophy of Law III), Heidelberg, 1990, Page 83ff.

[29] BverfG (Federal Constitutional Court) – Decision from 10/24/1996 - 2 BvR 1851-1853, 1875/94 in Strafverteidiger 1997, Page 14ff., 16

"nullum crimen, nulla poena sine lege". Since the Human Rights Courts are only responsible for "gross" human rights violations according to Articles 1, 4 and 5 of Law No. 26/2000, the restriction made requires no further discussion. It does require the mention, though, that the European Court of Human Rights (ECHR) did not follow the natural law notion, since it adduced punishability as given in the cases it had to decide already based on the national legislation of the German Democratic Republic.[30].

bbb) Individual Elements of Crime in the Light of the Prohibition of Retroactivity:

Based on the previous reflections, no serious arguments should be able to be made against the individual elements of crime of Law No. 26/2000 from the aspect of the prohibition of retroactivity. For as will be shown below, the elements of crime are modeled almost word-for-word after the corresponding elements of crime of the Rome Statute. This especially applies with regard to the provisions regarding the special forms of perpetration by military leaders or civilian supervisors (Article 42). Even if the content of the Rome Statute cannot be directly argued here in the context at hand, because the Statute was only made effective after July 1st, 2002, it can still be said that with its completion in July 1998, there was no longer any certainty that indictable offenses of this kind would remain exempt from punishment. Added to this comes the circumstance known generally worldwide – therefore also in all the militaries of the world – that the Statute on the formation of the ICTY from May 3rd, 1993, in Article 1 explicitly specifies retroaction as of January 1st, 1991. This case also shattered possible confidence in exemption from punishment for comparable offenses. The intention of the prohibition of retroactivity is, though, precisely to protect confidence in that a deed, which is not punishable, will not be retroactively sanctioned. Where confidence cannot emerge at all, however, there is also then nothing to protect.

In these circumstances, such confidence concerning the prohibition of retroactivity could no longer emerge, at least in the year 1999. The perpetrators of East Timor should therefore be refused the option of invoking the principle of the prohibition of retroactivity.

bb) The Difficulty of Ad Hoc Courts:

There are generally two concerns connected with the establishment of an ad hoc Court: The danger of manipulation when staffing the Court (aaa) and the accusation of political arbitrariness (bbb).

aaa) The Danger of Manipulation When Staffing the Court:

The formation of an ad hoc Court is generally fraught with the danger of manipulation when staffing the Court, whereby the **right to the lawful Judge**, who is acknowledged by most legal systems and has also found admission in agreements under international law[31], can be infringed against. This difficulty initially has nothing to do with the problem of the prohibition of

[30] EGMR NJW 2001, 3035ff.

[31] For example, Article 6 Para. 1 Sentence 1 of the ECHR, which guarantees the right to a hearing by an independent, impartial, legally-based court.

retroactivity, but yet frequently plays into it. For a Court conducting the trial of a deed that is not legally declared as punishable until after it has been committed can also only be appointed retroactively and be assigned Judges specifically selected for this purpose.

The right of the accused to a lawful Judge should protect him from manipulation. This danger rests upon the possibility of the exploitation of the fact that people, and therefore also Judges, differ from one another. For conflicts that have to be dealt with in criminal proceedings can be perceived and evaluated in different ways. If judging is to be and remain human, one cannot and would not want to exclude these human elements. However, this also allows manipulation to the effect that when Judges are appointed by the Executive, they may be assigned purposefully for this or other proceedings according to their known or presumed alignment.

The respective legal systems encounter this possibility of abuse very differently. It shall not concern us here, how in the Anglo-American legal system the possibilities of manipulation are counteracted by participation rights in appointing the jurors, since the Indonesian Human Rights Court - similar to many continental European countries - knows no Grand Jury or comparable institutions and therefore no jurors in the Anglo-American sense. The problem brought up here can therefore naturally only be debated based on the principles of law that prevail in the continental European countries.

Most of the continental European countries counter the possibilities of manipulation in assigning the Judge's bench with the right to the lawful Judge. Under this it is to be understood that the competence of the respective Judge must be established to a Court through a schedule of responsibility ahead of time – that is, at a time before a case is pending. This schedule of responsibility is also not controlled by the Executive, but rather by the organs of the Court in question itself, in which the Bench is represented. Even if not all possibilities for abuse are thereby ruled out, it should still be very difficult for the Executive to assign its desired Judges to particular proceedings.

In the case of an ad hoc Court, these possibilities for avoiding abuse in appointing Judges do not exist or are only very limited. For independent of whether the case is pending in a technically legal sense or not, it is nevertheless actually present before the formation of the Court and thereby before the appointment of the Judge's bench. There is thus no other way but to appoint Judges especially to this case. The formation of an ad hoc Court therefore inherently carries with it an increased danger of the appointment of Judges being manipulated.

Law No. 26/2000 attempts to counteract this danger through two regulations. The three "ad hoc Judges" to be appointed in addition to the two professional Judges should generally have knowledge in the field of human rights, in addition to many requirements that are generally applicable to every Judge (Article 29, 32 Para. 2 and 3). With this, the appointment of the Court is at least partially focused on a specific group of people. Knowledge in the area of human rights does not necessarily mean that a person with this knowledge works especially for the enforcement and promotion of human rights. For a Government official of a dictatorial regime, who appears before the UN Commission of Human Rights against legitimate reproaches of human rights violations, can also have knowledge in this area. The same applies for the assistants of such a representative. All the same, based on experience one

will nevertheless have to assume that the prevailing number of law professionals with knowledge in the field of human rights will be more for the protection and promotion of human rights than against and will continue accordingly in the future. Furthermore, the appointment of an opponent of human rights would very obviously be against the meaning of the provisions under discussion here.

Even if the President appoints these additional Judges, whereby the political dimension of the appointment of Judges is emphasized in a particular manner, this still occurs on the proposal of the Head of the Supreme Court (Art. 28). To be sure, one cannot deny that even in a country such as Germany, the heads of the highest Courts have political connections and are under political influence to a greater or lesser extent. It can be rightly supposed that this “networking” will not be less but rather more frequent in Indonesia. All the same, a certain kind of “filter” is installed with the right of nomination by the Head of the Supreme Court, that should stand against at least the grossest manipulations.

Neither the Statute of the ICTY nor its Rules of Procedure and Evidence are concerned with the problem of the lawful Judge. The competence of the chambers of first instance is determined from case to case by the Head of the Court. As soon as the competence of a chamber is substantiated in this way, the chairperson of the chamber names a Judge for the pretrial proceedings. The structure of the appeals chamber is also determined from case to case by the Head of the Court. The ICTY standard with regard to adherence to the basic principle of the lawful Judge therefore appears to be of an exceedingly low level, if such a level should be given at all.

It can therefore first of all be determined that the Indonesian legislators saw the potential for conflict in the appointment of an ad hoc Court and attempted to counteract it with suitable legal provisions. Whether these provisions are sufficient or not will have to be shown in practice.

If shortcomings should outcrop in practice, an addition or expansion should be deliberated to the effect of according human rights NGOs a corresponding right of recommendation. As long as such a right to recommendation does not comprise more than the very possibility for filing a recommendation, neither state nor constitutional precepts would hereby be infringed. The benefit would be found, however, in that a recommendation made in such a way would be able to trigger public debates of Judge appointments. Public discussions have never hurt democracy, only benefited. Without them, democracy could not survive.

bbb) The Accusation of Political Arbitrariness:

Even with the best system of control and corresponding actual implementation, it cannot be ignored that an ad hoc Court always incorporates very strong political contingents as well, which counteract the notions of law and can make a Court acting on this basis appear rather questionable.

(I) The creation of an ad hoc Court is namely always in response to a forgone politically exceptional situation, and therefore also always even a legislatively exceptional situation, which regularly coincides with the problem of retroaction as previously mentioned. In addition to that comes the fact that the

subject matter mostly concerns the coming to terms with injustice committed by the state – therefore of events of a predominantly political character. All of these components mutually strengthen their inherent political causes for conflict. The political contingents of these proceedings also appear to be the definitive driving force for ad hoc Courts. If the political situation changes, the driving force is removed and the proceedings collapse or are delayed. The result is that more or less randomly a portion of the perpetrators – usually the smaller portion –is prosecuted, while another portion gets off. This is harmful to the notions of law.[32]

(II) These determinations are confirmed by previous experiences with ad hoc Courts:

(IIa) For example, the International Military Tribunal of Nuremberg had comprised more proceedings than the so-called main trial of war crimes. After the international political climate changed, while still during this first process, political interest in the continuation of prosecution of Nazi injustice declined. The result was that Nuremberg was ended relatively quickly[33]. In no way was a legal coming to terms with the Nazi injustice – even in consideration of the 12 so-called subsequent Nuremberg proceedings – thus accomplished. From the points of view of justice, this was not an acceptable result for the victims and their relatives, while the convicted and their relatives felt these proceedings were political victor's justice, which arbitrarily punished some officials, but made common cause with other perpetrators as it appeared opportune with regard to world politics.

(IIb) The corresponding applies to the International Military Tribunal of Tokyo, which was likewise established after the end of the Second World War in order to atone for the Japanese war crimes.

(III) However, even when ad hoc Courts have sufficient "driving force", they remain vulnerable anyhow and run the danger of becoming the plaything of political forces, precisely because of this "driving force." In this way, the ICTY appears not to suffer because of the political determination of its "fathers" or "mothers," but rather because of lack of funds. This is, however, only a veiled form of the political forces acting on the Court in various ways[34].

Apart from the problem of funding, in the case of the Yugoslavia Tribunal it cannot be ignored that despite significant suspicious facts, serious violations

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[32] The law functions only under the assumption that all are equal before the law regardless of a person's standing. This also applies for international criminal law. Accordingly, the following is explicitly determined in Article 27 of the Rome Statute:

(I) This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of a State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

(II) Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the court from exercising its jurisdiction over such a person.

[33] There were in fact 12 so-called subsequent Nuremberg proceedings. These were no longer conducted before the International Military Tribunal, however, but rather before an additionally established American military court in Nuremberg. The last proceedings ended in 1949.

[34] The President of the Yugoslavian Tribunal, Judge Jorda, remarked on the occasion of a conference of the AED on 05/22/2002 in The Hague that the court stood with very difficult international relations, which it always had to take into consideration. In clear language, this means that the court is exposed to constant attempts to exert influence from the contributing countries that finance the court. Naturally, nothing is said about as to what degree the court complies with these desires or whether it withstands these attempts to exert influence.

of the Yugoslavia Statute by members of NATO which should have led to investigations by the prosecuting authority of the Tribunal[35], were nevertheless omitted, since the prosecuting authority had no possibility to get access to the corresponding NATO documents in order to corroborate the suspicion[36]. The proceedings before the Yugoslavia Tribunal thus run the danger of being viewed by the public outside the NATO countries solely as an extended political arm of the victors. Whether such a viewpoint is indeed the case outside of the NATO countries, remains to be seen. Because for a Court applies even more that which is applicable to every individual Judge: a bad appearance must be avoided. Apart from that, in the context at hand here it only matters to point to the strong political contingents that are generally inherent to ad hoc proceedings before ad hoc Courts. The Tribunals of Nuremberg, Tokyo and The Hague are examples with which political influences ad hoc Courts had to deal.

(IV) In this context, it must be mentioned that national tribunals also have difficulties with coming to terms with injustice committed the by state – even of former enemy states (like in the case of Germany).

(IVa) Therefore, the coming to terms with Nazi injustice by the German judiciary is certainly not a glorious chapter after the premature end of Nuremberg. A study commissioned by the ministry of justice of the state (*Bundesland*) of North-Rhine Westphalia on the North-Rhine Westphalian judiciary and its handling of the Nazi past is informative[37]. There it is determined that the initial recourse on Judges who underwent their professional socialization during the Weimar Republic, at times even during the Empire, led inevitably to a predominantly authoritarian pattern of behavior[38] and

[35] According to Article 1 of the Statute of the International Criminal Court for the Former Yugoslavia, the jurisdiction of this court is not restricted to citizens of the former Republic of Yugoslavia, but rather covers – independent of office, position or citizenship – any person who commits criminal acts in terms of this statute on the territory of the former Yugoslavia.

[36] As evidenced by its press release from 06/13/2000, because of “information” by various NGOs, the law enforcement agency had in fact set up a fact-finding group to clarify the reproaches raised in this "information" regarding offenses by NATO members against the co-called Yugoslavia Statute. The task of this fact-finding group was solely to clarify whether investigations were to be initiated. The fact-finding group thereby proceeded – as the report acknowledges – so that in the cases in which actual suspicious facts arose, they gave NATO the opportunity to refute them with a statement, which was then done by the NATO lawyers. It is obvious that suspicious facts cannot be substantiated when the procedures are like this. This could have been achieved merely through access to the corresponding military documents, which would not only have been impossible, but rather also simply unthinkable.
In actuality, the powerlessness in these matters may be even greater by far. For in the case of suspicion against NATO members with German citizenship, neither a parliamentary investigation committee of the Bundestag (German Parliament) nor a German court would have the power to obtain corresponding documents from the Bundeswehr (Germany’s armed forces) against the will of NATO. For the release of such documents requires the approval of the other NATO member states, insofar as they would be affected, which is usually the case. According to all experience, this is generally not to be expected when the matter concerns criminal accusations. The separation of powers and the constitutional state are thereby structurally rendered meaningless. This scenario is also in no way absurd and is found in Germany even at the level of the Bundesländer (states). In criminal proceedings, the findings of the investigating State Bureau of Investigation (Landeskriminalamt) are withheld time and time again with the argument that State Bureaus of Investigation or State Bureaus for the Protection of the Constitution (Landesverfassungsschutzämter) of other states that contributed denied their approval. In these cases, though, there is the option of bringing action against the corresponding state before the administrative court for approval of release – an option that appears unrealistic at the NATO level.

[37] Justizministerium des Landes NRW (Hrsg.), Die nordrhein-westfälische Justiz und ihr Umgang mit der nationalsozialistischen Vergangenheit. Abschlussbericht. Interdisziplinäres Forschungsprojekt der Westfälischen Wilhelms-Universität Münster,
Düsseldorf 2001, 147 Seiten (Ministry of Justice of the State of NRW (Ed.), The North-Rhine Westphalian Judiciary and Their Handling of the National-Socialistic Past. Final Report. Interdisciplinary Research Project of the Westphalian Wilhelms University, Muenster, Düsseldorf 2001, 147 Pages)

[38] Fn 19, page 21

thereby led to a conservative authoritarian tendency of the Courts and Public Prosecutor's office[39]. After the end of the so-called denazification, which was completed in the year 1951, the personnel problem came closer to a head. Already in the year 1952, the contingent of former NSDAP members in the Courts and Public Prosecutor's offices was at 80%[40]. Nonetheless, the study reaches the conclusion that it could not be determined that the high number of cases dismissed was primarily traceable back to individual and political blunders or exertions of influence[41]. Deiseroth[42] therefore appropriately states that the study contains significant shortcomings. One must agree with him.

This instance is illustrated by a report[43] from the year 1998 on the machinations of the former Attorney General of Cologne, with which he allowed corresponding preliminary proceedings of his subordinates concerning Nazi crimes to be ineffective. It therefore cannot be a surprise that Public Prosecutor's offices and Courts only sluggishly and hesitantly prosecuted Nazi crimes[44] and simultaneously omitted the overdue rehabilitation of the victims[45]. It appears that the coming to terms with the failed coming to terms with the Nazi injustice is doomed to fail again.

(IVb) The questionable practice of investigative authorities and Courts went hand in glove with actions respectively inaction of the legislator: on the one hand, a flood of cases being dismissed was triggered through a seemingly minor correction of § 50 Para. 2 Criminal Code in 1968[46], and on the other hand necessary legislative corrections concerning the rehabilitation of victims of Nazi injustice were neglected for decades; the latter were not made until May 1998, more than 50 years overdue[47]. One must therefore not only

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[39] loc. cit., Page 138
[40] loc. cit., Page 139
[41] loc. cit., Page 130
[42] Dieter Deiseroth, Nordrhein-westphälische Justiz und NS-Vergangenheit (North Rhine-Westphalian Judiciary and the NS-Past), in Kritische Justiz (Critical Judiciary) 2002, Page 90ff., 99.
[43] For example, the German daily the *taz* reported in its edition from 04/21/1998 under the title "Ermittlungen gezielt ins Leere geleitet" (Inquiries intentionally directed to nowhere) that in the 1980's, the Attorney General of Cologne at the time successfully blocked inquiries by his public prosecutors against former SS officers because of NS crimes committed in France.
[44] Solely as an example shall be mentioned here the proceedings against the now over 90-year old former SS-member Engel because of hostage shootings in the year 1944, which came to trial in early 2002 after decades of inquiry (see *taz* 03/30, 03/31/2002, "Späte Anklage nach fast 60 Jahren Ruhe" (Late Indictment after Nearly 60 Years of Silence).
[45] Also mentioned only as examples without claim to completeness: Only with the decision from 06/02/1997(!) - published in NJW 1998, 1102 - did the Landgericht (Court on the administrative level of the state [Land]) Berlin rescind the verdict from 04/06/1945 against the resistance fighter Dohnanyi as an unlawful act of revenge. With the decision from 09/08/1998 – published in NJW in 1998, 2685 – the Landgericht Lübeck rescinded the unlawful verdicts of the Danzig court from 09/08/1939.
Especially worth reading due to its subject matter is the decision of the Landgericht of Cologne from 12/19/1997 – published in NJW 1998, 2688 – with which the death sentence against Beck was rescinded. 1944, Beck a German soldier deserted in the Netherlands and, after Amsterdam was taken on 05/07/1945 by Canadian troops, surrendered to the latter. On 05/12/1945, he was transfered by the Canadians to a German prisoner of war camp under Canadian supervision, where he was sentenced to death on 05/13/1945 – five days after the capitulation – by his German comrades, a sentence which was carried out on the same day with Canadian support, in particular the provision of vehicles and weapons.
[46] See to this regard the composition by Michael Greve, "Amnestierung von NS-Gehilfen – eine Panne? Die Novellierung des § 50 Abs. 2 StGB und dessen Auswirkung auf die NS-Strafverfolgung" ("Amnesty of NS Assistants – a Mishap? The Amendment of § 50 Para. 2 Criminal Code and its Effects on the NS Criminal Prosecution") in Kritische Justiz (Critical Judiciary) 2000, 412ff.
[47] Not until May 1998 did the Bundestag (German Parliament) rescind unlawful NS verdicts such as because of desertion or forced sterilization – *taz* from 05/29/1998.

speak of a failure of the German post-war judiciary, but also of the German legislature as regards coming to terms with Nazi injustice.

(IVc) However, also the other Western European countries find difficulties in this respect. The fact that Italy, as a former ally of the Third Reich, displays a similar prosecution practice as the Federal Republic of Germany may surprise few[48]. However, the fact that Denmark, as a former enemy of the Nazi regime that suffered tremendously under German occupation, put up with decades of protraction of its extradition demands by German judicial authorities[49] is no longer rationally comprehensible, but can rather only be explained with questionable political conduct.

(V) The previous examples, which are only a small but significant excerpt from the state practices in handling injustice committed by the state and the coming to terms with the same, prove that the previous efforts to come to terms with injustice committed by the state by means of international ad hoc tribunals or permanent national Courts are less than encouraging. Precisely this may also be the reason for the efforts to create the permanent International Criminal Court, which was agreed upon with the Rome Statute in 1998. As a permanent Court of justice, it is – to some extent at least – withdrawn from the fluctuating exertions of influence from the international community, and as an international Court, it is withdrawn from attempts to exert influence by individual states along their national interests.

The Human Rights Court of Jakarta does not have such a status. It combines all disadvantages within itself. As a national Court, it is exposed to the intra-national influences in a particular manner; as an ad hoc Court, to the political time-current. Nonetheless, it appears to be the only solution under the given circumstances; that is, as long as the international community establishes no ad hoc tribunal for the atrocities committed in East Timor.

cc) Other Temporal Limitations of the Prosecution to the Months of April and September 1999:

With regard to the exclusion of the period from December 1975 to March 1999 and May 1999 to August 1999, two distinctions have to be made: one has to differentiate between the restriction of the penal authority of the Court that this exclusion implies as well the consequences thereof on the one hand (aaa) and the consequences for the investigative authority of the Court on the other (bbb).

aaa) Limitation of Penal Authority:

The temporal limitation of the prosecution to crimes that were committed in April 1999 and in September 1999 is not comprehensible. It is by no means in accordance with the general notions of justice that, for example, a crime committed on April 30th, 1999 at 11 PM is prosecuted, while the same perpetrator would go unpunished if he had waited to commit the very crime until

[48] The *taz* reports in its edition of 04/10, 04/11/1999 that proceedings were first brought against former SS Chief Storm Trooper Saevecke in the spring of 1999 for the particularly cruel public shooting of 15 political prisoners in August 1944.

[49] For example, for more than 50 years, Denmark has sought the criminal prosecution of the Danish citizen Soeren Kam, who was accused of the shooting of innocents as a former SS officer, on which the *taz* in its edition from 05/29/1998 and the *Süddeutsche Zeitung* in its edition from 03/06, 03/07/1999 reported.

just over an hour later. Also, no corresponding facts or motives of the legislator have become known for this restriction.

Even if one would assume that with the international negotiations, which started at the beginning of May 1999 and led to the conclusion of the so-called New York Agreement, a certain calming of the situation had taken place which only gave way to renewed gross atrocities with the referendum respectively the announcement of the results of the latter at the beginning of September 1999, this allows for no other judgment. For according to experience, human rights violations of the kind under discussion here have both a prehistory as well as an aftermath; that is, in the case at hand, a prehistory before April 1, 1999, an aftermath that may have gone far beyond April 30, 1999, as well as a prehistory that clearly lay before September 1st, 1999.

Additionally the exclusion of precisely those months in which the referendum was prepared and carried out may suggest that there were no atrocities at all during this time. Even if that were so, this arbitrary temporal limitation would nonetheless still unnecessarily underline the political components of an ad hoc Court. This might result in the creation of legends on the part of the perpetrators arguing that the disadvantageous outcome of the referendum for Indonesia was brought about by violence of the independence supporters under the protection of the UN authority in the country. In fact, Major General Damiri expressed this in a similar way as a witness in the proceedings against Soares, the former Governor of East Timor, in that he contended that only the integration supporters but not the independence supporters were disarmed. According to him the latter also continued to cause disturbances, but were not brought before a Court. UNAMET was biased and the vote was falsified. To what degree the military will be successful in creating such legends, which receive confirmation precisely from the temporal limitation on the prosecution that is under discussion here, only time will tell. In any case, all proceedings before the ad hoc Courts for East Timor in Jakarta are unnecessarily politicized by this temporal limitation. The result is that the proceedings will become more difficult to conduct and the outcome will be devaluated. Finally, law as a whole is damaged, which is particularly painful and disadvantageous for a country such as Indonesia, which must urgently make efforts to improve the structure of its justice system.

It is otherwise certain that numerous and gross human rights violations occurred during the four months that were excluded (May to August). After the conclusion of the New York Agreement, there was no motive to form or organize militias, vigilantes or similar armed cohorts or to maintain already existing ones. If this nonetheless occurred, which undoubtedly was the case, at least in the form of maintaining such groups, those responsible thereby kept a considerable threat potential through these groups, which was generally suited to affect the freedom of decision of individuals with regard to the referendum. In this context, it cannot go unconsidered that already at that time – that is, in April 1999 – there was urgent suspicion of these groups' participation in atrocities – such as, for example, the involvement in the massacre on the premises of Carrascalão in April 1999. Before this background, the exclusion of the period of time under discussion here is a purely politically motivated, unjustifiable, anticipated exculpation that disavows the request for justice. The victims and their families can only see this temporal limitation as unjust. The perpetrators that are prosecuted will give the image of being political victims as compared to the perpetrators that are spared.

The problem of political arbitrariness that is generally connected with an ad hoc Court is thereby intensified. Because of this effect alone, the temporal limitation would have been better left out.

bbb) Limitation of Investigative Authority:

Even if with the temporal limitation included in the Keppres No. 53/2002 and 96/2002 a limitation of punishability is made to offenses (as covered by Law No. 26/2000) committed in April 1999 and from September 1999, in no way is thereby also the investigative authority limited to the mentioned time period. Quite the contrary, the Court can only fulfill its mandate of investigation by clearing up events that occurred in the time before April 1999 and in the interim period (May to August 1999) as well.

For the Court must also investigate the circumstances exonerating the accused. With regard to the special criminal responsibility of military and civilian superiors in terms of Article 42, it depends precisely on what provisions they took to avoid atrocities before the terrible events. This basic principle must also apply in the opposite, though; that is, the Court must also investigate which events occurred before April 1999 and between April and September 1999 that should have caused a military or civilian supervisor in the case of dutiful exercise of his (command) authority to take concrete precautionary steps.

c) Geographical Jurisdiction:

The provisions on geographical jurisdiction in Law No. 26/2000 require no special evaluation in the context at hand. In need of discussion is, however, the geographical limitation found in Keppres No. 96/2001 to the administrative districts of Dili, Liquiça and Suai. The difficulty here is for the most part similar to the temporal limitation to the months of April and September 1999. In particular the accusation of political arbitrariness could be raised and work disadvantageously against an acceptance of the proceedings, especially in military circles.

d) Composition of the Courts:

The composition of the Courts of two professional Judges and three ad hoc Judges each is not objectionable in principle. Also the ad hoc Judges must have the required judicial qualifications of a Judge. As regards to the general problematique concerning the appointment of ad hoc Judges, reference can be made to the previous remarks on the problematique concerning ad hoc Courts.

In view of the study conducted in May 2002 by the UN Special Rapporteur on the Independence of Judges and Lawyers, Attorney at Law Param Cumaraswamy, on the corruptibility of the Indonesian Courts, this aspect cannot remain undiscussed[50]. This study, which in its results supposedly paints a very bleak picture, is not yet available in detail, however. A complete publication cannot be expected until the beginning of 2003. Thus, the study cannot yet be referred to in detail.

[50] UN rapporteur says RI judiciary in serious trouble, The Jakarta Post, July 18, 2002. [Remark of the editors of the English version: The study is available in the meantime; cf. http://www.unhchr.ch/pdf/chr59/65add2AV.pdf]

However, a study[51] already carried out for the World Bank in the years 1996/97 on judiciary reforms considered to be necessary in Indonesia is available, which also was concerned with the Indonesian Judges. The study finds[52] the training standards of Indonesian Judges to be inadequate and recommends a remedy through required continuing education[53]. It is also clearly stated that a Judge must have the personal aptitude and integrity that are also necessary for his office in addition to good knowledge of the law[54]. A discussion under the aspect of corruptibility or also other, similar aspects is, however, not made. Further down[55] the results of a survey on the topic of professional standards and fundamental ethical professional principles are reported, stating that the most frequent violation of ethical principles is due to malpractice by Attorneys[56], followed by inadequate acts of Judges[57]. Concrete references to the problem of corruption are, however, not found here either.

In view of the cases of corruption which have now become known, a certain difficulty in this area cannot be denied. The opinion that every Judge in Indonesia is corruptible cannot be shared. Reports from legal representatives of Indonesian NGOs counter this view (see Part B No. 6 lit. f)). Their remarks only make sense if one assumes that proceedings can also be won without bribery, which presupposes that not all Judges are corruptible. It is true that these remarks were not made in the framework of a survey regarding the corruptibility of Indonesian Judges. However, they can be considered as particularly impartial for precisely that reason. Even if these reports are not based on broad empirical data, they are still accorded special significance. It can be assumed that this group of people does not only have a certain specialized competency, but also a critical general attitude and therefore a special sensitivity for this subject.

It is not intended to play down the actual problem of corruption with the previous considerations. It would appear to be a grave mistake, however, to condemn the Indonesian Judges as a whole with generalizing judgments. For this would have the result on both sides that no one would seriously look at the proceedings at hand here any longer. The outcomes of the individual proceedings would only be the results of successful bribery of Judges for the critical observers anyway; for the Judges, this type of criticism would only be abusive criticism without any meaning.

From this, it follows that it is self-evident that the corruption problem must be observed and every piece of evidence must be followed up on. For the proceedings currently under discussion, however, no concrete signs of suspicion have arisen.

e) Elements of Crime:

The following must be said with regard to the evaluation of the punishable elements of crime:

aa) Limitation of the Elements of Crime:

Comments have already been made on the limitation of the elements of the crime in connection with the evaluation of the subject matter jurisdiction (Part C 2 a) aa)).

[51] Law Reform in Indonesia, Results of a research study undertaken by the World Bank, prepared by Ali Budiardjo, Nugroho, Reksodiputro, Jakarta, 1997
[52] loc. cit., Page 147ff.
[53] loc. cit., Page 152
[54] loc. cit., Page 154
[55] loc. cit., Page 50
[56] loc. cit. „lawyers winning cases by any means“
[57] loc. cit. „judges not seriously handling lawsuits“

What is said there can be referenced for the most part. The intention of the legal provision was and is the penalization of injustice committed by the state during intra-state conflicts, especially with regard to what happened in East Timor in 1999. Even if the resulting legal provision is oriented at the Rome Statute and therefore includes the corresponding provisions for genocide and crimes against humanity to a large extent and nearly verbatim, it was clearly not the intention of the legislator to implement the Rome Statute into national law as a whole, in order to fulfill the prerequisites of Article 17 Section 1 lit. a) of the Rome Statute to avoid criminal prosecution by the ICC. At that time, the Statute was not only not yet in force, but it could also not yet be foreseen whether it would be ratified by the required number of State Parties. Rather it concerned the avoidance of an international ad hoc tribunal that the international community had announced in case Indonesia would not adequately and sufficiently prosecute the crimes committed in East Timor on its own.

aaa) Genocide:

Article 8 of Law No. 26/2000 includes the element of crime of genocide. It is for the most part identical to the corresponding provisions in Article 6 of the Rome Statute. In this context, amnesty international[58] objects that incitement, abetment and conspiracy to this act did not find entry into the legal provisions according to the genocide convention. This is, however, not the case. The corresponding provision is found in Article 41 of Law No. 26/2000. It does not only apply for the criminal offense of genocide (Article 8), however, but rather also for all elements of crime of crimes against humanity.

bbb) Crimes Against Humanity:

Article 9 places crimes against humanity under penalty. This provision is largely fashioned after Article 7 of the Rome Statute. Article 7 Para. 1 lit k) is not adopted, however, which is reproved by amnesty international[59]. This element of crime concerns "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.“ This provision appears to be extremely alarming from the point of view of criminal law due to its lack of definiteness. Significantly, State Parties were not able to give further elucidations solely to this element of crime in Article 7 Para. 2, in which the elements of crime of Para. 1 are explained in greater detail, which underlines the previous evaluation. The Rome Statute does not satisfy the international standard on this point. Wisely, Law No. 26/2000 did not adopt this provision.

bb) The Requirement of Human Rights Violations to be “Gross” Violations:

Articles 1, 4 and 5 of Law No. 26/2000 restrict the concept of human rights violations to “gross” violations of human rights. One could undoubtedly argue whether this is a question of subject matter jurisdiction or substantive law. This question does not require conclusive clarification in the context at hand, however, since this provision could have the effect of a filter in both a formal law as well as substantive law function, which hinders the prosecution of human rights violations.

[58] AI index. ASA 21/005/2001
[59] AI index. ASA 21/005/2001

To begin with it must be noted that the term “gross” is imprecise and therefore opens the door to a broad interpretation. Along with that, there are doubts as to whether the provision is in accordance with the “definiteness requirement,” which requires that the norm reveal without any doubt what concrete behavior is threatened with penalty. As far as a legal definition can be found in Article 1 Para. 2 of Law No. 26/2000, though, this is just circular reasoning. For this provision only makes reference to other provisions of the Law, in which the term of “gross” human rights violations is used again without this term being explained. This does not limit a broad interpretation.

A broad interpretation generally allows, though, that not only legal but also legal-political considerations may have effect. The unlawful or even law-bending character of such interpretation is difficult to prove in individual cases and can certainly only then be assumed if recognizably irrelevant considerations are included. Depending on what standards are specified to the term "gross," the possibilities for prosecution before the Human Rights Court can be expanded or restricted.

However, one must contrast with this general danger the concrete elements of crime of Articles 8 and 9 of Law No. 26/2000. It requires no further argument that the crime of genocide in Article 8 is always a gross violation of human rights. The case is already different with the element of crime of “crimes against humanity” in terms of Article 9. Here, one has to differentiate between the crimes listed in Article 9. Undoubtedly, killing, extermination, enslavement, torture, rape, forced disappearance of people and similar crimes are always considered to be gross. However, already with the concepts of forced eviction, displacement of civilians or imprisonment the danger of “downplaying” exists. For it is also correct that not every human rights violation is at the same time a crime against humanity in the sense of international criminal law. Depending on the view, very different evaluations of the requirements for human rights violations to be considered as gross violations are therefore possible.

But in the case of the crimes mentioned previously, the danger of "downplaying“ is narrowed by the other criterion of the element of crime of Article 9, which is to be discussed later, that namely the crimes must be considered as part of an widespread or systematic attack directed against the civilian population. For a widespread attack as well as a systematic action let such crimes appear graver than a simple excess of an individual. Nonetheless, despite these considerations, the danger of "downplaying" cannot be wholly dismissed.

Incidentally, with the restriction to "gross" human rights violations Law No. 26/2001 follows the guidelines as they are found in the Statute of the International Criminal Tribunal for the Former Yugoslavia[60] and in the Rome Statute[61]. In terms of this, criticism should be less concerned with the Law than with possible future jurisprudence, insofar as it should be cause for concern and in conflict to that of the International Criminal Court.

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[60] Article 1 of the ICTY Statute states:
“The International Tribunal shall have the power to prosecute persons responsible for **serious violations** [accentuation by the author] of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.”

[61] Article 1, Sentence 2, 1st clause of the Rome Statute states:
“ [The ICC] shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most **serious crimes** (accentuation by the author) of international concern, as referred to in this Statute;”
Article 5 Para. 1 Sent. 1 of the Rome Statute states:
“The jurisdiction of the Court shall be limited to the most **serious crimes** [accentuation by the author] of concern to the international community as a whole.”

cc) The Requirement of Human Rights Violation to be Part of a Widespread or Systematic Attack Directed against the Civilian Population:

Article 9 of Law No. 26/2000 contains with the definitional element of crime that the violations of human rights must have taken place as "part of a widespread or systematic attack directed against the civilian population", an additional limitation of the penal authority of the Human Rights Tribunals. A result of this is that not all the crimes listed in Article 9 constitute a crime against humanity. Especially excesses committed by individual offenders, which are not connected as mentioned above, are excluded from prosecution by the Human Rights Courts. Also in future, they are intended to be prosecuted within the general criminal jurisdiction.

Therefore, a conviction before the Human Rights Courts requires the Court to succeed in providing the corresponding evidence. Yet, the element of the "widespread" attack is certainly subject to interpretation and allows for different views. However, the scope of interpretation should be rather small due to the mainly objective content of this element. In contrast to this, the definitional element of crime of a "systematic" attack seems to be more problematic. The same should only then be given if the offense took place before the background of either the state or organizations having promoted or encouraged the committing of such offenses[62]. It should not be necessary to have come to such atrocities already, because it cannot be drawn from the overall understanding that the first offense that occurs should be excluded. The same applies if further offenses can be prevented after the first one took place.

The promotion or encouragement of these offenses only has to be a given fact. A plan should not be necessary. The pursuing of a corresponding policy – even without a plan – should be sufficient. Regarding the subjective side of the offense, it also should not be necessary that the offender knows all characteristics or details of the plan or of a corresponding policy[63].

Without any doubt, there still is a considerable need for legal clarification regarding these terms of "extensive" or "systematic" attack. But also as to this point, not actually the Law, which has adopted this requirement literally from Article 7 of the Rome Statute, should be criticized, but rather a future administration of justice that is not consistent with the one of the International Criminal Court.

dd) Special Forms of Perpetration:

Although Articles 41 and 42 are found in Chapter IV, which contains the penalty provisions, these provisions, which define the different types of perpetration, belong to the regulations on the elements of crime.

aaa) Forms of Participation in Article 41:

Article 41 places attempt, incitement and abetment under the same threat of penalty as perpetration. Reasons for mitigation of punishment are not given and especially also those of general criminal law would not apply, as a cor-

[62] A similar view is provided by the Report of the Preparatory Commission for the International Criminal Court, Part II, Finalized Draft Text of the Elements of Crime, Introduction to Article 7 No. 3 – UN-Document PCNICC/2000/1/Add.2.
[63] loc. cit., Para. 2.

responding reference to the material criminal law regulations is lacking, in contrast to a reference to the criminal procedural regulations.

bbb) The Special Form of Perpetration in Article 42:

The expansion of criminal responsibility to the superiors of perpetrators included in Article 42 is a remarkable expansion and concretion. The acts included therein would also be punishable in other legal systems, but only based on interpretation of general, basic principles of criminal law, especially regarding the concept of a not genuine failure to act etc. The statutory provision precludes discretion-adverse and manipulatory attempts at interpretation. This must be seen as positive in light of the danger already previously discussed in other contexts.

As far as the failure to act by the ignorant superior in the cases in which, based on the circumstances of the relevant period of time, he should have known of the atrocities, is treated like the failure to act of the knowing superiors, this is to be welcomed. For in the case of military, paramilitary organizations, police or similarly structured organizations, an esprit de corps generally prevails, which obligates every member of this "corps" to omit everything that could expose a member of the "corps" to criminal prosecution for misconduct that was “only” committed against a person who does not belong to the “corps." This attitude of "comrades" is the quagmire in which human rights violations flourish. The perpetrator or perpetrators are certain from the outset, that all of the other members of their "corps," especially the superiors, will look away, be it before, during or after the atrocities. This feeling of security on the part of the perpetrator is, however, known to all other members of the “corps” and is carried by them. In light of this special criminological background, the equalization of the "ignorant superior," who, given proper exercise of duty, should have known of the atrocities, with the perpetrators is justified.

The same also applies with regard to the initiation of criminal prosecution by the superiors; that is, also for the cases in which the prosecution did not occur because the superior had no knowledge of the atrocities, although, given proper exercise of duty, he should have known.

With the provision in Article 42 of Law No. 26/2000 the latter entirely follows Article 28 of the Rome Statute.

ee) Penalties and Penalty Differentiations:

The following are comments on the penalties and penalty differentiations included in the Articles 36ff of Law No. 26/2000:

aaa) Death Penalty:

The problematic issue of the death penalty is assumed to be known, so that a detailed discussion will be abstained from here. As far as the death penalty is included in the Articles 36ff of Law No. 26/2000, there are fundamental concerns due to the special nature of this punishment, even when it concerns the avengement of the most severe crimes.

However, it is difficult to only object to the death penalty as included in Law No. 26/2000 with the reasoning that in a law for protection of human rights the death penalty is inappropriate.[64] Against that it could namely be argued that in a legal system that recognizes the death penalty, it would have to be considered by the victims and their families as an unacceptable injustice against them that precisely the perpetrators of the gravest crimes are spared the harshest penalty. Correctly, therefore, the death penalty should be criticized in the entire system – in connection with the demand to take the creation of a law to protect human rights as cause for abolition of the death penalty entirely.

In this context, it must be mentioned that the Rome Statute, like that of the ICTY, does not recognize the death penalty. The highest punishment is imprisonment for life.

bbb) Penalty Differentiations:

As far as the penalty framework, meaning minimum and maximum penalties, determined in the Articles 36ff of Law No. 26/2000 is concerned, this is to be welcomed, despite the criticism of international NGOs[65]. For judiciary discretion is limited and protection against arbitrary sentencing is provided by the determination of such penalty framework.

Such a limitation of judiciary discretion is not found in the Rome Statute. According to Article 77 of the Statute, each offense can be punished with a penalty ranging from a minor monetary fine up to life imprisonment. This very broad formulation appears extremely questionable by itself. When one further considers that it is to be included in Rule 145 of the future Rules of Procedure and Evidence that for the sentencing the willingness of the accused to cooperate with the Court is to be taken into consideration, the concerns grow even larger. Thereby, one almost invites “trial-deals” in the work of the future ICC. Judgments in the form similar to the selling of indulgences are to be expected. False testimonies of cooperating "chief witnesses" must be feared. The coming to terms with the past and the finding of the truth are endangered. In comparison with that, the stipulation of minimum and maximum penalties by Law No. 26/2000 must be considered as a noteworthy improvement.

The penalty frameworks arranged in the Law are appropriate with the severity of the particular offenses. This also applies with regard to the special provision of Article 42 of Law No. 26/2000, which concerns the responsibility of superiors and has already been discussed in C. 2. lit. e) dd) bbb). Reference is next made to the comments found there. On this point, as well, the Indonesian Law follows the international standard, as it was made in the Rome Statute, without restriction. This must be pointed out because the Federal Republic of Germany heavily watered down precisely those notions in Article 28 of the ICC Statute when implementing the standards of the ICC Statute. Already the title of § 13 Völkerstrafgesetzbuch (VStGB) (International Criminal Code) – "Violation of the Supervision Duty " – is a belittlement[66]. It is therefore no surprise when § 13 Para. 4 VStGB allocates a

[64] AI Index: ASA 21/005/2001
[65] For example, amnesty international in AI Index: ASA 21/005/2001
[66] § 13 Para. 1 VStGB states as follows:

maximum penalty of up to five years for the deliberate and up to three years for the negligent breach of duty. The Federal Republic of Germany, which considers itself to be on the level of setting the standard for international law, has, in misjudgment of the criminological context, thereby undertaken an alarming penalty limitation in contrast to the ICC Statute. The penalty frameworks of Article 36ff of Law No. 26/2000, which even in the most favorable case provides for a minimum penalty of five years, cannot be objected to when measured against this.

f) Proceedings before the Human Rights Courts:

The following must be said regarding the procedural regulations:

aa) Fundamentals:

Proceedings before Human Rights Courts generally concern criminal proceedings. Consequently, Article 10 of Law No. 26/2000 provides that – insofar as nothing else is regulated in this Law – the regulations of the Code of Criminal Procedure apply.

It must already be pointed out here that the Indonesian criminal procedures follow predominantly the inquisitory system[67], as most of the continental European countries know it in this or similar forms. The Court has the duty to investigate the subject matter. Even the "pretrial"[68] introduced with the criminal law reform of 1982 did not change anything in this respect. In particular, no system change towards an Anglo-American type contradictory system has taken place. A closer discussion of the different criminal law systems is made later in connection with the evaluation of the bills of indictment (C.3.) and the main hearings (C.4.).

bb) Special Role of the National Human Rights Commission:

The Indonesian Code of Criminal Procedure assigns the first steps of criminal prosecution to the police authorities. They must investigate the matter, which must produce at least a comprehensible initial suspicion. The results of the investigation must be reported to the Public Prosecutor's office, which engages in further enquiry based upon the investigations, especially the questioning of witnesses.

To the degree that in the case of the existence of human rights violations in terms of Law No. 26/2000 the police is deprived of criminal law jurisdiction for the first stage of the investigations and the National Human Rights Commission steps in in their place, this provision must be welcomed. Precisely because of the "esprit de corps" mentioned previously, police officials have difficulty in investigations against representatives of the state. This fundamental problem is approached befittingly with the regulations included in the Articles 18-20 of Law No. 26/2000. The appointment of an institution and its members that are committed in a special way to human rights is outstandingly suited to ensure that suspicious facts regarding human rights violations are not swept under the carpet. The provisions to this re-

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A military commander who deliberately or negligently neglects to properly supervise a subordinate who is under his command authority or actual control shall be penalized due to a violation of the supervision duty if the subordinate commits an offense according to this law whose imminence was recognizable to the commander and which he could have prevented.

[67] Hans Thoolen, Indonesia and the Rule of Law, London, 1984, page 166 ff., especially pages 184-190

[68] loc. cit., page 169

gard may therefore be a clear improvement to the conventional standards and may clearly be beyond the internationally recognized requirements.

The provision found in Article 25 of Law No. 26/2000 must also be assessed in a similarly positive manner, which gives the National Human Rights Commission the authority to ask the Attorney General for the state of the cases handed over to him at any time. This provision may also be above the conventional standards that are internationally observed.

cc) Time limit:

To the degree that time limits for the particular levels of procedure are found in the procedural regulations (such as Articles 21, 24, 31, 32), it is assumed that this concerns solely ordinal regulations. The preliminary judgment from 28th March, 2002, in the proceedings against Timbul Silaen also supports this. In these proceedings, the defense had reproved that the Public Prosecutor's office did not act within the legally stipulated period of time. In view of the fact that the Law did not stipulate any sanctions at all for the exceeding of the time limits, the Court considered these time limits to be solely ordinal regulations without consequences[69].

If legal practice should deviate from this or sanction other time limits, it would be exceedingly questionable. The determination of the truth cannot depend on the setting of time standards, and especially not on a "contest of parties within the time limits created by the law."

It must be noted in this context, however, that the ICTY also regularly works with "time limits;" that is, it gives the prosecutor and the defendants time limits, within which they must present their evidence. However, the Judges should always be available to accommodate the particular state of the proceedings and therefore not rigidly stick to their time limits. Sometimes, time limits are also set by the Court for the questioning of witnesses. All of this is an exceedingly questionable practice by the ICTY, which may be illegal. The fact that an international Court is doing it does not help matters. In particular, time limits cannot be viewed as the international standard.

g) Victim and Witness Protection:

There is nothing to object to when Article 34 of Law No. 26/2000 is solely the basis of authorization for regulations that specially regulate these highly sensitive matters. It is questionable, however, when these additional provisions are not made until so shortly before the start of the trial – namely one day before the day of the first main hearing of the first two proceedings – that proper implementation was obviously impossible. One must conclude this in any case – under a good-willed interpretation – from the circumstances that several witnesses on the victims' side did not appear.

The further developments in this area will therefore have to be paid special attention.

[69] Such ordinal regulations are not foreign to the German law of criminal procedure, either. § 121 StPO (Code of Criminal Procedure), for example, regulates the limitation of imprisonment on remand to six months. A detainment continuation can only be decided upon by the Oberlandesgericht (High Court on the administrative level of the state [Land]), which routinely decides for the detainment continuation.

h) Truth and Reconciliation Commission:

The creation of truth and reconciliation commissions according to Article 47 of Law No. 26/2000 is generally to be welcomed. It satisfies the circumstances that criminal law cannot come to terms with everything. Additionally, events of the kind under discussion here must also be come to terms with politically and from the perspective of history.

To the degree that the creation of these kinds of commissions is only an alternative to criminal prosecution, this is possibly still acceptable with regard to incidents from long ago; the problem of ad hoc Courts and that of the prohibition of retroactivity are especially aggravated in these cases. For events from recent history, this cannot apply, however. In these cases, use of the option of Article 43 of Law No. 26/2000 should be made – also in the interest of the proceedings under discussion here, in order to take away their uniqueness within Indonesia and thereby a possible political tarnishing.

3. Evaluation of the Bills of Indictment:

Already before the main hearings in the three proceedings observed here were carried out, criticism[70] – predominantly stemming from the Anglo-American legal sphere – was voiced that the bills of indictment were insufficient. They included too few data on the actual occurrences. The political responsibility of the accused was supposedly also not sufficiently depicted.

a) Anglo-American and Continental European Type Legal Systems:

The approach that is expressed in this criticism is based on a legal understanding at home in the Anglo-American legal sphere that can in no way be regarded as the single, worldwide authoritative standard; with parts of its basic structure it is also in contradiction to the continental European legal theory. A legal evaluation of the indictments must allow for these circumstances without ignoring the criticism mentioned. The question is thereby posed as to what valuation standards are to form the basis. To answer this question calls for the depiction and comparison of the particular basic legal structures of both types of legal systems.

However, this examination must be limited to the basic principles of the respective legal system. The reason for this is, for one, that neither *the* continental European nor *the* Anglo-American law of criminal procedure exists. Rather, there is an abundance of different national systems as concerns criminal procedure with numerous regulations that deviate from one another. This diversification is sometimes extended even further, such as in the case of the USA, where one will even find deviations from state to state. Procedural systems are also found that, though they belong to one type of legal system, nevertheless have absorbed elements of the other type[71]. There is probably no “pure” system adhering to the one or the other type of legal system. Furthermore, a comprehensive examination can not be accomplished in the context of this legal opinion.

The following remarks will therefore be limited to the most fundamental standpoints; that is, insofar as these are relevant to understanding the different evaluations of the bills of indictment. It must already be pointed out here that these considerations are significant

[70] For example, Indonesia Briefing of the ICG (International Crisis Group) from 05/08/2002, Indonesia: Implications of the Timor Trials.

[71] The German Code of Criminal Procedure, for example, which can be said to belong to the continental European legal sphere, is familiar in § 239 with the cross-examination that forms the core of the Anglo-American criminal process.

not only for the evaluation of the bills of indictment, but rather also for the assessment of the respective main hearings – and therefore for the entire proceedings (see part C.4.).

aa) The Anglo-American View:

A relevant aspect here is not only the basic criminal procedural understanding that results from the criminal process of Anglo-American coinage which is to be characterized as a contradictory procedure. Rather, also prevalent substantive legal concepts, in particular the element of crime of "conspiracy," must be included. It cannot be ignored that all of this does not only concern academic but also political perceptions. This especially applies for dealing with injustice committed by the state. There are very different experiences and traditions among the different peoples precisely in this area, which very significantly helped to mold their respective historical self-conception.

aaa) Main Features of the Contradictory Procedural System:

In the Anglo-American legal sphere, one generally encounters a system of contradictory criminal procedure, whereby the various national legal systems are differ in character. Representatives of the Anglo-American legal sphere themselves call this system an “adversary system.” In contrast to the inquisitory system of the continental European criminal procedure, it is generally the responsibility of the parties - that is, of the prosecution and the defendant – to collect evidence and present it during the proceedings. The Court’s sole responsibility is to take note of the presentation and draw from it the required, legal conclusions.

It follows from this that the parties or de facto the representatives of the parties determine the materials used in the proceedings. They call their witnesses and present their records.

As representative of a party, the prosecutor is solely required to introduce into the proceedings the evidence that, in his opinion, supports the accusation, in such a way that it can be utilized by the Court. It is then the job of the defendant or his representative in the proceedings to cast doubt upon the incriminating evidence in cross-examination or through counter evidence.

The Court makes the decision regarding punishability as well as sentencing. Both legal standpoints are often separated in terms of legal procedure by the so-called separate finding of guilt. It is decided in a first segment whether the accused is guilty or not guilty; in a second segment, it is decided what sentence is to be given if he has been found guilty. This judicial task is often split between the jury and the Judge, insofar as a jury is provided. The jury then makes the decision regarding the question of punishability and the Judge subsequently regarding the sentence.

From all this, it follows that the party representatives are accorded a role that determines the course of the proceedings. Weaknesses of the bill of indictment cannot generally be compensated for by actions of the Judge or the jury. If witnesses are not questioned, such as because they are not already named in the bill of indictment, the Court cannot correct this. The same applies if additional evidence, in particular witnesses or documents, results

from the hearing of evidence. It is then the job of the representative of the prosecution to present these witnesses or records.

From all this, it follows that the position of the parties is determinative for the scope and the contents of the hearing of evidence. They fight with one another while the role of the Court is of a mediating character. It further follows that neither the weaknesses of the indictment nor the weaknesses of the prosecuting counsel can generally be compensated for by the Court. Scope, contents and strategy of the bill of indictment are therefore already of crucial significance before the start of the hearings before the Court.

These basic procedural principles are based on a certain view of what the criminal proceedings can and cannot do. This approach is frequently described as an expression of a formal notion of truth in contrast to a substantive notion of truth. A substantive notion of truth is understood to be the determination of that which actually took place. Consequently, when taking the basis of the substantive notion of truth, the obligation to investigate the actual occurrences stands as the highest imperative. In contrast to that, the formal notion of truth assumes that the determination of the truth is not possible. Only as close an approximation to the truth as possible can be attempted. The goal of the closest approximation of the truth is achieved through procedural rules – called the Rules of Procedure and Evidence in the criminal proceedings.

bbb) The Catch-All Offense of "Conspiracy":

With regard to substantive law, it must be noted that the element of crime of "conspiracy" in the Anglo-American legal sphere is of fundamental importance. It is somewhat of a catch-all offense, which, with typical British reservation, is described as "useful elasticity."[72] Even after the creation of the Criminal Act of 1977, which included a legal provision on "conspiracy," the British Parliament felt obligated to continue to allow “conspiracy” to apply according to common law[73], out of reasons of legal continuity. The legal provision is, however, considered as inadequate, so that one must refer back to corresponding common law jurisprudence for its interpretation and usage[74]. Due to its character (useful elasticity), the element of crime has already played a particular role in the Nuremberg proceedings[75]. The Rome Statute also includes a “conspiracy” provision in Article 25 No. 3 lit. (d).

"Conspiracy" also cannot be compared with similar elements of crime of German criminal law – such as e.g. the formation of a criminal association in terms of § 129 StGB (Criminal Code) or the formation of a terrorist association in terms of § 129a StGB. The element of crime of "conspiracy" not only has significance in great historical and preeminent proceedings, but rather is also solidly anchored in the everyday legal life.

[72] A.P. Simester and G.R. Sullivan, Criminal Law – Theory and Doctrine, Oxford – Portland/Oregon, 2001, Page 289
[73] loc. cit., Page 265
[74] loc. cit., Page 266
[75] Kempner, Erinnerungen, Frankfurt, 1986, Page 112. Kempner, the former deputy American Chief Prosecutor of Nuremberg, reported that the legal concerns of the defendants of Nuremberg and their defense counsel were met with the allusion to "conspiracy."

The term “conspiracy” has meanwhile also found its way into civil law and is utilized in particular in class action lawsuits against private parties concerning economic exploitation of political injustice[76].

ccc) "Conspiracy" as Part of a Historical and Cultural Imprint:

The aspect of “conspiracy” cannot only be considered as just an element of crime, however. It is deeply rooted in the collective subconscious of the Anglo-American legal and cultural sphere. The beginnings are found in the 16th century and are connected with the dissociation of England from Rome by Henry VIII. Possession of a transcript of a papal bull was already "conspiracy" and led to infliction of the death penalty. The notion of "conspiracy" boomed during the Puritanical Revolution. The American Revolution adopted this aspect and proceeded during and also after the Revolution on the assumption of a continual British conspiracy. The question of whether there was such a conspiracy fills entire libraries, so that according to the interpretation of several historians it no longer matters whether there was a conspiracy or not, as the dispute about the issue has meanwhile become the determining element.

bb) The Continental European View:

The inquisitory system is found in most of the continental European states[77]. The crucial element of this system is the "Enquiry Ex Officio Maxim“, that is, the Judge is officially required to investigate the circumstances of the case. This results in the following basic procedural principles:

aaa) Main Features of the Inquisitory System:

The proceedings are governed by the Judge and not by the prosecution and the defense as in the Anglo-American adversary system[78]. Going along with this is the fact that the right to question is first executed by the Judge and only thereafter by the prosecution and the defense. The Court orders the summoning of witnesses or submission of documents as well as the presentation of files (possibly also from other proceedings), though in individual cases the implementation may also be left to the Public Prosecutor’s office.

The Judge is therefore the master of the proceedings in a much more advanced sense. The fact alone that he is entitled to be the first party to conduct the questioning can, depending on its execution, build up or destroy a witness and is decisive for the proceedings. Furthermore, it is under his control to expand the hearing of evidence by summoning additional witnesses not

[76] As an example, reference is made to a class-action lawsuit in South Africa against UBS, a bank in Switzerland, which is based on the assertion that UBS supported the Apartheid system through its business policies and thereby damaged the plaintiffs. Other class-action lawsuits were announced against German automobile manufacturers in South Africa with the same argumentation. The objection of the company, as reported in the media before the proceedings, that they had solely produced and sold goods there but in no way collaborated with the system were likewise met with allusions to "conspiracy."

[77] These states are usually described as "civil law states" from the Anglo-American view. The description serves as a demarcation from the "common law states." The terms are an expression of the centuries-old different legal traditions, which not only express themselves in substantive law but rather also in law of procedure.

[78] It should correctly say by state and defendants. For these are the parties of the criminal process. However, the imbalance between the parties becomes clear here, that in the respective process is actually determined less by the parties themselves than by their representatives.

named in the bill of indictment or presenting additional documents and files; likewise he can shorten the hearing of evidence by renouncing the evidence named in the bill of indictment – if also under the sword of Damocles of an examination and a repeal by an appellate Court.

From the previously mentioned authority follows a very relativized importance of the indictment in the continental European criminal proceedings, which the Anglo-Americans describe as “accusatory” process and the continental Europeans themselves describe as “inquisitory” process. A weak indictment in the formal sense generally does not lead to collapse in the main hearing. The actual investigations conducted by the prosecution, about which the files of the inquiry that must be presented to the Court with the preferral of charges provide information, are authoritative. As a result of the enquiry ex officio maxim, the Judge – if he does not want to run the danger of nearing obstruction of punishment – is obligated to follow up on evidence that results either from the files of inquiry or out of the course of the main proceedings and to expand the hearing of evidence. In the Anglo-American legal terminology, the Judge of an inquisitory legal system would be called a “fact finder” – and one of the first order.

This strong position of the Judge is also described as an expression of the substantive notion of truth governing the criminal process in contrast to a formal notion of truth. Even if the investigation into the objective truth is always subject to general limitations, the Judge is nonetheless obligated to achieve as close an approximation of the substantive truth as possible. Only the fulfillment of such an obligation justifies, according to the continental European interpretation, the most severe encroachment onto the rights of the individual that a legal system allows, namely the imposition of a term of imprisonment.

bbb) No Element of Crime Comparable to "Conspiracy":

It has already been mentioned that predominantly in the continental European legal systems catch-all offenses comparable to “conspiracy” are unknown. The reason for this may be seen in that for reasons of constitutional law, there are generally especially strict requirements of the precept of definiteness in the respective substantive criminal law. It follows from this that catch-all offenses are generally impermissible in criminal law and therefore of no significance, insofar as they occur at all.

ccc) Other Historical Experiences:

If an element of crime comparable to "conspiracy" is lacking, then naturally no tradition supported by it or any pre-understanding molded by it will be encountered. In consequence of different historical courses, the legal historical and legal political conflicts in general follow different patterns. Therefore, questions of the prohibition of retroactivity or the problematique of ad hoc Courts are of greater and more formative significance.

cc) Conclusions as Regards to the Categories for Assessment to Be Employed:

In view of the fact that the Indonesian criminal law system is predominately attached to that of continental Europe, it is obvious that the standards resulting herefrom should be applied first and foremost. However, it should already be noted

here that from a forensic view, the value of prosecutional activity amounts to more than the quality of the bill of indictment in either criminal law system. Rather, it depends on what the prosecution has actually put together as evidence. In proceedings against representatives of the state, due to their official status, all of the documentation that directly or indirectly provides information on their activity in this official capacity is therefore of crucial significance. Insofar as documents are mentioned in bills of indictment, their significance can rarely be appropriately assessed without detailed knowledge of the contents of the respective document.

b) Assessment of the Bills of Indictment:

The bills of indictment must be assessed in light of the background mentioned previously. In all of the bills of indictment it is noticeable that they are limited exclusively to the time period of April and September 1999. It is true that only crimes committed during this period of time can be prosecuted. Accordingly, the extent of the respective obligation of individual military commanders or superiors of civilian institutions to act is determined by their concrete level of awareness of the respective atrocities at the time. However, this "current" level of awareness is the result also of previous information which the suspect obtained. Therefore, the complete reproduction of the state of the military and police reporting on April 1st and September 1st, 1999, would be of significance, which naturally would have included the chronologically preceding reports, upon which the state of reporting at both of the aforementioned points in time was based.

The same applies for preceding actions, in particular as to which commanders or superiors formed or supported which groups that later attracted attention because of acts of violence, what contacts were made with them etc. Also with regard to this the "current" state of reporting at that time, to the extent as mentioned previously, would have been of significance. Additionally, the "current" state of command would have been of importance, whereby the same temporal scope must apply as with the state of reporting.

For the reasons named under C.2. lit. d) cc), the Public Prosecutor's office was also not barred from clearing up the circumstances outside of April and September 1999. Quite the contrary – the Public Prosecutor's office was obligated to clear up the same in the interests of the defendants, for their exoneration. This applies in particular with regard to the determination of the state of command, from which strongly exonerative but also strongly incriminating moments could have resulted.

These missing determinations must be assessed as a significant flaw in the bills of indictment.

Although the above mentioned flaws in the bills of indictment should not be described as negligible, they nonetheless could not impact the effectiveness of the bill of indictment. Due to the inquisitory maxim, they did not impact the investigative authority of the Court or even limit it. With the admittance of the respective indictment by the Court, their function was fulfilled, namely the initiation of the judicial investigation. A "better composed" bill of indictment could not have achieved more in the inquisitory system. With the pendency of proceedings of the respective process, the primary responsibility lay with the Court, also with regard to the extent of the clearing up of the case.

Thus even if a bill of indictment burdened with considerable flaws can fulfill its function and this also occurred in the cases at hand, it nevertheless cannot be denied that the quality of a bill of indictment is of actual influence on the Court proceedings. A bill of indictment afflicted with flaws may normally have a discouraging affect on the Court,

whereby it must, however, be clarified that a possible discouragement does not go so far that a Court violates its duty to provide clarification.

4. Evaluation of the Trials:

The evaluation of the main hearings must also be made from the point of view that the proceedings do not follow the Anglo-American type contradictory procedural system, but are rather inquisitory proceedings according to the continental European legal conception. The previous remarks concerning the evaluation of the bills of indictment (C. 3.) must therefore be taken up and the effects of the contradictory system on the design of the main hearing be contrasted with the ones of the inquisitory system.

a) Fundamentals:

The difference between both systems becomes most clear when contrasting the basic principles according to which the hearing of evidence is conducted.

aa) Hearing of Evidence in the Contradictory System:

In the contradictory process, the hearing of evidence, in particular the questioning of witnesses is exclusively the affair of the parties or their representatives. The prosecution summons witnesses that are in their opinion relevant, which are normally witnesses for the prosecution; the defense summons the witnesses for the defense. The same applies with regard to documents and expert opinions. Whatever evidence the parties do not come up with cannot be compensated for by additional efforts of investigation by the Court.

The parties, i.e. the prosecution and the defense, or their representatives in the proceedings conduct the questioning of witnesses and experts. Neither the members of the jury nor the Judge are permitted to ask questions. The questioning itself is done according to the rules of cross-examination, which is the core and culmination of the Anglo-American type contradictory system. Thus, the party that presents the witnesses has the initial right to questioning. Strict fundamental principles must be adhered to. Only when the right to questioning has been exhausted may the opposite side ask questions, whereby it is not subject to the strict rules to which the parties presenting the witnesses are subjected. The goal of the opposite side during this questioning will naturally be to make the testimony of the witnesses incredible and the witnesses themselves untrustworthy. Only after the opposite side has exhausted this right to questioning may the party presenting the witnesses restore the credibility of the witnesses and the plausibility of their statements, once again according to the strict rules. These rules apply to the prosecuting counsel as well as to the defense. They are to be applied according to which party presents the witness. Of course, there are different national and state variations of this.

The purpose of this process is to create an equality of arms between the parties. The party presenting the witnesses generally has an advantage due to their own inquiries. They know the witnesses and have, in normal cases, already interviewed them beforehand and thereby more or less prepared them for their testimony within the framework of what is permissible. The opposite side is generally less familiar with the respective evidence. In order to create compensation for this inequality, the party presenting the witness is bound to strict rules in their questioning, while the opposite side is subject to less restrictive regulations.

bb) Hearing of Evidence in the Inquisitory System:

Contrastingly, in the inquisitory system, generally the Court determines what evidence is made subject matter of the hearing of evidence, even if the prosecution may carry out the concrete summoning in one or the other national system. The Court will thereby normally follow the statements made by the prosecution in the bill of indictment or in the pre-trial. The Court is, however, not bound to this. It is not unusual that the Court summons additional witnesses right from the start, which the Court considers to be necessary based on the circumstances of the case that are known to the Court. The same applies for documents and expert opinions, as well.

If it emerges during the hearing of evidence that additional evidence is available, it is first the Court's responsibility to officially hear more witnesses or expert opinions or to present documents. If the Court does not deem this to be necessary, the parties can file corresponding evidence motions, which the Court must allow according to certain rules, which cannot be explicated here.

The right to questioning first falls to the Court in the examination of witnesses and experts. Only when the Court decides it has completed its questioning are the party representatives permitted to ask questions. It is first the turn of the representative for the prosecution at the session, followed by the defense. The defendant may also ask questions – if only as the last to go. This sequence is only changed if a witness is heard that is summoned by the defense based on a corresponding motion of evidence. However, also in this case the Court can begin questioning. The defense and the prosecution then follow. These cases are not so frequent, though, as the prosecution generally has to name also exonerative witnesses in the bill of indictment, which the Court is obligated to summon.

The advantages and disadvantages of this system depend on the abilities of the Court and its Judges. The responsibility for the outcome of a respective proceedings therefore lies predominately with the respective Judges.

With regard to the background of the proceedings under evaluation here – namely the prosecution of injustice committed by the state, and in particular by the military – it cannot remain unsaid that the investigative authority of the Judge has limits in the inquisitory system as well. These are predominately found where the results of the investigation and documents are withheld from the Court by investigatory authorities or other official institutions and where this is done so adeptly that no clues of this result. Experience has shown that complete camouflaging is very difficult, however. Even in proceedings with a background concerning intelligence services, the connections to other files, documents and information can be determined – at least by an experienced Judge. It is then the responsibility of the Judge, with the weight of his authority, to ensure that that which is withheld is produced. The Judge therefore regularly puts himself in contradiction with the Executive. Practice shows that not all Judges are inclined to expose themselves to such a conflict. There are, nevertheless, notable examples of Judges being able to bring these conflicts to successful conclusions, which is their most original judicial responsibility.[79]

[79] The so-called Mykonos Proceedings are named as an example, which concerned the killing of several exiled Iranians in Berlin. During this process, the court considered it important to determine the masterminds, and in particular to determine whether the ones who gave the orders were official representatives of Iran. The development of the proceedings in this direction with the corresponding hearing of evidence contradicted the interests of the Federal Republic, whereby the court could not be dissuaded from its endeavors to clear up the case. Another, if not so fortunate example, are the so-called Schmuecker Proceedings. Through three proceedings, each of which ended with the conviction of the defendant, but each of which were rescinded by the appellate court each time, the

b) Evaluation of the Three Proceedings:

The following must be said in consideration of the previous remarks:

aa) Questioning:

All three proceedings were characterized by intensive questioning of the witnesses by the Judges. The fact alone that, with few exceptions, all five Judges of the respective Court questioned all witnesses in detail, sometimes repeatedly, is far beyond the usual practice as it is known, for example, from the German criminal Courts. It could clearly be felt that each Judge wanted to obtain for himself a direct impression of the events, whereby they did not want to fall back on the answers that the witnesses had already given to their colleagues. This sometimes led in a substantial extent to repeated questions, which were patiently accepted by all participants. Therefore, no lack of willingness for clearing up the case on the part of the respective Judges can be deduced from the questioning of the witnesses.

bb) Confrontation with information from files

It was conspicuous, though, that – with few exceptions – no confrontation with information from files was undertaken. This is astonishing because, according to experience, documentation on the kind of occurrences as brought to Court are available in a broad variety. Nothing happens in the police force or the military without a report written and notifications made about it. Even if one may have any doubt as to this regard, reference to the testimony of Major General Damiri can be made. From this one could get an idea about a whole "pyramid of reporting", all the way up to his level of command. It can be assumed as certain that General Damiri was not the peak of the pyramid, either.

Therefore, one strongly got the impression that documents and records of the aforementioned type were not accessible at all or not accessible to a sufficient extent for the respective Courts. The above-average intensiveness of the questioning by the respective Judges, who thereby apparently attempted to compensate for these shortcomings, also support this assumption.

cc) Case Files:

The previous impression also seems to be confirmed by the visible volume of the case files. For it could be realized that in all the proceedings the Court documents consisted of about 500 to 600 pages. This may appear to judicial laymen or to those unfamiliar with criminal law as very extensive, but it is not in any way. The 600 pages include all of the orders, witnesses' testimonies, interim reports from the investigative authority and the like, but also especially the daily reports and orders of the day of the different levels of command for the period of time in question here, whereby the previous remarks under C. 2. lit. d) cc) and C. 3. lit. b) should be referenced. The documents for the state of military command and reporting for the relevant time periods alone should fill dozens of files with up to 500 pages each.

By way of comparison, it can be noted that the prosecuting authority of the ICTY has about 3 million documents in total and that at least 12,000 to 14,000 docu-

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judges submitted to the nondisclosure strategy of the public prosecutor, which was imposed from the Bureau for the Protection of the Constitution (Verfassungsschutz). Not until a fourth process after 15 years did the judges draw the consequences. In view of the previous practices of secrecy, they no longer considered a fair process to be possible and ceased the aforementioned.

ments are introduced in each of the proceedings[80]. Similarly extensive were the records in the proceedings against the members of the defense ministry council of the former German Democratic Republic, who were accused of having created the state of command on the basis which the shots at the inner-Germany border were fired, which led to more than 400 deaths in 28 years, [81].

It cannot therefore be ignored that the evident weakness of the proceedings lies in the inadequate case files. Without the mentioned documents, based on which corresponding confrontations could be made, such a process cannot be conducted. This inadequacy begins already with the fact that every witness can hide behind poor recollection, which is difficult to refute as that recollection cannot be refreshed by arguments based on military deployment reports. What is more, every witness can report in a distorted manner and even lie with relatively no risk. He can even mock the Court, as General Damiri did with his remarks that there were no secret service reports for the time period in question because they had not been able to work due to bad weather.

The Court is thereby at the mercy of the manipulations of the witnesses. It must also be considered that the witnesses, insofar as they were members of the military or the police or paramilitaries, see themselves as part of a group that must stick together in order to prevent anything from touching the group. This esprit de corps is particularly pronounced in the case of members of the military, in view of the extensive economic independence and autonomy of the Indonesian armed forces, which cover two thirds to three-fourths of their expenses from their own commercial endeavors and thereby must be considered a state within a state. Given this context, it would therefore be very strange for one to assume that the military would have no intention of influencing the Court in a way that would depict the military in a favorable way. In light of this background, without military documents on the reporting and command levels any Court would be helplessly at the mercy of every attempt at appeasement, cover-up or manipulation by the military.

This lack of documents also cannot be compensated for by witnesses of the atrocities, in particular by victims or relatives of victims that are summoned as witnesses. For these witnesses can normally only speak about the terrible events themselves, but not about the structure of command or the state of reporting or orders. Therefore, in the best-case scenario – at least in proceedings that abide by principles of due process of law and protect the basic principles of "fair trial" – the testimonies of these witnesses allow the direct perpetrators of the lowest levels to be convicted. With regard to the far more dangerous “behind the scenes masterminds" of the middle and upper levels of command the testimonies of these witnesses only seldom present anything to go by. For that reason as well, the military and police documents on the events concerned in the hearings are indispensable in proceedings of this kind.

dd) Efforts of the Court to Obtain all the Required Documents:

On the days of the proceedings that were here observed, no indications arose that the Court had undertaken any kind of efforts to get hold of the documents required to conduct the proceedings. It therefore already became apparent, due to this

[80] The numbers are based on the data provided by judge Dr. Schomburg, the presiding judge of the 2nd chamber of the first instance court of the ICTY, which he gave at a seminar on institutions in international criminal law hosted by the German Academy of Attorneys, which took place in Berlin in September 2002.

[81] Approx. 18,000 pages of case files were available to the participants of this process. In addition, there was also a file room in the courthouse, in which additional files that were relevant to the proceedings could be viewed. The extent of these additional files was probably just as large as that of the case files.

failure to act, that the proceedings would reach the outcome as it actually occurred in the end.

To what degree this must be assessed as a violation of general standards is another question, however. For it is not always the strong point of Judges, even in "civilized" states, to put the necessary amount of efforts into the procurement of official files and police or military records. One must describe this problem in all countries of the world as one of the most neuralgic interfaces between the Executive and the Judiciary.

Nothing much different should apply in the criminal proceedings of the Anglo-American variation. There, it is not in fact the responsibility of the Judge or the jurors, but rather that of the prosecuting attorney to procure official documents respectively reports and orders from the police and military.

5. Preliminary Evaluation of the Verdicts Known to Date:

In view of the shortcomings determined under Item C. 4., the verdicts are no surprise. Without documents on the state of command and reporting as regards to the military, police and administration in the relevant time periods, a conviction of especially high-ranking military members was not to be expected.

All the same, several circumstances appeared rather strange:

a) Military and civil administration documents were partly not introduced to the proceedings at all, partly only to an insufficient degree. Determinations of the concrete involvement of members of the military or the civil administration therefore could not be made.

b) The Courts' determinations that the gross violations of human rights were not to be expected from the viewpoint of the defendants are not convincing. They are based, for one, on the insufficient extent of process documents, in particular the lack of status reports from different levels; for another, on the viewpoint restricted to the months of April and September 1999, although neither Keppres No. 53 nor No. 96 include any restriction to the investigative authority (see also Part C, No. 2, lit. b) cc) bbb)).

c) The element of crime of Article 42 of Law No. 26/2000 does not require on the subjective side of the offense that the perpetrator omits the preparations to prevent the anticipated gross violations of human rights because he has the intent and purpose to enable the anticipated atrocities. It is solely sufficient that, given proper exercise of his duties, based on the circumstances at the relevant time he should have known that corresponding offenses were imminent. The Court did not even make an attempt at investigating and determining these given circumstances as a result of the insufficient case files.

d) The acquittal of the defendant Sugito is also not comprehensible given the lack of documents. The defendant Sugito was identified by a witness in the Courtroom as a participant of the group that, on September 7th, 1999, buried on the beach of Wemasa the victims of the massacre of September 6th, 1999, in the Ave Maria church in Suai. Knowledge of the concrete massacre is not of concern. For the witness, Julius Basabae, reported that the clothing of the bodies was soaked with blood (see also Part A, No. 4 lit. b) bb) bbb)). In light of the corpses of 27 recognizably violently killed people, three of whom were recognizably priests, Sugito must have assumed that there had been gross violations of human rights. It also contradicts every kind of life experience that someone would participate in a very obviously illegal transport of corpses without asking how it

happened that these people were violently killed and what the reason for the transport was.

Article 42, Para. 1 of the Law. No. 26/2000 treats the superior who obtains knowledge of a crime committed by one of his subordinates in terms of this law and does not initiate prosecution, like the perpetrators (see above Part C, No. 2, lit f) dd) ccc)). The simple failure to act already forms the grounds for criminal responsibility. This, thus, constitutes a real crime by omission. From this follows *a minore ad majorem*, that even more so an active attempt to prevent prosecution is punishable. The hiding of corpses and their disposal over the border to West Timor can only be understood as to prevent or at least hinder prosecution because of the events in Suai. Significantly, not all of the bodies were later found. This act of disposing the bodies is in any case a "more" as compared with the mere failure to initiate prosecution.

It should also not depend on whether the defendant Sugito was the superior of the perpetrators of Suai who possibly remain unknown. For participation in terms of Article 41 in an offense of Article 42 of Law No. 26/2000 is not ruled out and is therefore possible. In any case, Sugito was a participant in the active obstruction of prosecution.

These argumentation would only fail to take hold if no crimes against humanity had occurred in the Ave Maria church. It is explicitly determined in the verdict that this is not the case. Precisely for that reason is the acquittal of Sugito even less comprehensible.

e) That Soares was sentenced to imprisonment for three years, despite the fact that the minimum penalty is ten years, is incomprehensible and also not acceptable. Article 10 of Law No. 26/2000 includes solely one reference to the criminal procedural regulations, though not to the substantive criminal law, to which the sentencing regulations belong. There is no corresponding reference at any other part of the law, either. A lowering of the penalty below the legal minimum sentence is therefore impossible.

   The fact that the Court handed down sentence below the minimum penalty should not be overrated, however. Similar blunders also occurred during the prosecution of state-committed injustice in the former German Democratic Republic. There, the Landgericht (Provincial Court) of Berlin found all of the defendants in the proceedings against three members of the National Defense Council of the GDR because of the fatal shots at the inner-German border to be guilty, but sentenced one of the defendants to imprisonment for only three and one-half years, although the minimum penalty for homicide is five years. It was not until the appellate Court that this outcome was corrected[82].

Without the full wording of the written verdicts, the aforementioned evaluation must naturally be somewhat superficial. A conclusive evaluation must therefore be reserved for a later time. Among other things, the following will have to be looked at in this concluding assessment:

- upon which case files the respective Courts based their assumptions,
- whether they restricted the investigative period entirely to April and September 1999 and
- what standards they required in detail concerning the respective mental element of the offense.

[82] BGH Decision from 07/26/1994 – NJW 1994, 2703ff, 2707

6. Summary:

The question,

> *if the international standards are met by the criminal proceedings regarding the events in East Timor in 1999, which were instituted before the Human Rights Court in Jakarta in March 2002 or if the same are only "mock trials", in order to avoid an ad hoc tribunal as threatened by the international community,*

may in summary be answered as follows:

- A uniform international standard, against which the trials in Jakarta could be measured, does not exist. Already the standards of the ICTY and the ICC differ. In addition to this, there are also different national standards in those countries, which have implemented the Rome Statute into national law. Therefore, the trials in Jakarta can only be measured against the principles that are common to all the different standards.

- Thanks to Komnas-HAM or thanks to the fact-finding commission KPP-HAM, which was established by it, it was possible to secure evidence of the atrocities committed in East Timor at a very early point of time. Most states do not have such an institution. The establishment of the commission itself as well as its courageous actions must be considered as exceptional.

- The attempt to implement with Law No. 26/2000 the existing international criminal law as manifest in the Rome Statute into national law – as far as it is not international criminal law as regards to war – has to a large extend been successful. Wherever shortcomings and deficiencies as regards to implementation can be noted in individual issues, the same remain within the limits.

- The three indictments, which form the basis for this legal opinion, have fulfilled their task in inquisitory proceedings to achieve the approval for bringing in an action and the opening of the trial. But already here, it must be criticized that the case files, which were presented by the Attorney General's Office together with the indictments, were insufficient, that especially the necessary and complete documents about the state of reporting and command concerning the military, police and administration for the period of time in question were missing.

- The efforts of the Court to investigate the events by intensively questioning the witnesses made a positive impression. Given the presentation of insufficient documents by the Attorney General's Office, these efforts, however, were destined to be unsuccessful from the beginning. This way, the witnesses could not be confronted with military or police reports or orders and therefore, the Court was helplessly subjected to all cover-up, blocking and manipulation attempts by witnesses, who were members of the military. Therefore, it must be specifically criticized that the Court did not make any efforts on its own to introduce the missing documents into the proceedings. With this, it has grossly violated its duty to provide clarification, a duty that it has in an accusatory respectively inquisitory process.

As a matter of fairness, however, it must be mentioned that the Courts in all states, especially also in those, which distinguished themselves as pacemakers of an international criminal jurisdiction, have problems to act with the necessary vigor vis-á-vis public authorities, police or military in such proceedings, in order to ensure that the required documents are included in the case files.

- Subject to a concluding examination of the written opinions of the Court of those verdicts that have been made public to date, it can be assumed from a first review that the questionable acquittals are the result of the superficial hearing of evidence which was due to insufficient case files.

PART D:

Conclusion

The found deficiencies, which inhere in the trials, are severe and cannot be ignored. Therefore, a correction of the current decisions is required, on the basis of the documents that have to be introduced into the proceedings regarding the state of reporting and command concerning the military, the police and the administration during the period of time in question.

But it must be considered that also other states, which are considered as exemplary, would have their difficulties to have documents presented in Court proceedings, which may give a negative impression of military, police or public authorities. An additional factor is that Indonesia is a country in transition and in a process of democratization. This makes it even more difficult for the persons responsible in Indonesia to release the necessary records. At the same time, it is important to support this process of democratization.

Therefore, the positive approaches should be pointed out, i.e. placing emphasis on the largely successful implementation of the international criminal law into national law and on the subjective investigatory efforts of the Judges at the Human Rights Court. Besides this, the forces interested in the democratization process should be supported.

Thereby, it is assumed that at least the ad hoc Judges at the Human Rights Courts are especially interested in human rights issues, and with this also in democracy issues, due to the legally demanded access requirements. These Judges must be supported. It cannot be ruled out either that one or the other professional Judge at these Courts or some of the Public Prosecutors can be counted into the group of persons that are interested in the democratization process. Also the National Human Rights Commission Komnas-HAM would play a special part in this respect.

Based on this, Komnas-HAM should be brought to use its right arising from Article 25 of Law No. 26/2000, i.e. to request a statement of facts from the Attorney General's Office regarding the state of the proceedings, in which the latter should specifically indicate the documents that have been presented to the Court at the respective trials. If it then turns out, as is to be expected given the above mentioned, that the Attorney General's Office failed to pass all of the required documents they had received from Komnas-HAM on to the respective Courts of the Human Rights Court, Komnas-HAM should be furthermore brought to urge the Attorney General's Office to submit all of the documents, especially also at the proceedings for which appeals were filed.

As far as records on the events are concerned that are under the right of disposal of UN Authorities or of the Australian troops that were at that time acting on their behalf, the publication of these records should be sought. Also here, the so-called Dracula-principle applies, which is so popular with the international commercial law: Wheeling and dealings, violations of the law and abuse last only as long as they remain in the dark. Once the light of the public shines on them, they dissolve just like Count Dracula in the sunlight.

All of these measures should not be initiated without the involvement of the national NGOs as well as of those, which are internationally active in this field. Especially regarding the strengthening of the democratization process, they have a special task. They are the intermediaries between the partially quite difficult processes of the individual trials and their easily comprehensible representation in public. Their involvement and participation from the beginning on must therefore be ensured.

Before a Court, which is strengthened by as complete case files as possible, quite different outcomes of the trials can be expected – also for those proceedings, which are already before appellate Courts. At the same time, this would promote the democratization process in Indonesia and support the forces interested in the same. The concept of human rights would be strengthened.

The remaining alternative would be the establishment of an international ad hoc tribunal. This would first of all have advantages, if it was equipped with additional and better case files. But as explained above, also the Indonesian ad hoc Courts could be forced to make use of these records, which seem to be available to the international community. The actual advantage of a national Court would be that even small successes would strengthen the democratic forces. This is shown by the situation in Germany. Even though the prosecution and trial of Nazi injustice by German postwar Courts must be mostly considered as failed due to the aforementioned reasons (Part C Item 2., lit. b) bb) bbb)), it cannot be dismissed that these trials have for several generations burnt deeply into the collective subconscious that the crimes committed by the Nazis and by the state ruled by them were gross injustice. Therefore, the "national solution" should be principally preferred, which does, however, not mean that under certain circumstances there is nevertheless still an international tribunal to be established.

Completely rejected should be the path of a reconciliation without a coming to terms with the past, as it is more and more propagated by the first President of the, since May 2002 independent, Democratic Republic of East Timor, Xanana Gusmão[83]. But a coming to terms with the past does not necessarily have to consist of criminal proceedings. It must, however, be wholehearted and retain and/or restore the dignity of the victims and of their surviving relatives. It is, however, doubtful whether "social justice is the best legal remedy against the experienced traumatizing", i.e. payments to the victims and the surviving relatives, as stated by Gusmão during a speech before the East Timorese Parliament[84]. Payments generally lack the seriousness of a coming to terms with the past, which should not mean that they may not constitute a further necessity, besides the latter. According to experience, the lack of a coming to terms will continue to haunt people, even if money is paid. Therefore, the formula "money instead of Court" probably would not work in the long run.

Berlin, 29th November 2002

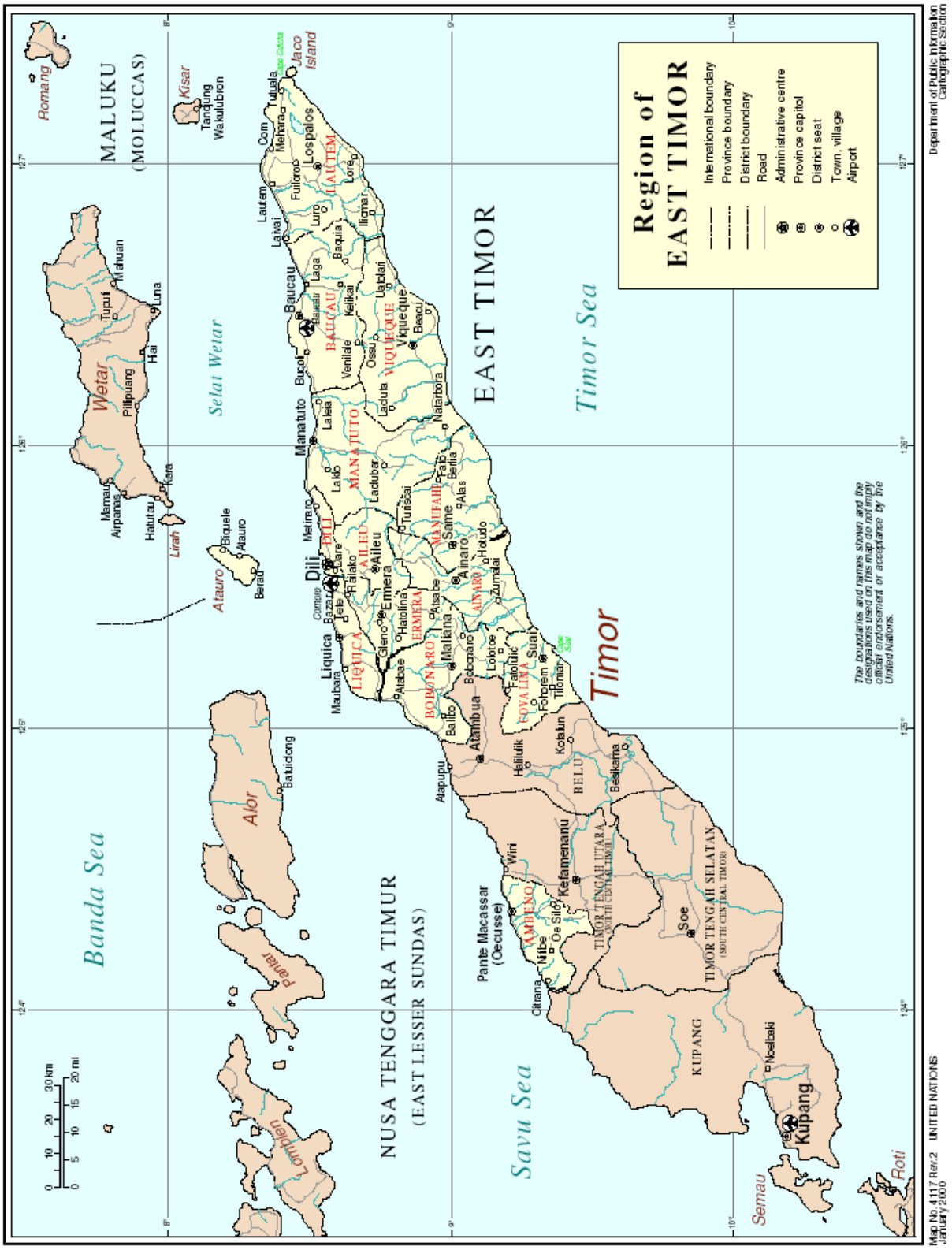
signed Bernd Häusler
(Attorney at Law)

[83] Gusmao wants reconciliation, not international court, LUSA, 10/23/2002
[84] loc. cit.

List of Appendices:

Appendix 1A

Map of East Timor



Appendix 1B (Part 1)

AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE PORTUGUESE REPUBLIC ON THE QUESTION OF EAST TIMOR

The Governments of Indonesia and Portugal,

Recalling General Assembly resolutions 1514 (XV), 1541(XV), 2625(XXV) and the relevant resolutions and decisions adopted by the Security Council and the General Assembly on the question of East Timor;

Bearing in mind the sustained efforts of the Governments of Indonesia and Portugal since July 1983, through the good offices of the Secretary-General, to find a just, comprehensive and internationally acceptable solution to the question of East Timor;

Recalling the agreement of 5 August 1998 to undertake, under the auspices of the Secretary-General, negotiations on a special status based on a wide-ranging autonomy for East Timor without prejudice to the positions of principle of the respective Governments on the final status of East Timor;

Having discussed a constitutional framework for an autonomy for East Timor on the basis of a draft presented by the United Nations, as amended by the Indonesian Government;

Noting the position of the Government of Indonesia that the proposed special autonomy should be implemented only as an end solution to the question of East Timor with full recognition of Indonesian sovereignty over East Timor;

Noting the position of the Government of Portugal that an autonomy regime should be transitional, not requiring recognition of Indonesian sovereignty over East Timor or the removal of East Timor from the list of Non-Self-Governing Territories of the General Assembly, pending a final decision on the status of East Timor by the East Timorese people through an act of self-determination under United Nations auspices;

Taking into account that although the Governments of Indonesia and Portugal each have their positions of principle on the prepared proposal for special autonomy, both agree that it is essential to move the peace process forward, and that therefore, the Governments of Indonesia and Portugal agree that the Secretary-General should consult the East Timorese people on the constitutional framework for autonomy attached hereto as an annex;

Bearing in mind that the Governments of Indonesia and Portugal requested the Secretary-General to devise the method and procedures for the popular consultation through a direct, secret and universal ballot;

Agree as follows:

Article 1
Request the Secretary-General to put the attached proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia to the East Timorese people, both inside and outside East Timor, for their consideration and acceptance or rejection through a popular consultation on the basis of a direct, secret and universal ballot.

Article 2
Request the Secretary-General to establish, immediately after the signing of this Agreement, an appropriate United Nations mission in East Timor to enable him to effectively carry out the popular consultation.

Article 3
The Government of Indonesia will be responsible for maintaining peace and security in East Timor in order to ensure that the popular consultation is carried out in a fair and peaceful way in an atmosphere free of intimidation, violence or interference from any side.

Article 4
Request the Secretary-General to report the result of the popular consultation to the Security Council and the General Assembly, as well as to inform the Governments of Indonesia and Portugal and the East Timorese people.

Article 5
If the Secretary-General determines, on the basis of the result of the popular consultation and in accordance with this Agreement, that, the proposed constitutional framework for special autonomy is acceptable to the East Timorese people, the Government of Indonesia shall initiate the constitutional measures necessary for the implementation of the constitutional framework, and the Government of Portugal shall initiate within the United Nations the procedures necessary for the removal of East Timor from the list of Non-Self-Governing Territories of the General Assembly and the deletion of the question of East Timor from the agendas of the Security Council and the General Assembly.

Article 6
If the Secretary-General determines, on the basis of the result of the popular consultation and in accordance with this Agreement, that the proposed constitutional framework for special autonomy is not acceptable to the East Timorese people, the Government of Indonesia shall take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976, and the Governments of Indonesia and Portugal and the Secretary-General shall agree on arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations. The Secretary-General shall, subject to the appropriate legislative mandate, initiate the procedure enabling East Timor to begin a process of transition towards independence.

Article 7
During the interim period between the conclusion of the popular consultation and the start of the implementation of either option, the parties request the Secretary-General to maintain an adequate United Nations presence in East Timor.

DONE in New York on this 5th day of May, 1999.

For the Government of Indonesia:

/s/ Ali Alatas Minister for Foreign Affairs of Indonesia

For the Government of Portugal:

/s/ Jaime Gama Minister for Foreign Affairs of Portugal

Witnessed:

/s/ Kofi A. Annan Secretary-General United Nations

Appendix 1B (Part 2)

EAST TIMOR POPULAR CONSULTATION AGREEMENT REGARDING SECURITY

The Government of Indonesia and Portugal and the Secretary General of the United Nations,

Agree as follows:

1. A secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a free and fair ballot in East Timor. Responsibility to ensure such an environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI (Indonesian Armed Forces) and the Indonesian Police is essential in this regard.

2. The Commission on Peace and Stability established in Dili on 21 April 1999 should become operational without delay. The Commission, in cooperation with the United Nations, will elaborate a code of conduct, by which all parties should abide, for the period prior to and following the consultation, ensure the laying down of arms and take the necessary steps to achieve disarmament.

3. Prior to the start of the registration, the Secretary-General shall ascertain, based on the objective evaluation of the UN mission, that the necessary security situation exists for the peaceful implementation of the consultation process.

4. The police will be solely responsible for the maintenance of law and order. The Secretary-General, after obtaining the necessary mandate, will make available a number of civilian police officers to act as advisers to the Indonesian Police in the discharge of their duties and, at the time of the consultation, to supervise the escort of ballot papers and boxes to and from the polling sites.

DONE in New York on this 5th day of May 1999

For the Government of Portugal

/s/ Jaime Gama Minister for Foreign Affairs Portugal

For the United Nations

/s/ Kofi A. Annan Secretary-General United Nations

For the Government of Indonesia

/s/ Minister for Foreign Affairs Indonesia

Appendix 1C

Executive Summary Report on the investigation of human rights violations in East Timor

Jakarta, January 31, 2000

Part I
Introduction

1. After the Indonesian Government announced the two options on January 27, 1999 concerning the future of East Timor, that is, to either accept or reject special autonomy, agreements were signed in New York on May 5, 1999 between the Indonesian and Portuguese Governments under the umbrella of the UN. The agreements covered the implementation of the popular consultation in East Timor, including provisions governing the maintenance of peace and security in East Timor.

2. Since the two options were offered, especially after the announcement of the results of the popular consultation, various forms of violence developed that are considered gross violations of human rights.

3. Faced with these facts, KOMNASHAM issued a statement on September 8, 1999. The first point reads, "at the time the lives of the East Timor people had reached a state of anarchy and acts of terrorism by both individuals and groups were widespread, witnessed openly and allowed by the security apparatus".

4. Both the local and international community were gravely concerned by the situation that developed in East Timor. The UN Human Rights Commission convened a special session in Geneva on 23 27 September 1999 concerning the East Timor plight. This was only the fourth special session held since the commission was formed 50 years ago. This shows the serious assessment of the international community concerning the human rights violations that occurred in East Timor.

5. Simultaneously, on 22 September 1999, the National Human Rights Commission (KOMNASHAM) established the Commission for Human Rights Violations in East Timor (KPP-HAM) in Resolution No. 770/TUA/IX/99, which was revised in Resolution No. 797/TUA/X/99 dated 22 October 1999. These resolutions were issued in light of the mounting human rights violations in East Timor after the popular consultation and take into consideration Law No. 39/1999 concerning Human Rights and Regulation No. 1/1999 concerning the Human Rights Court.

6. KPP-HAM's mandate was to gather facts, data and information concerning violations of human rights that occurred in East Timor from January 1999 until the Parliament Ruling of October 1999 that ratified the results of the popular consultation. The investigation focused on whether genocide, mass murders, torture, forced deportment, gender-related crimes and a scorched-earth campaign occurred. KPP-HAM was also assigned to investigate the involvement of the state apparatus and other institutions. The assignment continued from 23 September 1999 until December 1999, and was then extended until 31 January 1999 by the Resolution from the Chairman of KOMNASHAM No. 857/TUA/XII/99 dated 29 December 1999.

7. KPP-HAM's authority, in line with Article 89 (3) of Law No. 39/1999 concerning Human Rights and Articles 10 and 11 of Regulation No. 1/1999 concerning the Human Rights Court, is to conduct an investigation and inspection concerning reports of human rights violations in East Timor, request statements from victims, summon and question witnesses, gather evidence and inspect several sites, including buildings required for the purpose of the investigation upon approval of the Chief Justice. Furthermore, KPP-HAM was authorized to inspect and request government documents for the purpose of the investigation upon approval of the Chief Justice, provide protection for witnesses and victims and process and analyse the facts discovered in the interest of prosecution and publication.

8. The report of the results of the KPP-HAM investigation was submitted to KOMNASHAM who then submitted the report to the Attorney General for the purpose of investigation and prosecution in the Human Rights Court.

9. KPP-HAM consists of 9 members, 5 members from KOMNASHAM and 4 human rights activists. In carrying out its assignment, KPP-HAM was assisted by a team consisting of 13 assistant investigators, 14 secretariat staff and 3 resource persons. During the course of the assignment, one of the members of KOMNASHAM resigned because he became the Attorney General.

10. To carry out its task, KPP-HAM established work procedures and systems in line with Criminal Law Procedures and in fulfilment of international standards, particularly those contained in the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Guidelines for the Conduct of United Nations Inquiries into Allegation of Massacres. The KPP-HAM investigation was impartial and was not focused on the accountability of a certain group that was involved in violations of human rights in East Timor.

11. The process began by gathering secondary and tertiary information concerning human rights violations from both printed and electronic mass media publications, reports of institutions/organizations and individual complaints. The information was computerized and process using the HURIDOC program. The data was then analysed and re-verified through the inspection of evidence, documents, witness testimony and field inspections and interviews and questioning of parties who were involved in human rights violations.

12. KPP-HAM conducted six field inspections to Kupang NTT, three visits to East Timor and inspected a mass grave in NTT. An expert forensics team accompanied KPP-HAM to inspect the mass grave. KPP-HAM also gathered new information, interviewing 55 victims, 23 witnesses and 45 other people who were involved in human rights violations.

13. KPP-HAM met three times with the UN-established International Investigation Commission for East Timor to exchange information. However, evidence was not exchanged, as an agreement concerning the protocol of cooperation was not reached.

14. To facilitate its work in the field, KPP-HAM opened a secretariat office in Kupang, staffed with three assistants who were assigned to expedite secretariat activities, arrange documents and communications, prepare witnesses and assist with the evacuation of witnesses and their families.

Part II
POST BALLOT EAST TIMOR RELATIONSHIP BETWEEN THE CIVIL AND MILITARY AUTHORITIES AND THE MILITIAS

15. The violence in East Timor escalated after the Indonesian military invaded the territory in 1975 and established and promoted armed civilians who were later called WANRA, or People's Security Forces. Some of these community security personnel were incorporated into the Indonesian Army through a military training program and were salaried as regular soldiers. The military top brass called these soldiers TNI Sons of the Soil and they were only assigned to East Timor to assist the TNI operations there. The elite of the pro-integration groups were made government officials, as was the case of Joao Tavares, who became the Regent of Bobonaro, while commanding the Halilintar militia.

16. The situation in East Timor after the Indonesian Government offered the two options changed drastically. The May 5, 1999 Agreement in New York provided opportunity for international observers to monitor human rights violations and the Indonesian Government's responsibility to uphold peace and security in East Timor. At the same time, various political and security policies were introduced which strengthened the armed civilian security groups, or militias. Violence increased and the pro-independent supporters began to react. The violence continued in line with the need to ensure that special autonomy was chosen.

17. After the two options were offered, more militia units were established and manned by young men. A report from the Udayana Commander Major General Adam R. Damiri to the Coordinating Minister of Politics and Security declared that the pro-integration movement was directed by young men who formed the Love Red & White organization. Other reports stated that the young men who formed the Love Red & White organization were originally members of the Gada Paksi and Garda Muda Penegak Integration youth organizations that were established, trained and funded by Kopassus (elite forces) from 1994-1995. Eurico Gutteres, the commander of the Aitarak militia in Dili was a prominent leader of the Gada Paksi. The militias then grouped together as the Integration Struggle Force (PPI), with Joao Tavares as its commander. The deputy commander was Eurico Guterres and the head of staff was Herminio da Costa da Silva. The pro-integration groups, according to the Regents and Governor of East Timor, were called Pam Swakarsa. The presence of the militias was acknowledged by TNI General Wiranto and noted in Contingency Plan.

18. In follow-up to this acknowledgement of the pro-integration militias, a massive program of support was launched involving the military apparatus at various levels. The goal of the program was to breakdown the domination of pro-independence groups while developing the domination of the pro-integration movement among the people.

19. From the facts gathered, it is very clear there was a relationship between the pro-integration militias and the military. Most of the leadership and core cadre were former members of the community security forces such as Kamra [People's Security, Wanra People's Defense, Garda Paksi, Hansip [civil guard that worked with the army] and members of the army itself. They were trained and armed with weapons that included SKS, M16, Mauser, G-3, grenades and pistols and left over Portuguese rifles. From witness testimony received by KPP-HAM, arms were supplied to the militias by the Commander of Tribuana Unit and Commander of Suai military district. The relationship was seen also in the joint operations and patrols.

20. The TNI's support of such operations caused the police to be unable to function and take legal action in cases of violence, such as the attack on the Liquica Church.

21. Based on the facts above, we see that, first, there was a strong relationship and linkage between the TNI, Polri, government bureaucracy and the militias. Second, the violence that

occurred in East Timor beginning after the announcement of the offer of the two options until the period after the results of the popular consultation were announced was not caused by a civil war but was the result of a systematic campaign of violence.

Part III
Pattern of Violations of Human Rights: Crimes Against Humanity

22. Based on facts, documentation, information and witness testimony, KPP-HAM not only found actions that could be classified as gross human rights violations for which the state is responsible, but also found evidence of crimes that could be classified as crimes of universal jurisdiction. These crimes included systematic and mass murder; extensive destruction, enslavement, forced deportations and displacement and other inhumane acts committed against the civilian population. These acts constitute a gross violation to the right to life, the right to personal integrity, the right to liberty, the right of movement and residence and the right to property, as seen in the following Table.

Systematic and mass murders

23. Much information and evidence was gathered, proving that extra-judicial acts of violence and murder of a number of people continued with cruelty and brutality.
Murders occurred in residential areas, in churches and in places where refugees fled, such as military and police headquarters.

Torture and ill treatment

24. In almost every case of violence committed by members of the TNI, POLRI and militias, there is proof that the civilian public was subject to torture and ill treatment due to their differing political views. Before the popular consultation, the militias tortured and ill-treated civilians who refused to become militia members. After the announcement of the results of the popular consultation, terror, intimidation and death threats occurred during every attack and assault and destruction of physical infrastructure, including attacks on fleeing refugees.

Enforced disappearances

25. Enforced disappearances occurred since the announcement of the two options offer. Citizens with different political views were intimidated, threaten and some disappeared. The militias were responsible for these enforced disappearances. The militias are suspected to have received support from the security apparatus regarding such kidnappings or summary executions.

Gender-based violence

26. The evidence of the militias committing acts of violence against women gathered by KPP-HAM involved torture, forced sex with underage girls, sex slavery and rape. The rap of East Timor women took the following forms: (a) a perpetrator and one women, (b) more than one perpetrator and one women, (c) gang rape of a number of women in one location, and (d) use of a certain location for repeated acts of rape.

Forced displacement of civilians

27. The information and evidence gathered by KPP-HAM shows two patterns of forced displacement of the population, that is, the displacement that occurred before the popular consultation due to increased violence from newly formed militias and the displacement that occurred after the announcement of the results of the vote when members of the TNI, POLRI and militias committed violent acts and forced the population to flee.

Scorched-earth campaign

28. KPP-HAM found evidence in East Timor that a planned, systematic and massive scorched-earth campaign was launched in various cities including Dili, Suai, Liquica and others. The scorched-earth campaign destroyed residences, crops and livestock, stores, shops, hotels, office buildings, places of worship, education facilities, hospitals and other public infrastructure and facilities, and military and police installations. It is estimated that the destruction reached 70-80%.

General pattern of violence

The crimes against humanity described above show a systematic program that resulted from extensive planning. This is evident from the following:

29. Period after announcement of the two options

Formation and re-activation of armed civilian groups who were mobilized in the name of pro-integration and security. These groups were under the direct coordination of the TNI.

The mobilization of the militia forces to support the pro-integration faction was accomplished through political terror. Murder, kidnappings and forced displacement were committed by members of the TNI, POLRI, government bureaucracy and the militias.

The mobilization of the militia forces was in line with various policies of the military leadership and the Coordinating Minister of Politics and Security that played a large role in creating conditions in the interest of a special autonomy victory and involved the Tribuana Task Force and the P4OKTT Task Force.

30. Period after the New York Agreement

Violence involving members of the TNI and POLRI abated drastically in May 1999 when the New York Agreement was signed on May 5, 1999. Through cantonment and the establishment of the Indonesian Task Force (P3TT), the Indonesian Government attempted to show its neutrality in the interest of the success of the popular consultation. However, policies initiated in Jakarta called for preparation in the even of failure of the 1st Option. These plans called for a general retreat and relocation of the people for their welfare, stating UNAMET partiality and pro-independence retaliation as the grounds for these actions.

31. Period after the popular consultation

After the popular consultation, violence increased drastically throughout East Timor, including murders, kidnappings, rape, property destruction, theft of homes and property, the burning and destruction of military installations, offices and civilian residences, with the goal of forced deportation. Members of the TNI, POLRI and the militias were the key figures responsible for this campaign which involved the creation of conditions, choice of acts committed, scheduling and planning of the forced deportation. This campaign was initiated to convince the international community that the results of the popular consultation should be doubted and that the people of East Timor would rather choose to live safely in West Timor.

Acts of violence and intimidation were directed at news reporters and officials of various international agencies.

The final stage of the violence campaign has been the continued cooperation of the TNI and militias to keep the refugees in West Timor in their camps. The distribution of the refugees shows the effective control of these camps by the militias and TNI through the end of October 1999.

Part IV
PRIMARY CASES

32. KPP-HAM forced its attention on a number of primary cases during the period from January 1999 to October 1999. These cases include: the massacre at the Liquica Church on April 6; the kidnapping of 6 Kailako, Bobonaro villagers on April 12; the murder of a civilian in Bobonaro; the attack on Manuel Carrascalao´s home on April 17; the attack on the Dili Diocese on September 5; the attack on the house of Bishop Belo on September 6; the burning of people´s homes in Maliana on September 4; the attack on the Suai Church complex on September 6; the murder at the Maliana Police Headquarters on September 8; the murder of the Dutch journalist, Sander Thoenes, on September 21; the murder of a group of priests and journalists in Los Palos on September 25; and acts of violence against women.

Massacre at the Liquica Church complex

33. On April 6, the Besi Merah Putih militia, armed with guns and sharp weapons and supported by the district military command, attacked refugees seeking protection in the Liquica Church complex. The refugees had fled there because they had been terrorized by the militia. During the attack, approximately 30 people died. The police apprehended the civilian members responsible but let them go. The TNI did nothing regarding its members who were involved. Five bodies were taken away by the police and buried on the instruction of the district military command. The other corpses were thrown in Masin Lake on order of the TNI (Rajawali Troops).

Murder of Kailaco villagers

34. On 12 April 6 people were kidnapped by the subdistrict military command in Kailaco working together with the Halilintar militia. They were brought to the subdistrict military command, then taken to the house of Manuel Soares Gama and murdered.

35. On April 12 as well there was a retaliation by a group believed to be Falintil against Manuel Soares Gama´s group as they were travelling from Maliana to Kailako. Three people were

killed, including Manuel Soares Gama. In addition, two other TNI members were killed in the attack. Four persons were wounded.

36. The TNI and Halilintar militia retaliated the next day, April 13, capturing six local citizens. After the six people were interrogated and torture at the subdistrict military command and later executed publicly. The execution was led by the Lt. Col. Burhanuddin Siagian, head of the district military command of Bobonaro and Joao Tavares, commander of the militia forces (PPI). The six corpses were then thrown into the Marobo River.

Attack on the home of Manuel Carrascalao

37. On April 17, 1999, a mass gathering attended by 5,000 pro-integration supporters from the 13 districts of East Timor was held in front of the East Timor Governor´s office. The gathering was called to confirm the appointment of Eurico Gutteres as commander of the Aitarak militia. Some of the militia members destroyed the office of the Suara Timor Timor newspaper. Towards the late afternoon, the home of Manuel Carrascalao was attacked by Besi Merah Putih and Aitarak militias. The victims of the attack were refugees who had fled from Liquica, Alas and Turiscai seeking protection at the home of Manuel Carrascalao and his son, Manuelito Carrascalao. 15 people died in the attack. The surviving 50 refugees, including the families of Manuel Carrascalao and CNRT leader Leandro Isaac, were taken by the Police to Police Headquarters.

Attack on the Dili Diocese

38. On September 5, 1999, the situation in Dili had deteriorated, with shots fired repeatedly, houses burned and destroyed. During this chaos, besides the fleeing refugees, security forces made up of TNI and POLRI troops were patrolling the streets. Witnesses said they saw militias dressed in black with Aitarak printed on their shirts and wearing red and white head bands attack the refugees who were seeking protection at the Camra Eclesestica (Dili Diocese) and then set fire to the diocese. During this event, 25 victims died.

Attack on the home of Bishop Belo

39. On September 6, a TNI Lieutenant Colonel entered the home of Bishop Belo to request that the Bishop leave his residence and be evacuated to Police Headquarters. After Bishop Belo left his residence, a group of militias, including those dressed in Aitarak uniforms, began to attack around 5,000 refugees who were seeking protection in the complex. The refugees were forced to obey the militias and leave the complex, which was then burned. At least 2 people died in this attack.

Massive destruction and murders in Maliana

40. On September 4, there occurred massive destruction and burning of peoples´ homes in Maliana. Approximately 80% of the buildings in the town were destroyed.
From August 30, Maliana was under the control of the TNI, POLRI and the Dadurus Merah Putih and Halilintar militias who restricted movement in and out of the area, especially those who were considered pro-independence and the staff of UNAMET. During this reign of destruction, the perpetrators also kidnapped and killed two local UNAMET staff and pro-independence activists. Villagers attempting to flee were attacked with guns and sharp weapons. Since that time, the militias set up checkpoints in the Bobonaro district, especially in

Memo and Batugade, to inspect refugees fleeing to West Timor. Several witnesses said that a number of refugees had disappeared after being stopped at these checkpoints.

41. On September 8, people seeking refuge in the Maliana police station were killed by the Dadurus Merah Putih militia with the direct support of members of the TNI and POLRI. At least 3 people died.

Massacre in the Suai Church complex

42. On September 4, the Laksaur militia and members of the TNI in Debos Hamlet caused the death of a high school student. Consequently, villagers fled for refuge in the Nossa Senhora de Fatima Church and the Ave Maria Suai Church, where many refugees had been staying for a while. On the evening of September, residences and government buildings in Suai were burned down by the Laksaur militia and members of the TNI. Commencing September 6, villagers were forced from their homes. The Suai subdistrict military commander, 1st Lieutenant Sugito took part in the burning and pillaging.

43. On September 6 at around 14.30, the Laksuar Merah Putih and Mahidi militias and members of the TNI and POLRI attacked refugees staying in the Suai Church complex. The attack was directly led by the Regent of Covalima, Herman Sediono and the Suai subdistrict military commander, 1st Lieutenant Sugito. Before this, the militias threatened to kill all of the priests and both male and female refugees. At the time there were approximately 100 refugees staying in the church complex and an unknown number of refugees outside the complex. Father Hilario was shot once in the chest and Igidio Manek a Laksuar militia member stepped on the priest´s body. Father Fransisco was stabbed and sliced by Americo, also a member of the Laksuar militia. Another witnessed, Domingos dos Santos, saw Father Dewanto killed in the old church. At the time of the attack, the Police, the Loro Sae Mobile Brigade Contingent and members of the TNI were outside of the fence shooting refugees who tried to flee outside the church complex. It is thought that at least 50 people were murdered in this incident.

44. Twenty-six of the corpses were hauled by a truck and two cars and were buried in Alas Village, Wemasa District, Belu Regency. The burying of the corpses was directed by Suai subdistrict military commander, 1st Lieutenant Sugito along with three members of the TNI and a contingent of Laksaur militia. The corpses were transported from Suai at around 08.30 by 1st Lieutenant Sugito and his cohorts, after passing by the Metamauk Police Post in the Wemasa, West Timor area. The exhumation of the mass grave of the Suai Church victims found there to be 16 males, 8 females and 2 corpses whose gender could not be determined, ranging in age from 5 to around 40 years of age.

Murder of a Dutch journalist

45. A Dutch journalist, Sander Thoenes was killed on September 21. His body was found by locals in Becora, East Dili the next day, September 22. It is thought that Sander Thoenes left the Tourismo Hotel, Dili between 16.30 and 17.45 on a motorcycle driven by Florinda da Conceicao Araujo heading for Becora, Dili. The two men had gone only 300 meters when they were stopped by unknown persons travelling on three motorcycles, a truck and a car. The unknown attackers wore TNI uniforms and carried automatic weapons. The unknown persons shot at Sander Thoenes and Florinda da Conceicao Araujo, but Araujo was able to escape. At the time, Battalion 745 was crossing through the area.

Killing of religious figures in Los Palos

46. On September 25, a group of religious figures was attacked while on the road to Baucau. The attack was carried out by Tim Alfa militia, led by Joni Marques Nine people were killed, including the Indonesian journalist, Agus Mulyawan. This incident is believed to have been on the order of a Kopassus unit working with a Tribuana unit. The bodies were thrown into the Raumoko River and the vehicle the group was travelling in was burned up.

Violence against women

Sexual Slavery

47. At the end of September, at the refugee camp in the village of Raehanek, Belu, West Timor, women and children of suspected pro-independence families forced out of a car near the village administration office. They were separated from the other refugees as they were thought to be pro-independence supporters. They were placed in special tents and by members of the Laksaur militia and forced to satisfy sexual desires of militia members each night. One of the women was still a nursing mother. If the women refused, they were threatened with death. One of the female refugees was shot in the back with a homemade weapon and still experiences trauma from the experience.

48. On September 6, two teenage girls from Ainaro were abducted and forced to become sexual slaves by the commander of a Mahidi militia contingent. While controlled by the militia, the two victims were gang raped repeatedly for weeks by the militia members.

49. On June 6, twenty-three women were held against their will by Besi Merah Putih Militia near Gugleur, Maubara, Liquica. They were held and forced to cook, clear and provide sexual services.

50. On September 5, a girl named Alola - a third level junior high school student from Suai - and other women were forcibly brought to the Laksaur headquarters by Laksuar contingent commander Manel E. Gidu in Raihanek, Belu, West Timor and forced to become sex slaves of the Laksuar militia. Witnesses and the mother of the victim twice attempted to secure the release of the victim, but were refused by the militia.

Rape

51. Rape took place at the district military command of Covalima on September 6, after several women were taken there following the Suai church massacre. Laksaur militia members tried to rape them. On September 7, one young girl among them, Martinha, was forcibly taken by a Laksaur militia head named Olipio Mau and raped. When the girl was abducted, her family went immediately to report to the district military commander, but he was not there, so they reported to the cashier the next day but never received any response. The girl was returned home only in the afternoon.

Part V
Description of Victims and Perpetrators

Victims

52. KPP-HAM witnessed tremendous losses of both life and property resulting from the reign of violence in East Timor from January October 1999. Those who lost their lives were chosen due to their political views and included high school and university students and CNRT activists.

53. Even those who had no political affiliation, such as women and children and religious figures were also victims of violence such as happened during the massacre at the Suai Church on September 6, 1999.

54. There were some victims from among the pro-autonomy supporters.

55. In addition, KPP-HAM discovered female victims of sexual violence who were molested by both the militia and the authorities in East Timor and in the refugee camps in West Timor. Property losses included both private property, public infrastructure and other social cultural facilities.

Perpetrators

56. There were three main kinds of perpetrators identified by KPP-HAM as those responsible for the campaign in East Timor. First, those who committed crimes directly, including militia members, TNI and POLRI. Second, those who ran the field operations in the civilian bureaucracy including district heads (bupati), the governor and local military and local police officials. Third, those who held responsibility for security policy, including high level military officials who were involved and knew about the reign of violence but failed to do anything to prevent it.

57. Violent acts were also committed by those who opposed the special autonomy option, such as the Falintil. Accounts of these crimes are found in the reports of the Peace and Stability Commission and the reports of government and military officials that were submitted to KPP-HAM.

Part VI
CONCLUSIONS AND RECOMMENDATIONS

58. During the compilation of this report and summary to be submitted to KOMNASHAM, KPP HAM carefully considered all of the findings in the field, statements from witnesses, victims, perpetrators and other parties, official and unofficial reports and documents and various other sources of information. KPP HAM has also taken into consideration all reports and other materials that were compiled by both UNTAET and INTERFET during their respective investigations.

59. Due to the various restrictions involving time, facilities and infrastructure, as well as the efforts of certain parties to destroy evidence, the findings of KPP HAM gives only a partial picture of the human rights violations that occurred.

60. KPP HAM was able to gather facts and evidence that strongly indicates a planned, systematic, wide-scale and gross violation of human rights, mass murders, torture and

ill-treatment, disappearances, violence against women and children (including rape and sexual slavery), forced evacuation, property destruction and implementation of a scorched-earth campaign, all of which constitute crimes against humanity.

61. KPP HAM also found strong evidence of the loss and destruction of evidence that constitutes a criminal act.

62. From all of the facts and evidence gathered, KPP HAM did not find proof of criminal genocide.

63. The facts and evidence also shows that the civil authorities and military, including the police force, worked in cooperation with the militias to create conditions that supported crimes against humanity, and which were carried out by the civil authorities, military, police and the militias.

64. The militia forces under various names throughout the territory, were directly or indirectly established as Wanra People's Defense, Kamra People's Security and Pamswakarsa Security Forces and were directly an indirectly armed, trained, supported and funded by the civil, military and police authorities.

The types of acts and the pattern of crimes against humanity were as follows:

Mass Murders

65. Mass murders resulting in a large number of civilian casualties were carried out systematically and cruelly in various locations. Generally the mass murders occurred in places of refuge such as churches, police and military headquarters. Sharp weapons and firearms were used in these attacks by the militias together with and or with the support of the military authorities or the military and police authorities allowed such crimes.

Torture and Ill-treatment

66. Systematic, large-scale and widespread torture and ill treatment of the pro-independence civilian population was carried out. The torture and ill treatment occurred at various times either before the victims were murdered or after the victims were indiscriminately detained to extract information. In some cases, the torture and ill treatment also occurred spontaneously as victims homes were raided. During the mass displacement of the population, torture and ill treatment of university and high school students and members of the CNRT was prevalent.

Forced disappearances

67. Forced disappearances occurred according to the following patterns. First, disappearances occurred during the recruitment of the militias. A number of civilians disappeared after refusing to join the militias. Second, disappearances occurred as a means of forcing the pro-independence supporters to submit. Third, there are reports that a number of students and pro-independence supporters disappeared as a result of continued militia activities in the refugee camps.

Sexual enslavement and rape

68. Sexual enslavement and rape occurred in civilian homes, military headquarters and refugee camps both before and after the popular consultation.

Scorched-earth campaign

69. The scorched-earth campaign was conducted before and after the announcement of the results of the popular consultation, during which the homes of civilians, various government offices and other buildings were destroyed. Before the popular consultation, the homes of pro-independence supporters were burnt to the ground. The campaign increased in intensity and scope after the results of the popular consultation were announced and involved the destruction of buildings and other property throughout most of East Timor.

Forced displacement and deportation

70. Terror and intimidation before the popular consultation resulted in the displacement of the population to various places of refuge such as churches and the mountains. After the results of the popular consultation were announced, a large-scale forced displacement and deportation of the population occurred with logistic and transportation support from the civil, military and police authorities in compliance with established plans. The forced displacement was the ultimate target of the various acts of violence and the scorched-earth campaign that occurred in many locations. Terror and intimidation were the means to ensure the forced displacement and deportation of the refugees and continues to be used to obstruct the return of the refugees to their homes. Until now, there are still many refugees who still are unable to return to their places of origin.

Destruction and loss of evidence

71. The destruction of evidence by the perpetrators of these crimes against humanity was planned and intentional and included the destruction of documents, mass burials and the relocation of corpses to hiding places. Mass graves are still be discovered.

72. There are three groups of perpetrators of these crimes against humanity, namely:

those who committed crimes directly in the field, including the militias and the military and police authorities;

those who ran the field operations in the civilian bureaucracy, including District Heads (Bupati), the Governor and local military and police officials;

and those who held responsibility for national security policy, including but not limited to, high-level military officials who actively or passively were involved in these crimes.

73. The involvement of the civil administration and the military including the police working together with the pro-integration militia groups in the aforementioned crimes against humanity constitutes a misuse of power and authority which resulted in the involvement of both military and civil institutions. In detail, the aforementioned proof demonstrates that members of civil and military institutions, including the police, are suspected of involvement, including but not limited to, the following persons:

- Governor, East Timor Abilio Soares
- District Head, Dili Dominggos Soares
- District Head, Covalima Colonel Herman Sediono
- District Head, Liquica Leoneto Martins
- District Head Bobonaro Guilherme dos Santos
- District Head, Lospalos Edmundo Conceicao E. Silva
- Commander, Resort Military Command 164, Wira Dharma (East Timor) Brigadier General FX Tono Suratman
- Commander, Resort Military Command 164, Wira Dharma (East Timor) Colonel M. Nur Muis
- Chief of Police, East Timor Brigadier General Police Timbul Silaen
- Sub-District Military Commander Suai (Covalima) First Lieutenant Sugito
- Head of Intelligence, Bobonaro (Maliana) District Military Command First Lieutenant Sutrisno
- District Military Commander, Bobonaro Lt.Col. Burhanuddin Siagian
- District Military Commander Los Palos Lt. Col. Sudrajat
- Commander, Battalion 744, Dili Infantry Major Yakraman Yagus
- Commander, Battalion 745, Los Palos Infantry Major Jacob Sarosa
- Member, Battalion 744, Dili Private (First Class) Luis
- Commander of Company B, Battalion 744 Captain Tatang
- Kopassus Officer/Intelligence Task Force Dili Military Command Lt. Col. Yayat Sudrajat
- Staff, District Military Command, Liquisa 1st Lieutenant Yacob & Sgt. (2nd Class)
- Regional Military Commander IX, Udayana Major General Adam Damiri
- Security Advisor, Indonesian Task Force for the Implementation of The Popular Consultation in East Timor Major General Zacky Makarim
- Commander , Aitarak Militia Eurico Gutteres
- Commander, Laksaur Militia Olivio Moruk
- Commander, Laksaur Militia Martinus
- Member, Laksaur Militia Manek
- Commander, Tim Alfa Militia Joni Marquez
- Members, Tim Alfa Militia Joao, Manuel, and Amilio da Costa
- Commander, Besi Merah Putih Militia Manuel Sousa
- Commander, Halilintar Militia Joao Tavares

Other names involved either directly or indirectly can be found in the complete report.

74. All crimes against humanity in East Timor, directly or indirectly occurred because of the failure of the Armed Forces Commander to guarantee security during the implementation of the announcement of the two options by the government. The police structure which, at the time, was still under the command of the Defense Ministry had already weakened the ability of the police force to carry out its security duties based on the New York agreements. In view of this, Armed Forces General Wiranto as Armed Forces Commander is the party that must be asked to bear responsibility.

75. As a special note, KPP HAM feels that without prejudice to the rights of the parties under investigation to seek the best legal assistance, the fact that all of those under investigation, with the exception of the militias, have obtained legal assistance from the TNI Officials Human Rights Advocacy Team, any conflict of interest among those under investigation has been avoided. There is a strong possibility conflicts of interest will arise among the TNI officials, police officials, the former Coordinating Minister of Politics and Security and the former Minister of Foreign Affairs. This fact, whether directly or indirectly, could obstruct investigation efforts to gather facts and uncover the truth and is a hindrance, therefore, to upholding the law and justice.

Recommendations:

Based on the conclusions contained above, KPP HAM presents the following recommendations:

76. Requests the Attorney General to conduct investigations into the perpetrators suspected of involvement in serious human rights violations, especially but not limited to those named in the conclusions above.

77. Requests the Government to make protocol arrangements to gain access to all the new facts and proof about human rights violations in East Timor up to now which UNTAET and other international bodies are in the process of uncovering.

78. Requests the parliament and the government to form a Human Rights Court with the authority to try the perpetrators of human rights violations and crimes against humanity relating to national and international law (Human Rights and Humanitarian Law). The Human Rights Court in question must have the authority to try human rights violations occurring in the past as well as those that have occurred in East Timor to the present.

79. Requests the Government to immediately ratify international human rights instruments that are important to the upholding of human rights in Indonesia including, but not limited to, the Covenant on Civil and Political Rights and the First Optional Protocol.

80. Requests the Government to provide security guarantees to all witnesses and victims.

81. Requests the Government to strive to provide rehabilitation and fair compensation to the victims and their families.

82. Requests the Government to state clearly that each case of gender-based violence is a human rights violation. In addition, the government is responsible for providing various forms of service (psychiatric, psychological) and other compensation to the victims.

83. Calls upon the National Human Rights Commission in the interests of truth and justice as well as in the interests of history to carry out full investigations of all human rights violations in East Timor since 1975. The results of these investigations must be made into a formal human rights document.

84. Urges the Government to conduct a repositioning, redefinition and renewal of the armed forces (TNI) so that it becomes a security institution within a democratic country that holds human rights in high esteem. For that to be achieved, the TNI's additional functions need to be abolished, in particular the territorial functions that up to now have become a restriction and hindrance to the good functioning of the police and civil administration.

85. Calls on the Government to guarantee the function of upholding the law as well as security and community order. In this context, the institution of the police must be fully separated from the TNI. In addition there is a need for a strengthening and empowering of the police force through professional training and demilitarisation of the police force.

86. Urges the Parliament and the Government to regulate intelligence institutions and activities through laws that guarantee that state intelligence functions are carried out wholly in the interests of national and community security so that they do not become an instrument for violating human rights.

87. Calls upon the Government and the Attorney General to ensure that the legal process concerning crimes against humanity - - whoever is the perpetrator, including members of the military is conducted freely and independently without any interference whatsoever.

88. Requests the Government to facilitate and erase all restrictions and pressure that will hamper the return of refugees who want to return home. In this regard, UNTAET is requested to provide legal and security guarantees for those returning to East Timor.

Jakarta, 31 January 2000

Commission to Investigate Human Rights Violations in East Timor

Dr. Albert Hasibuan, SH.
Chair

Dr. Todung Mulya Lubis, SH, LLM
Deputy Chair

Asmara Nababan, SH.
Secretary

Dr. Engineer. H.S. Dillon
Member

Drs. Koesparmono Irsan SH, MM, MBA
Member

Nursyahbani Katjasungkana,SH
Member

Dra. Zoemrotin KS
Member

Munir, SH
Member

Appendix 2A

Unofficial translation

HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

REPUBLIC OF INDONESIA ACT NO. 26 OF 2000 CONCERNING HUMAN RIGHTS COURTS

WITH THE MERCY OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

a. whereas human rights are basic rights bestowed by God on human beings, are universal and eternal in nature, and for this reason may not be disregarded, diminished, or appropriated by anyone whosoever;

b. whereas to participate in preserving world peace and guaranteeing the implementation of human rights, and to provide protection, assurance, justice, and a feeling of security to both individuals and society, it is necessary to establish forthwith a Human Rights Court in order to resolve gross violations of human rights in accordance with Article 104 clause (1) of Act No. 39 of 1999 concerning Human Rights;

c. whereas establishment by the government of a Human Rights Court to resolve gross violations of human rights based on Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts was considered inadequate and therefore not ratified as an Act by the House of Representatives of the Republic of Indonesia, and for this reason it is necessary to revoke the aforementioned Government Regulation in Lieu of an Act;

d. now, therefore, upon consideration of clauses a, b and c, it is necessary to enact provisions in an Act concerning Human Rights Courts;

In view of:

1. Article 5 clause (1) and Article 20 clause (2) of the 1945 Constitution;

2. Act No.14 of 1970 concerning Principal Provisions on Judicial Authority (State Gazette No. 74 of 1970, Supplement to the State Gazette No. 2951) as amended by Act No. 35 of 1999 concerning Amendments to Act No. 14 of 1970 concerning Principal Provisions on Judicial Authority (State Gazette No. 147 of 1999, Supplement to the State Gazette No. 3879);

3. Act No. 2 of 1986 concerning Courts of General Jurisdiction (State Gazette No. 20 of 1986, Supplement to the State Gazette No. 3327)

4. Act No. 39 of 1999 concerning Human Rights (State Gazette No. 165 of 1999, Supplement to the State Gazette No. 3886);

With the joint approval of

THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

and

THE PRESIDENT OF THE REPULIC OF INDONESIA

DECREES:

To enact: ACT CONCERNING HUMAN RIGHTS COURTS.

CHAPTER I
GENERAL PROVISIONS

Article 1
The terms used in this Act have the following meanings:
(1) Human rights are a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to respect and protect human dignity and worth.
(2) Gross violation of human rights is a violation of human rights as referred to in this Act.
(3) A Human Rights Court is a court dealing specifically with gross violations of human rights.
(4) A person is an individual, group of people, civil or military, or police, having individual responsibility.
(5) Inquiry is a set of acts of inquiry to identify the existence or otherwise of an incident suspected to constitute a gross violation of human rights to be followed up by an investigation in accordance with the provisions set forth in this Act.

CHAPTER II
STATUS AND LOCATION OF HUMAN RIGHTS COURTS

Section One
Status

Article 2
A Human Rights Court is a special court within the context of a Court of General Jurisdiction.

Section Two
Location

Article 3
(1) A Human Rights Court shall be located in a regional capital or a municipal capital and its judicial territory shall cover the judicial territory of the relevant District Court.
(2) In the case of the Special District of Jakarta, a Human Rights Court shall be located in the territory of each relevant District Court.

CHAPTER III
SCOPE OF AUTHORITY

Article 4

A Human Rights Court has the task and authority to hear and rule on cases of gross violations of human rights.

Article 5

A Human Rights Court has the authority to hear and rule on cases of gross violations of human rights perpetrated by an Indonesian citizen outside the territorial boundaries of the Republic of Indonesia.

Article 6

A Human Rights Court does not have the authority to hear and rule on cases of gross violations of human rights perpetrated by persons under the age of 18 (eighteen) at the time the crime occurred.

Article 7

Gross violations of human rights include:
(a) the crime of genocide;
(b) crimes against humanity.

Article 8

The crime of genocide as referred to in Article 7 letter a is any action intended to destroy or exterminate in whole or in part a national group, race, ethnic group, or religious group by:
1) killing members of the group;
2) causing serious bodily or mental harm to members of a group;
3) creating conditions of life that would lead to the physical extermination of the group in whole or in part;
4) imposing measures intended to prevent births within a group; or
5) forcibly transferring children of a particular group to another group.

Article 9

Crimes against humanity as referred to in Article 7 letter b include any action perpetrated as a part of a broad or systematic direct attack on civilians, in the form of:
1) killing;
2) extermination;
3) enslavement;
4) enforced eviction or movement of civilians;
5) arbitrary appropriation of the independence or other physical freedoms in contravention of international law;
6) torture;
7) rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilisation, or other similar forms of sexual assault.

8) terrorisation of a particular group or association based on political views, race, nationality, ethnic origin, culture, religion, sex or any other basis, regarded universally as contravening international law;
9) enforced disappearance of a person;
10) or the crime of apartheid.

CHAPTER IV
JUDICIAL PROCEDURE

Section One
General Provisions

Article 10
Unless stipulated otherwise in this Act, the judicial procedure for cases of gross violations of human rights shall be conducted according to provisions governing criminal judicial procedure.

Section Two
Arrest

Article 11
(1) The Attorney General as investigator is authorised to arrest, for the purposes of investigation, any person who, on the basis of sufficient preliminary evidence, is strongly suspected of perpetrating a gross violation of human rights.
(2) The investigator shall carry out arrest as referred to in clause (1) by producing an order and serving the suspect an arrest warrant stating the identity of the suspect, the reason for the arrest, and the location of the investigation, along with a brief description of the gross violation of human rights he or she is suspected of perpetrating.
(3) Attachments to the arrest warrant as referred to in clause (2) must be given to the family of the accused immediately following the arrest.
(4) In the event of a suspect being caught in the act of perpetrating a gross violation of human rights, arrest shall be executed without an order on the condition that the arrester immediately surrenders the suspect and any evidence to the investigator.
(5) Arrest as referred to in clause (2) shall not exceed 1 (one) day.
(6) The period of arrest shall be subtracted from the sentence passed.

Section Three
Detention

Article 12
(1) The Attorney General as investigator and public prosecutor is authorised to undertake the detention or extend the detention of a suspect for the purposes of investigation and prosecution.
(2) The judge of a Human Rights Court, by his or her ruling, is authorised to undertake the detention of a suspect for the purposes of investigation in a court session.
(3) A warrant for detention or extended detention shall be served on a suspect or defendant, who based on sufficient evidence, is strongly suspected of perpetrating a gross violation of human rights, should circumstances raise concerns that the suspect or the defendant may abscond, damage or conceal evidence, and/or re-perpetrate the gross violation of human rights.

Article 13
(1) Detention for the purposes of investigation shall not exceed 90 (ninety) days.
(2) The time period referred to in clause (1) may be extended for a maximum of 90 (ninety) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.
(3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the period of detention may be extended for a maximum of 60 (sixty) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.

Article 14
(1) Detention for the purposes of prosecution shall not exceed 30 (thirty) days.
(2) The time period referred to in clause (1) may be extended for a maximum of 20 (twenty) days by the Chief Justice of a Human Rights Court in accordance with his or her judicial scope.
(3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the period of detention may be extended for a maximum of 20 (twenty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.

Article 15
(1) Detention for the purposes of a hearing in a Human Rights Court shall not exceed 90 (ninety) days.
(2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.

Article 16
(1) Detention for the purposes of cross-examination in a High Court shall not exceed 60 (sixty) days.
(2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the High Court in accordance with his or her judicial scope.

Article 17
(1) Detention for the purposes of an appeal hearing in the Supreme Court shall not exceed 60 (sixty) days.
(2) The time period referred to in clause (1) may be extended for a maximum of 30 (thirty) days by the Chief Justice of the Supreme Court in accordance with his or her judicial scope.

Section Four
Inquiry

Article 18
(1) Inquiries into cases of gross violation of human rights shall be conducted by the National Commission on Human Rights.
(2) In conducting an inquiry as referred to in clause (1), the National Commission on Human Rights may form an ad hoc team comprising the National Commission on Human Rights and public constituents.

Article 19
(1) In conducting an inquiry as referred to in Article 18, the inquirer is authorised:
a) to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights;
b) to receive reports or complaints from individuals or groups concerning the incidence of gross violations of human rights, and to pursue statements and evidence;
c) to call on complainants, victims, or subjects of a complaint to request and hear their statements;

d) to call on witnesses to request and hear their witness;
e) to review and gather statements from the location of the incident and other locations as deemed necessary;
f) to call on relevant parties to give written statements or to submit necessary authenticated documents;
g) on the order of the investigator to:
1) examine of letters;
2) undertake search and seizure;
3) examine houses, yards, buildings, and other places that certain parties occupy or own;
4) dispatch specialists pertinent to the investigation.
(2)The inquirer shall inform the investigator upon initiating an inquiry into an incident suspected of constituting a gross violation of human rights.

Article 20
(1) Should the National Commission on Human Rights consider there is sufficient preliminary evidence that a gross violation of human rights has occurred, a summary of the findings of the inquiry shall be submitted to the investigator.
(2) No later than 7 (seven) working days following the submission of the summary findings of inquiry, the National Commission on Human Rights shall submit the inquiry findings in full to the investigator.
(3) In the event that the investigator considers the inquiry findings referred to in clause (2) insufficient, the inquirer shall immediately re-submit the inquiry findings to the investigator accompanied by guidelines for their completion, and within 30 (days) of receiving the inquiry findings, the investigator is required to consummate these insufficiencies.

Section Five
Investigation

Article 21
(1) Investigation of cases of gross violations of human rights shall be undertaken by the Attorney General.
(2) Investigation as referred to in clause (1) excludes authority to receive reports or complaints.
(3) In undertaking the task referred to in clause (1), the Attorney General may appoint an ad hoc investigator, which may be a government agency and/or a public constituent.
(4) Prior to undertaking his/her task, an ad hoc investigator shall take an oath or pledge in accordance with his or her religion.
(5) To be appointed as ad hoc investigator, a person is required to:
a. be a Citizen of the Republic of Indonesia;
b. be at least 40 (forty) years of age and no more than 65 (sixty-five) years of age;
c. be a graduate at law or other graduate with expertise in law; matters;
d. be of sound mind;
e. be of authoritative standing, honest, fair, and of good character;
f. to be loyal to Pancasila and the 1945 Constitution; and
g. to have knowledge of and concern for human rights.

Article 22
(1) Investigation as referred to in Article 21 clause (1) and (3) must be completed within a period of no longer than 90 (ninety) days from the date the inquiry findings are received and declared complete by the investigator.
(2) The time period referred to in clause (1) may be extended for a period not exceeding 90 (ninety) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.

(3) In the event that the time period referred to in clause (2) elapses before the investigation is complete, the investigation may be extended for a period of no more than 60 (sixty) days by the Chief Justice of the Human Rights Court in accordance with his or her judicial scope.
(4) If during the time period referred to in clause (1), clause (2), and clause (3) insufficient evidence is obtained from the investigation findings, a writ to terminate the investigation must be issued by the Attorney General.
(5) Once a writ to terminate an investigation is issued, an investigation may be re-opened only if additional proof and evidence for prosecution exists which supplements the investigation findings.
(6) In the event that termination of an investigation as referred to in clause (3) is not accepted by a victim or his/her family, the victim or his/her family by blood or marriage to the third degree, has the right to submit a pre-trial request to the Chief Justice of the Human Rights Court in accordance with his or her judicial scope and in accordance with prevailing legislation.

Section Four
Prosecution

Article 23

(1) Prosecution of cases of gross violations of human rights shall be conducted by the Attorney General.
(2) In the implementation of her/his task as referred to in clause (1), the Attorney General may appoint an ad hoc public prosecutor, who may be a member of the government and/or a public constituent.
(3) Prior to undertaking his or her task, an ad hoc public prosecutor shall take an oath or pledge in accordance with his/her religion.
(4) To be appointed as ad hoc public prosecutor, a person is required to:
a. be a Citizen of the Republic of Indonesia;
b. be at least 40 (forty) years of age and no more than 65 (sixty-five) years of age;
c. be a graduate at law or other graduate with expertise in law;
d. be of sound mind;
e. be of authoritative standing, honest, fair, and of good character;
f. to be loyal to Pancasila and the 1945 Constitution;
g. and to have knowledge of and concern for human rights.

Article 24

Prosecution as referred to in Article 23 clause (1) and clause (2) must be completed within no more than 70 (seventy) days from the date of receipt of the investigation findings.

Article 25

The National Commission on Human Rights may at any time request a written statement from the Attorney General concerning the progress of the investigation and prosecution of a case of gross violation of human rights.

Section Seven
Oath

Article 26

The oath taken by an ad hoc investigator and ad hoc Public Prosecutor as referred to in Article 21 clause (4) and Article 23 clause (3) shall be worded as follows:
"I solemnly swear/promise that in undertaking this task, I shall not, directly or indirectly, using any name or method whatsoever, give or promise anything whatsoever to anyone whosoever".

"I swear/promise that I, in order to undertake or not undertake something related to this task, shall not at any time accept directly or indirectly from anyone whosoever any promises or favours".
"I swear/promise that I will be faithful to, uphold, and apply the state principles of Pancasila, the 1945 Constitution, and legislation in force for the state of the Republic of Indonesia".
"I swear/promise that I will consistently undertake this duty conscientiously, objectively and with integrity, without discriminating between people, and will hold professional ethics in the highest regard in carrying out my obligations in proper and fair manner as befitting an official of good character and integrity with regard to upholding law and justice".

Section Eight
Court Hearings

Paragraph 1
General Provisions

Article 27

(1) Cases of gross violations of human rights shall be heard and ruled on by a Human Rights Court as referred to in Article 4.
(2) Hearings of cases of gross violations of human rights as referred to in clause (1) shall be conducted by a Human Rights Court judges' panel of 5 (five) persons, comprising 2 (two) judges from the relevant Human Rights Court and 3 (three) ad hoc judges.
(3) The Panel of Judges referred to in clause (2) shall be chaired by a judge from the relevant Human Rights Court.

Article 28

(1) Ad hoc judges shall be appointed and dismissed by the President as Head of State upon the recommendation of the Chief Justice of the Supreme Court.
(2) The total of ad hoc judges as referred to in clause (1) shall number at least 12 (twelve) persons.
(3) Ad hoc judges shall be appointed for a period of 5 (five) years and may be re-appointed for 1 (one) additional period of office.

Paragraph 2
Conditions of Appointment for Ad Hoc Judge

Article 29

To be appointed as ad hoc Judge, a person is required to:
1. be a Citizen of the Republic of Indonesia;
2. be faithful to God Almighty;
3. be at least 45 (forty-five) years of age;
4. be a graduate at law or other graduate with expertise in law;
5. be of sound mind;
6. be of authoritative standing, honest, fair, and of good character;
7. be loyal to Pancasila and the 1945 Constitution; and
8. have knowledge of and concern for human rights.

Article 30

Prior to undertaking his/her tasks, an appointed ad hoc judge as referred to in Article 28 clause (1) is required to take an oath or pledge in accordance with his/her religion, worded as follows:

"I solemnly swear/promise that in undertaking this task, I shall not, directly or indirectly, using any name or method whatsoever, give or promise anything whatsoever to anyone whosoever".
"I swear/promise that I, in order to undertake or not undertake something related to this task, shall not at any time accept directly or indirectly from anyone whosoever any promises or favours".
"I swear/promise that I will be faithful to, uphold, and apply the state principles of Pancasila, the 1945 Constitution, and legislation in force for the state of the Republic of Indonesia".
"I swear/promise that I will consistently undertake this duty conscientiously, objectively and with integrity, without discriminating between people, and will hold professional ethics in the highest regard in carrying out my obligations in proper and fair manner as befitting an official of good character and integrity with regard to upholding law and justice".

P a r a g r a p h 3
Hearing Procedure

Article 31
Cases of gross violations of human rights shall be heard and ruled on by a Human Rights Court within a period of no more than 180 (one hundred and eighty) days from the date of the case being brought before the Human Rights Court.

Article 32
(1) In the event of a request for appeal to the High Court, the case of gross violation of human rights must be heard and ruled on within a period of no more than 90 (ninety) days from the date of the case being brought before the High Court.
(2) Hearings of cases as referred to in clause (1) shall be conducted by a judges' panel of 5 (five) persons, comprising 2 (two) judges from the relevant High Court and 3 (three) ad hoc judges.
(3) The total of ad hoc judges in the High Court as referred to in article (2) shall number at least 12 (twelve) persons.
(4) Provisions set forth in Article 28 clause (1) and clause (3), Article 29, and Article 30 shall also apply for the appointment of ad hoc judges to the High Court.

Article 33
(1) In the event of a request for appeal to the Supreme Court, a case of gross violation of human rights must be heard and ruled on within a period of no more than 90 (ninety) days from the date of the case being brought before the Supreme Court.
(2) Hearings of cases as referred to in clause (1) shall be conducted by a judges' panel of 5 (five) persons, comprising 2 (two) Supreme Court judges and 3 (three) ad hoc judges.
(3) The total of ad hoc judges in the Supreme Court as referred to in article (2) shall number at least 3 (three) persons.
(4) Ad hoc judges in the Supreme Court shall be appointed by the President as head of state upon the recommendation of the House of Representatives of the Republic of Indonesia.
(5) Ad hoc judges as referred to in clause (4) shall be appointed for one period of office of 5 (five) years.
(6) To be appointed as ad hoc judge in the Supreme Court, a person is required to:
a. be a Citizen of the Republic of Indonesia;
b. be faithful to God Almighty;
c. be at least 50 (fifty) years of age;
d. be a graduate at law or other graduate with expertise in law;
e. be of sound mind;
f. be of authoritative standing, honest, fair, and of good character;
g. be loyal to Pancasila and the 1945 Constitution; and
h. have knowledge of and concern for human rights.

CHAPTER V
PROTECTION OF VICTIMS AND WITNESSES

Article 34
(1) Every victim of and witness to a gross violation of human rights has the right to physical and mental protection from threats, harassment, terror, and violence by any party whosoever.
(2) Protection as referred in clause (1) is an obligatory duty of the law enforcement and security apparatus provided free of charge.
(3) Provisions on procedures for protecting witnesses shall be further governed in a Government Regulation.

CHAPTER VI
COMPENSATION, RESTITUTION, AND REHABILITATION

Article 35
(1) Every victim of a violation of human rights violations and/or his/her beneficiaries shall receive compensation, restitution, and rehabilitation.
(2) Compensation, restitution, and rehabilitation as referred to in clause (1) shall be recorded in the ruling of the Human Rights Court.
(3) Provisions concerning compensation, restitution, and rehabilitation shall be further governed in a Government Regulation.

CHAPTER VII
PENAL PROVISIONS

Article 36
Any person who perpetrates actions as referred to in Article 8, letter a, b, c, d or e, shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 37
Any person who perpetrates actions as referred to in Article 9 letter a, b, d, e, or j shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 38
Any person who perpetrates actions as referred to in Article 9 letter c shall be sentenced to a maximum of 15 (fifteen) years in prison and no less than a minimum of 5 (five) years in prison.

Article 39
Any person who perpetrates actions as referred to in Article 9 letter f shall be sentenced to a maximum of 15 (fifteen) years in prison and no less than a minimum of 5 (five) years in prison.

Article 40
Any person who perpetrates actions as referred to in Article 9 letter g, h, or i shall be sentenced to a maximum of 20 (twenty) years in prison and no less than a minimum of 10 (ten) years in prison.

Article 41
For attempting, plotting, or assisting the perpetration of a violation as referred to in Article 8 or Article 9, the sentences set forth in Article 36, Article 37, Article 38, Article 39, and Article 40 shall apply.

Article 42
(1) A military commander or person acting as military commander shall be held responsible for any criminal action within the judicial scope of a Human Rights Court perpetrated by troops under his or her effective command and control, and for any such criminal action by troops under his or her effective command and control arising from improper control of these troops, namely:
a) a military commander or aforementioned person acknowledges, or under the prevailing circumstances ought to acknowledge that these troops are perpetrating or have recently perpetrated a gross violation of human rights; and
b) a military commander or aforementioned person fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.
(2) Both police and civil leaders are held responsible for gross violations of human rights perpetrated by subordinates under their effective command and control resulting from a failure on the part of the leader to properly and effectively control his or her subordinates, namely:
a) the aforementioned leader is aware of or deliberately ignores information that clearly indicates his or her subordinates are perpetrating, or have recently perpetrated a gross violation of human rights; and
b) the aforementioned leader fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.
(3) Actions as referred to in clause (1) and clause (2) shall be liable to the same penal provisions set forth in Article 36, Article 37, Article 38, Article 39, and Article 40.

CHAPTER VIII
AD HOC HUMAN RIGHTS COURTS

Article 43
(1) Gross violations of human rights occurring prior to the coming into force of this Act shall be heard and ruled on by an ad hoc Human Rights Court.
(2) An ad hoc Human Rights Court as referred to in clause (1) shall be formed on the recommendation of the House of Representatives of the Republic of Indonesia for particular incidents upon the issue of a Presidential Decree.
(3) An ad hoc Human Rights Court as referred to in clause (1) is within the context of a Court of General Jurisdiction.

Article 44
Hearings in an ad hoc Human Rights Court and their judicial procedure shall be in accordance with the provisions set forth in this Act.

CHAPTER IX
TRANSITIONAL PROVISIONS

Article 45
(1) From the date this Act comes into force, establishment of Human Rights Courts as referred to in Article 4 shall begin in Central Jakarta, Surabaya, Medan and Makassar.
(2) the judicial territory of Human Rights Courts as referred to in clause (1) shall correspond to the judicial territory of the District Court in:

a) Central Jakarta, which encompasses Greater Jakarta, and the Provinces of West Java, Banten, South Sumatra, Lampung, Bengkulu, West Kalimantan, and Central Kalimantan;
b) Surabaya, which encompasses the Provinces of East Java, Central Java, Special District of Yogyakarta, Bali, South Kalimantan, East Kalimantan, West Nusa Tenggara, and East Nusa Tenggara;
c) Makassar, which encompasses the Provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku, North Maluku, and Irian Jaya;
d) Medan, which encompasses the Provinces of North Sumatera, the Special District of Aceh, Riau, Jambi, and West Sumatera.

CHAPTER X
CONCLUDING PROVISIONS

Article 46
For gross violations of human rights as referred to in this Act no lapse provisions shall apply.

Article 47
(1) Resolution of gross violations of human rights occurring prior to the coming into force of this act may be undertaken by a Truth and Reconciliation Commission.
(2) The Truth and Reconciliation Commission as referred to in clause (1) shall be established by an Act.

Article 48
Inquiry, investigation and prosecution of gross violations of human rights that have been or are currently being undertaken in accordance with Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts shall remain in effect insofar as they do not contravene the provisions set forth in this Act.

Article 49
Provisions concerning the authority of Superiors Entitled to take Punitive Action and Submitting Officers as referred to in Article 74 and Article 123 of Act No. 31 of 1997 concerning Military Tribunals are deemed no longer in effect with regard to the examination of gross violations of human rights in accordance with the provisions set forth in this Act.

Article 50
With the coming into force of this Act, Government Regulation in Lieu of an Act No. 1 of 1999 concerning Human Rights Courts (State Gazette No. 191 of 1999, Supplement to the State Gazette No. 3911) is revoked and deemed no longer in effect.

Article 51
This Act comes into force on the date of its enactment.
For the public to be informed, it is ordered that this Act be promulgated in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta, 23 November 2000
PRESIDENT OF THE REPUBLIC OF INDONESIA
ABDURRAHMAN WAHID

Enacted in Jakarta, 23 November 2000
SECRETARY OF STATE OF THE REPUBLIC OF INDONESIA DJOHAN EFFENDI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2000 NUMBER 208

NOTES TO ACT NUMBER 26 OF 2000 OF THE REPUBLIC OF INDONESIA CONCERNING HUMAN RIGHTS COURTS

I. GENERAL

That human rights as set forth in the 1945 Constitution, the Universal Declaration of Human Rights, Decree of the People's Legislative Assembly No. XVII/MPR/1998, and Act No. 39 of 1999 concerning Human Rights, must be executed with a full sense of responsibility in accordance with the philosophy embodied in Pancasila the 1945 Constitution and the principles of international law.

Decree of the People's Legislative Assembly No. XVII/MPR/1998 concerning Human Rights charges leading state agencies and all government apparatus with the task of respecting, upholding, and disseminating information on human rights to all members of the public, and with ratifying various United Nations instruments concerning Human Rights insofar as these do not contravene Pancasila and the 1945 Constitution.

Providing protection of human rights may be achieved by the establishment of a National Commission on Human Rights and Human Rights Courts, and by the establishment of a Truth and Reconciliation Commission.

To execute the mandate of Decree of the People's Legislative Assembly No. XVII/MPR/1998 concerning Human Rights, Act No. 39 of 1999 concerning Human Rights was established. Establishment of this Act constitutes a realisation of the Indonesian nation's responsibility as a member of the United Nations. In addition, establishment of the Act concerning Human Rights involves a mission to execute a moral and legal responsibility to hold in the highest esteem and implement the Universal Declaration of Human Rights drawn up by the United Nations, as well as provisions set forth in several other legal instruments governing matters pertaining to human rights which have been ratified and/or approved by the state of the Republic of Indonesia.

The approach to developing law can be viewed from the national interest or from the international interest, and so to resolve cases of gross violations of human rights and to restore security and peace in Indonesia it is necessary to set up Human Rights Courts, which are special courts for dealing with gross violations of human rights. To realise the establishment of these Human Rights Courts, it is necessary to set forth provisions in an Act concerning Human Rights.

The basis for establishment of an Act concerning Human Rights Courts is as set forth in Article 104 clause (1) of Act No. 39 of 1999 concerning Human Rights.

It is hoped that the Act concerning Human Rights Courts can protect the human rights of both the individual and society, and provide a basis for law enforcement, legal certitude, justice, and a sense of security of both the individual and society with regard to gross violations of human rights.

Establishment of an Act concerning Human Rights Courts is based on the following considerations:

Gross violations of human rights are extraordinary crimes and have a broad national and international impact. They do not constitute crimes governed under the Criminal Code and they give rise to both material and non-material loss arising from a feeling of insecurity of the individual or society. Therefore it is necessary to immediately restore legal supremacy in the interests of realising peace, order, calm, justice, and prosperity for all the people of Indonesia;

Gross violations of human rights require inquiry, investigation, prosecution, and hearing of a specific nature.

With regard to the specific approach to dealing with gross violations of human rights:
a) it is necessary to establish an ad hoc team, ad hoc investigator, ad hoc public prosecutor, and ad hoc judges to inquire into gross violations of human rights;
b) it is necessary to establish that inquiry into gross violations of human rights may be conducted only by the National Commission on Human Rights, and that contrary to provisions set forth in the Criminal Code, the investigator is not authorised to receive any reports or complaints;
c) it is necessary to set forth provisions concerning the time constraints for conducting investigation, prosecution and court hearings;
d) it is necessary to set forth provisions concerning the protection of victims and witnesses;
e) it is necessary to set forth provisions establishing the non-expiry of gross violations of human rights.

Concerning gross violations of human rights such as genocide and crimes against humanity, for which provisions in international law apply retroactively, provisions concerning the obligation to waive restrictions set forth in legislation shall apply, as set forth in Article 28 J clause (2) of the 1945 Constitution, which reads: “In executing the rights and freedoms of every person it is necessary to waive any restrictions set forth in law for the sole purpose of guaranteeing the recognition and of upholding the rights and freedoms of another person, in the interests of justice and in consideration of moral and religious values, security, and public order in a democratic society”. In other words, the principle of retroactivity is in effect for the protection of human rights themselves based on Article 28 J clause (2) of the 1945 Constitution. Therefore, this Act also sets forth provisions governing ad hoc Human Rights Courts to hear and rule on cases of gross violations of human rights perpetrated prior to the coming into force of this Act. Ad hoc Human Rights Courts, which are within the context of a Court of General Jurisdiction, are set up on the recommendation of the House of Representatives for certain incidents upon the issue of a Presidential Decree.

In addition to ad hoc Human Rights Courts, this Act also mentions a Truth and Reconciliation Commission as referred to in Decree of the People’s Legislative Assembly No. V/MPR/2000 concerning of Consolidation of National Unity and Integrity. The Truth and Reconciliation Commission will be established under an Act as an extra-judicial agency charged with establishing the truth by discussing past misuse of authority and violations of human rights, in accordance with prevailing law and legislation, and with undertaking reconciliation in the common interest of the nation.

II. ARTICLE BY ARTICLE

Article 1 Self-explanatory

Article 2 Self-explanatory

Article 3 Self-explanatory

Article 4 The meaning of “hear and rule on” in this provision includes resolving the relevant case by providing compensation, restitution, and rehabilitation in accordance with prevailing law.

Article 5 Provisions set forth in this Article are intended to protect Indonesian citizens who perpetrate gross violations of human rights outside the geographical territory of Indonesia, in the sense that they will be prosecuted in accordance with the provisions set forth in this Act concerning Human Rights Courts.

Article 6 A case of gross violation of human rights committed by a person under the age of 18 (eighteen), shall be heard and ruled on by a District Court.

Article 7 "The crime of genocide and crimes against humanity" in this provision are in accordance with "The Statute of The International Criminal Court" (Article 6 and Article 7).

Article 8
- Letter a A "group member" means one or more members of a group.
- Letter b Self-explanatory
- Letter c Self-explanatory
- Letter d Self-explanatory
- Letter e Self-explanatory

Article 9 "direct attack on civilians" means an action taken against civilians in follow up to policy of an authority or policy related to an organisation.
- Letter a The meaning of "killing" is as defined in Article 340 of the Criminal Code.
- Letter b The meaning of "extermination" encompasses deliberate action taken to cause suffering, including action to obstruct the supply of food and medicines that causes the extermination of a part of a population.
- Letter c The meaning of "enslavement" in this provision includes trade in humans, particularly the trading of women and children.
- Letter d The "enforced eviction or movement of civilians" means the enforced movement of people by eviction or other enforced action from their official place of residence, except for reasons permitted by international law.
- Letter e Self-explanatory
- Letter f "torture" in this provision means deliberately and illegally causing gross pain or suffering, physical or mental, of a detainee or person under surveillance.
- Letter g Self-explanatory
- Letter h Self-explanatory
- Letter i The meaning of "enforced disappearance of a person" is the capture, detention, or kidnap of a person by or with force, sanctioned or approved by the state or by the policy of an organisation, followed by a refusal to recognise this appropriation of freedom or to provide information regarding the fate or location of the person involved, with the intention of denying him or her legal protection for a long period of time.
- Letter j The meaning of "the crime of apartheid" is inhumane action of a nature corresponding to the crimes referred to in Article 8 perpetrated in the context of an oppressive and authoritative institutional regime by a particular racial group on another racial group or other racial groups, for the purposes of upholding that regime.

Article 10 Self-explanatory

Article 11
- Clause (1) Self-explanatory
- Clause (2) Self-explanatory
- Clause (3) Self-explanatory
- Clause (4) Self-explanatory
- Clause (5) The meaning of "1 (one) day" is within 24 (twenty-four) hours from the time the suspect is arrested.
- Clause (6) Self-explanatory

Article 12 Self-explanatory

Article 13 Self-explanatory

Article 14 Self-explanatory

Article 15 Self-explanatory

Article 16 Self-explanatory

Article 17 Self-explanatory

Article 18 Clause (1) Only the National Commission on Human Rights has the authority to conduct inquiries in order to preserve the objectivity of inquiry findings since the National Commission on Human Rights is an independent organisation.

Clause (2) The meaning of "public constituent" is public figures and members of the public who are professional and dedicated, of high integrity, and who have full comprehension of matters pertaining to human rights.

Article 19 Conducting an "inquiry" in this provision means a series of actions taken by the National Commission on Human Rights in line with its pro-justiciary scope.

Clause (1)
- Letter a Self-explanatory
- Letter b The meaning of "receive" is to receive, record, and register a report or complaint concerning the occurrence of a gross violation of human rights along with accompanying evidence.
- Letter c Self-explanatory
- Letter d Self-explanatory
- Letter e Self-explanatory
- Letter f Self-explanatory
- Letter g The meaning of "order of the investigator" is a written order issued by the investigator on the request of the inquirer. The investigator shall issue the aforementioned order immediately upon receiving the request from the inquirer.
- Item 1) Self-explanatory
- Item 2) "Search" in this provision includes body and or house searches.
- Item 3) Self-explanatory
- Item 4) Self-explanatory

Clause (2) Self-explanatory

Article 20 Clause (1) In this provision the meaning of "sufficient preliminary evidence" is preliminary evidence to sufficient to suspect a criminal action has been perpetrated by a person by reason of his/her actions or condition, and that based on the preliminary evidence it is appropriate to suspect that person is a perpetrator of a gross violation of human rights. During an inquiry, to respect the principle of presumption of innocence, the findings of inquiry are closed (not made public) insofar as with regard to the names of those suspected of perpetrating gross violations of human rights, in accordance with Article 92 of Act No. 39 of 1999 concerning Human Rights The meaning of "follow up" is to conduct an investigation.

Clause (2) Self-explanatory

Clause (3) In this provision the meaning of "insufficient" is not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation.

Article 21 Clause (1) Self-explanatory

Clause (2) Self-explanatory

Clause (3) In this provision the meaning of a "public constituent" is a political organisation, public organisation, non-government organisation, or other public organisation such as an institute of higher education. The word "may" is used in this provision to allow appointment by the Attorney General of an ad hoc investigator as deemed necessary.

Clause (4) Self-explanatory

Clause (5) Self-explanatory

Article 22 Self-explanatory

Article 23 Clause (1) Self-explanatory

Clause (2) An ad hoc public prosecutor from among public constituents shall first and foremost be appointed from among former public prosecutors in a Court of General Jurisdiction or from among prosecuting attorneys in Military Courts.

Clause (3) Self-explanatory

Clause (4) Self-explanatory

Article 24 Self-explanatory

Article 25 Self-explanatory

Article 26 At the time of taking the oath/pledge, certain words shall be uttered in accordance with the person's religion. For example, followers of the Islamic religion shall say "I swear by God" before reading the oath, and Christians/Catholics shall say "So help me God" after reading the oath.

Article 27 Clause (1) See notes for Article 4

Clause (2) The purpose of the provisions set forth in this clause is to ensure that the judges' panel always comprises an odd number of judges.

Clause (3) Self-explanatory

Article 28 Clause (1) "Ad hoc judge" is a judge who is not a judge by career and who meets the requirements of being professional, dedicated, and of high integrity, and having a full understanding of the characteristics of a welfare state founded on justice, and respect for human rights and human obligations.

Clause (2) Self-explanatory

Clause (3) Self-explanatory

Article 29 Item 1 Self-explanatory

Item 2 Self-explanatory

Item 3 Self-explanatory

Item 4 The meaning of "expertise in law" includes among others, a degree in syariah law or a degree from a Tertiary Police Academy.

Item 5 Self-explanatory

Item 6 Self-explanatory

Item 7 Self-explanatory

Item 8 Self-explanatory

Article 30 See notes for Article 26

Article 31 Self-explanatory

Article 32 Self-explanatory

Article 33 Clause (1) Self-explanatory

Clause (2) Self-explanatory

Clause (3) Self-explanatory

Clause (4) Self-explanatory

Clause (5) Self-explanatory

Clause (6) Letter a Self-explanatory

Letter b Self-explanatory

Letter c Self-explanatory

Letter d Self-explanatory

Letter e Self-explanatory

Letter f Self-explanatory

Letter g Self-explanatory

Letter h Self-explanatory

Article 34 Self-explanatory

Article 35 The meaning of “compensation” is compensation provided by the state because the perpetrator is unable to provide compensation in full as is his or her responsibility. The meaning of “restitution” is compensation provided a victim or a victim’s family by the perpetrator or a third party. Restitution may constitute: returning property paying compensation for loss or suffering; or covering the cost of a particular action. The meaning of “rehabilitation” is restoration of the previous position, for example of honour, good name, office, or other right.

Article 36 Self-explanatory

Article 37 Self-explanatory

Article 38 Self-explanatory

Article 39 Self-explanatory

Article 40 Self-explanatory

Article 41 The meaning of “plotting” is when 2 (two) or more people agree to perpetrate a gross violation of human rights.

Article 42 Self-explanatory

Article 43 Clause (1) Self-explanatory

Clause (2) The House of Representatives of the Republic of Indonesia may recommend the setting up of an ad hoc Human Rights Court based on suspicions that a gross violation of human rights has occurred subject to certain locus and tempus delicti conditions prior to the enactment of this Act.

Clause (3) Self-explanatory

Article 44 Self-explanatory

Article 45 Self-explanatory

Article 46 Self-explanatory

Article 47 The purpose of provisions set forth in this Article is to provide an alternative method of reconciliation of gross violation of human rights, outside a Human Rights Court.

Article 48 Self-explanatory

Article 49 This provision is meant to apply only to gross violations of human rights, and its jurisdiction applies to both civilians and military personnel.

Article 50 Self-explanatory

Article 51 Self-explanatory

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 4026.

Appendix 3A

Unofficial translation

Case File No. : 02/HAM/TIM-TIM/02/2002

I. DEFENDANT
Name : **ABILIO JOSE OSORIO SOARES**
Place of Birth : Laclubar, Kabupaten Manatuto East Timor
Age / Date of Birth : 53 years / June 2, 1947
Sex : Male
Nationality : Indonesian
Address : Jl. Tim Tim Km II Kupang NTT.
Ph. (0380) 828931
HP 0811382768
Religion : Catholics
Occupation : Civil Servant
Education : Middle School
Last Occupation : Former Governor of East Timor

II. The defendant in this case had never been detained

III. INDICTMENT

ONE:

The defendant ABILIO JOSE OSORIO SOARES was appointed as Governor of East Timor under Presidential Decision Number 260/M/Th. 1997 dated September 16, 1997, on April 3,4,5,6, 1999, April 17, 1999, September 4,5,6, 1999, or in April and September 1999, located in Liquisa Regency, Covalima Regency (in the city of Suai), in Dilli Regency and Dilli Administrative City or at least in East Timor Province Territory, where Human Rights Ad Hoc Court of the Central Jakarta District Court which has the authority to preside and rule over the case under PRESIDENTIAL DECREE NO. 96/2001, Article 2, concerning the Changes of PRESIDENTIAL DECREE No. 53/2001 on the Establishment of Human Rights Ad Hoc Court of the Central Jakarta District Court. The defendant as Governor of East Timor and as superordinate of the Head of Liquisa Regency, LEONITA MARTINS, the Head of Covalima Regency, Drs. HERMAN SEDYONO and Deputy Commander of Pro-Integration Forces (PPI), EURICO GUTTERES in Dilli Regency/Dilli Administrative City who bear criminal responsibility for serious human rights violations committed by his subordinates: Head of Liquisa Regency, LEONITO MARTINS, Head of Covalima Regency, Drs. HERMAN SEDYONO, Deputy Commander of The Pro-Integration Forces (PPI) in Dilli Regency/ Dilli Administrative city, which were under his authority and control and the defendant did not take any appropriate and correct control upon his subordinates.

The defendant knew about or deliberately ignored information that obviously showed that his subordinates: Head of Liquisa Regency, LEONITO MARTINS, Head of Covalima Regency, Drs. HERMAN SEDYONO, Deputy Commander of Pro-Integration Forces (PPI) were committing or had just committed serious human rights abuses in the form of murder committed in a widespread or systematic fashion, and directed against pro-independence civilians. In this case, the defendant as Governor and Head of Government in East Timor Province under Law No.5/1974 on Principles of Local Government who was responsible for all aspects of social, political, economic, and cultural life as well as for upholding law and maintaining order, the defendant did not conduct or did not take any appropriate steps such as to coordinate with

security forces in preventing or quelling the actions of his subordinates, nor did he turn them over to responsible authorities to be investigated, questioned, and prosecuted, which then resulted on attack to civilians as follows:

Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in Pastor RAFAEL DOS SANTOS's residence in Liquisa Church compound, resulting in 22 people dead and 21 people wounded.

- Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in MANUEL VIEGAS CARRASCALAO's residence in Dilli, resulting in 12 people dead and 4 people wounded.

- Attack committed by Pro-Integration group on September 4 and 5, 1999 against Pro-Independence civilians who had taken refuge in Dilli diocesan compound, Dilli, resulting in 46 people dead.

- Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in Bishop BELLO's residence in Dilli, resulting in 10 people dead and 1 person wounded.

- Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in Ave Maria Church in Suai (Covalima Regency), resulting in 27 people dead.

The defendant's actions were committed as follows:

- Before the implementation of popular consultation to determine East Timorese's future, the defendant hold a meeting in East Timor Province governor office in Dilli with Regency Heads in order to giving them direction, in which the defendant said that in order to face all possibilities, a political organization for ballot participants called Forum Persatuan Demokrasi dan Keadilan (FPDK)/ United Front for Democracy and Justice and Barisan Rakyat Timor-Timur/ East Timor Popular Front was needed to be established in every regencies. This organization was established to accommodate the aspiration of Pro-Integration East Timorese in facing the consultation, and also to facilitate Pam Swakarsa (militia civil guard) organization based on Law No.20/1982.

- The meeting concluded that the following social organizations should be established in every regencies:
a. Pam Swakarsa (militia civil guard) funded by each regency's government budget.
b. Grassroots organizations which grew spontaneously but whose existence were recognized de facto by the defendant and whose funding came from pro-integration people themselves:

- In Covalima Regency, the organizations established were:

- Pam Swakarsa (militia civil guard)
- FPDK (Forum Persatuan Demokrasi dan Kaedilan) / United Front for Democracy and Justice
- BRTT (Barisan Rakyat Timor Timur) / East Timor Popular Front
- MAHIDI (Mati Hidup Demi Indonesia) / Life or Dead for the Sake of Indonesia
- LAKSAUR

- In Liquisa Regency, the organizations established were:

Pam Swakarsa
FPDK (Forum Persatuan Demokrasi dan Keadilan)
BRTT (Barisan Rakyat Timor Timur)

BMP (Besi Merah Putih)

- In Dilli Regency and Administrative City, the organizations established were:

Pam Swakarsa
Aitarak
Pejuang Pro Integrasi
Milisi
FPDK, BRTT
BMP (Besi Merah Putih)
Oan Timor Badamai
Liquisa
Saka Eimere Darah Merah Putih
MAHIDI (Mati Hidup Demi Indonesia)

- After the popular consultation had been conducted, these organizations joined into the Pro-Integration Forces (Pasukan Pejuang Integrasi/PPI) and Uni Timor Satria/UNTAS under the leadership of EURICO GUTTERES.

- The organization had been reported to the defendant by the Deputy Commander of The Pro-Integration Forces (PPI) and therefore the defendant had known about its existence and has responsibility to supervise the organization.

- The defendant knew that there were irregularities at polling places during the popular consultation to determine option and the defendant also knew that there were emerging confusion, fighting, mugging, murder, burnings, and destruction such as:

1. In Liquisa Regency

- As the popular consultation in East Timor Province was approaching, particularly in Liquisa Regency, the security situation and public order began to rise, resulting in disputes, conflicts, and enmities between groups of Pro-Independence and of Pro-Integration Massa Besi Merah Putih (BMP), which the majority of its members were to become members of Pro-Integration Forces.

- The disputes, conflicts, and enmities became more extensive, when on April 3, 1999 Pro-Independence group had threaten to murder Pro-Integration Massa Besi Merah Putih (BMP) in Dato village, Liquisa District, Liquisa Regency.

- On April 4, 1999, Pro-Independence masses under the leadership of Jasinto Da Costa Pereira burned down houses belonged to Pro-Integration Massa Besi Merah Putih because Besi Merah Putih mass from Pukelara and Maubara burned down Felisberto Dos Santos' house and killed his son Elidio, a member of Pro-Independence masses.

- On April 5, 1999, Pro-Independence group felt threatened that they would be killed by Pro-Integration Massa Besi Merah Putih, Pro-Independence masses were beginning to take refuge at Pastor Rafael Dos Santos' residence in Liquisa Church compound. Pastor Henry from Maubara gave information that Pro-Integration Massa Besi Merah Putih would attack Liquisa territory.

- Based on Pastor Henry's information, Pro-Independence group led by Jasinto Dacosta Pereira and his supporters left for Maubara Liquisa border to prevent the Pro-Integration Massa Besi Merah Putih's attack plan but when they met at Batu Blete, Pro-Integration Massa Besi Merah Putih together with the Indonesian army and the Indonesian police (TNI/POLRI)

shot supporters of Pro-Independence resulting in 2 people killed and 7 people wounded, among them were Jose from Hatukesi and Sirilio Dos Santos who got bullets on their tighs.

- At 1.00 p.m. Eastern Indonesian Time, groups of Pro-Independence masses from several places, which the amount of more or less than 2000 people, has taken refuge at Pastor RAFAEL DOS SANTOS' residence in Liquisa church compound. On the same time, personnels of the Indonesian army and the Indonesian police had surrounded the Liquisa Church compound, and minutes later Besi Merah Putih (BMP) mass arrived and opened fire to the air, therefore Pro-Independence group refugees became panic and scared.

- Later on, on Tuesday, April 6, 1999, around 7 a.m. Eastern Indonesian Time, more or less than 300 people from Pro-Integration Massa Besi Merah Putih led by MANUEL SOUSA strated to gather and encircle Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound, among them there were people bringing firearms, homemade firearms, machetes, samurais, knives, sticks, spikes, arrows, and other kinds of heavy tools. They shouted at Pro-Independence refugees to leave the Church compound.

- Around 8 o'clock in the morning, Pastor RAFAEL DOS SANTOS was visited by 2 Brimob personnels namely DAMIANUS DAPA and FRANSISKUS SALAMALI who demanded that JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS to be handed over to the Pro-Integration Massa Besi Merah Putih group, but the demand was rejected by Pastor RAFAEL DOS SANTOS because he was afraid that they would be killed.

- Around 11.30 a.m. Indonesian Eastern Time, 5 (five) personnels of the Indonesian police led by 1st Lieutenant Police JHON REA visited Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound, demanding him to hand over JACINTO DA COSTA PEREIRA. Pastor RAFAEL DOS SANTOS was willingly to hand him over with a condition that JACINTO DA COSTA PEREIRA and his friends would be brought to East Timor Provincial Police Command in Dilli and Besi Merah Putih masses should be withdrawn from Liquisa.

- At that moment, Pro-Integration Massa Besi Merah Putih groups were threatening the Pro-Independence refugees and shouted "Leave this compound, or the second offence will come, eventhough you were inside the Church, we will attack the Church at 1.00 p.m. Indonesian Eastern Time", while throwing stones at Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound which was surrounded by stonewall. The situation was very threatening and frightening because the Indonesian Army troops from the District Military Command 1638/Liquisa and the Brimob/Indonesian Police personnels from Liquisa District Police Command were joining with Pro-Integration Massa Besi Merah Putih group.

- Under the condition offered by Pastor RAFAEL DOS SANTOS, 1st Lieutenant Police JOHN REA went to the District Military Command 1638/ Liquisa to report the condition and also made a report that Pro-Integration Massa Besi Merah Putih will attack Liquisa Church compound if until 12.00 noon Indonesian Eastern Time, JACINTO DA COSTA PERIERA was not handed over.

- In responding to the 1st Lieutenant JHON REA's report, the Deputy Commander of Military Command Post 164/WD, Col. Inf. MUJIONO, held a meeting with ASEP KUSWANI, as the Military District Commander 1638/ Liquisa, Drs. ADIOS SALOVA, as the Liquisa District Police Commander, and YAYAT SUDRAJAT, as the Tribuana VIII Task Force Commander, LEONETO MARTINS, as the Head of Liquisa Regency, and later on he ordered LEONETO MARTINS to tell Pastor Rafael Dos Santos that he agreed with the condition offered by Pastor Rafael Dos Santos; The order was rejected by LEONETO MARTINS with a reason that he was afraid that he would be killed if he met Pastor Rafael Dos Santos; therefore the Deputy Commander of Military Command Post 164/WD ordered the 1st Lieutenant Police JHON REA to meet Pastor Rafael Dos Santos.

- Around 12.15 p.m. Indonesian Eastern Time, when the 1st Lieutenant Police JHON REA headed for Liquisa Church compound, it was heard fires at the location and was followed by an attack to Liquisa Church compound by Pro-Integration Massa Besi Merah Putih group led by MANUEL SOUSA and JOSE AFAAT (Head of Maubara District), the Indonesian army troops, among others, JOSE MATHEUS, TOME DIOGO, ABILIO ALVES, CARLOS, ANTONIO GOMES, ISAK DOS SANTOS, GEORGE VIEGAS, MAURISIO, JEFERINO, ZAARIAS, MANUEL MARTINS, JAOB, and personnels from the Indonesian Police, among others, ALFONSO and CHICO from the Liquisa Police, and committed murder by means of shooting fire by firearms, homemade firearms, there were people slashing with machetes and samurais, there were people using bows and arrows, there were people stabbing with knives, and there were people hitting with other kinds of heavy tools against masses of Pro-Independence refugees who were taking shelter at Pastor Rafael Dos Santos' residence in Liquisa Church compound, resulting in 22 civilians from Pro-Independence group were killed, namely:

1. JACINTO DA COSTA PEREIRA
2. AGUSTINHO
3. JOANICO
4. ABRAO DOS SANTOS
5. AGUSTO MAUZINHO
6. AMEKO DOS SANTOS
7. NARSIZIO
8. HERMINO DOS SANTOS
9. FERNANDO DOS SANTOS
10. LAURINDO PEREIRA
11. MARIKI DOS SANTOS
12. MANUEL LISBOA
13. VITOR DA COSTA
14. ALBERTO OLIVEIRA
15. AMANDIO CESAR DOS SANTOS
16. CESAR DOS SANTOS
17. AGUSTINHO DOS SANTOS
18. LAURINDA DOS SANTOS
19. SANTIAGO
20. JOHNNY / MAU SOKO
21. annonymous grave of Liquisa case in Maubara graveyard
22. annonymous grave of Liquisa case in Maubara graveyard

The wounded victims, more or less than 21 people, namely:

1. JOSE RAMOS
2. FRANCISCO DOS SANTOS
3. JOAO PEREIRA
4. ABILIO DOS SANTOS
5. JOSE NUNES SERRAO
6. LUCAS SOARES
7. MATEUS PANLERO
8. RICARDO RODRIGUES PEREIRA
9. LAKUMAU
10. JANUARI
11. FELIS
12. JOAO KUDA
13. ARMANDO
14. ANTONIO
15. LUIS

16. EMILIO
17. LUCAS DOS SANTOS
18. JOAO DOS SANTOS
19. SEBASTIAO
20. RAMIRIO
21. MATIUS ALVES CORREIRA

2. In Dilli Regency/ Dilli Administrative City

- On Saturday, April 17, 1999, around 9.00 a.m. Indonesian Eastern Time, Pam Swakarsa inauguration rally was held in the East Timor Governor office courtyard. The rally was attended by several district officials such as East Timor Governor ABILIO JOSE OSORIO SOARES, DOMINGOS M. D. SOARES, SH.MS (Head Regency of Dilli), MATHIUS MAIA (Mayor of Dilli Administrative City), JOSE DA SILVA TAVARES, as Commander of the Pro-Integration Forces (PPI) and EURICO GUTTERES, as Deputy Commander of The Pro-Integration Forces or as superordinate of the Aitarak group and Jose Ximenes.

- At the rally, EURICO GUTTERES who knew that his supporters (Aitarak forces or groups/Pro-Integratian Forces, who were fully equipped with weapons, were showing re-sentment against the Pro-Independence group), delivered in his speech before his supporters, and the words used, among others,
- All CNRT leaders should be exterminated
- Kill all CNRT leaders
- People who were pro to independence should be killed
- Kill Manuel Viegas Carrascalao
- Carrascalao family should be killed
- Kill Leandro Issac, David Dias Ximenes, Manuel Viegas Carrascalao, kill Manuel Viegas Carrascalao family

- After the Pam Swakarsa inauguration rally was over, some members of Pro-Integratian Forces left the place and marched towards ALEANDRO ISSAC's residence, entered from back door and opened fire, destroyed the content, and shot toward parking space behind the house. Later on, they attacked Manuel Viegas Carrascalao's residence in Jl. Antonio De Carvalho No. 13 Dilli East Timor which housed 136 Pro-Independence refugee groups from Maubara-Liquisa, Turiscai, Alas and Ainaro, the result of the attack were 12 people killed namely:
1. MARIO MANUEL CARRASCALAO (MANELITO), was burried in Dilli
2. RAUL DOS SANTOS CANCELA, was burried in Maubara
3. ALVONSO RIBERO (same as above)
4. RAFAEL DA SILVA (same as above)
5. ALBERTO DOS SANTOS (same as above)
6. JOAO DOS SANTOS (same as above)
7. ANTONINO DO SOARES (same as above)
8. CRISANTO DOS SANTOS (same as above)
9. CESAR DOS SANTOS (same as above)
10. AGUSTINO B. X. LAY (same as above)
11. EDUARDO DE JESUS (same as above)
12. JANUARIO PEREIRA (same as above)

The names of 4 (four) wounded people were:

1. Witness VICTOR DO SANTOS (APIN), wounded on his left hand and middle finger.
2. Witness ALFREDO SANCHES, was stabbed on his left back and left finger.
3. Witness FLORINDO DE JESUS, was cut on his right and left hands, and his right ear was cut and shot.

4. MIKI suffered from cutting..

- On Monday, September 6, 1999, around 11.00 a.m. Indonesian Eastern Time, Pro-Integration groups came to Bishop Bello's residence in Dilli. After shooting at Bishop Bello's home, Pro-Integration groups forced Pro-Independence refugee groups who were taking shelter inside Bishop Bello's home to go out, not long after the Pro-Independence refugee groups gathered at Bunda Maria Park in front of Bishop Bello's home, a shout "FIRE" was heard and than Pro-Integration groups attacked by shooting towards Pro-Independence refugee groups, resulting in a Pro-Independence civilian named NUNU and one anonymous person were dead, Pro-Integration groups were also destroying and burning down Bishop Bello's home.

3. In Covalima Regency (Suai)

- After the ballot/popular consultation was announced on August 30, 1999, for East Timorese to choose between integration with Indonesian state, nation, and government, or declaring independence from Indonesia (to have their own state and nation), in which the anti-integration (Pro-Independence) group won the votes, intense situation was arising. High tension emerged between groups who declared Pro-Independence/anti integration and those from Pro-Integration group.

- In this intense situation, the more or less than 2000 civilians from Pro-Independence groups, priests and nuns, were taking refuge in Ave Maria Catholic Church compound.

- On September 6, 1999, an attack, using firearms and homemade firearms, occurred committed by Pro-Integration groups consisting of, among others, IZEDIO MANEK, OLIVIO MENDOZA MORUK ALIAS OLIVIA MOU, MARTINUS BERE, MOTORNUS, DAN VASCO DA CRU, who have joined Laksaur under the leadership of OLIVIO MARUK, against Pro-Independence civillians including priests and nuns who were taking shelter and were inside Ave Maria Church compound, resulting in 27 civilians, who were taking refuge inside Ave Maria Catholic Church compound, were dead:

a. 17 males consisted of:
- 14 civilians
- 3 priests
b. 10 females

For the above serious human rights violations, the defendant knew or deliberately ignored information obviously showing that his subordinates Head of Liquisa Regency, Head of Covalima Regency, Deputy Commander of the Pro-Integration Forces (EURICO GUTTERES) and other mass organizations, such as Pam Swakarsa under the direction of East Timor Provincial Government in Dilli, were committing or had just committed serious human rights abuse in the form of murder against Pro-Independence civilians who were inside Liquisa Church compound, Ave Maria Church compound, or in other places in East Timor Province territory. For that events, the defendant did not take appropriate actions in his authority to prevent or to quell the actions, where the defendant did not do any prevention, or steps such as ordering the security personnel to prevent conflict between Pro-Integration and Pro-Independence groups nor did he turn the latter over to appropriate authorities for guidance, investigation and prosecution.

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

TWO:

The defendant ABILIO JOSE OSORIO SOARES was appointed as Governor of East Timor under Presidential Decision Number 260/M/Th. 1997 dated September 16, 1997, on April 3,4,5,6, 1999, April 17, 1999, September 4,5,6, 1999, or in April and September 1999, located in Liquisa Regency, Covalima Regency (in the city of Suai), in Dilli Regency and Dilli Administrative City or at least in East Timor Province Territory, where Human Rights Ad Hoc Court of the Central Jakarta District Court which has the authority to preside and rule over the case under PRESIDENTIAL DECREE NO. 96/2001, Article 2, concerning the Changes of PRESIDENTIAL DECREE No. 53/2001 on the Establishment of Human Rights Ad Hoc Court of the Central Jakarta District Court. The defendant as Governor of East Timor and as superordinate of the Head of Liquisa Regency, LEONITA MARTINS, the Head of Covalima Regency, Drs. HERMAN SEDYONO and Deputy Commander of Pro-Integration Forces (PPI), EURICO GUTTERES in Dilli Regency/Dilli Administrative City who bear criminal responsibility for serious human rights violations committed by his subordinates: Head of Liquisa Regency, LEONITO MARTINS, Head of Covalima Regency, Drs. HERMAN SEDYONO, Deputy Commander of The Pro-Integration Forces (PPI) in Dilli Regency/ Dilli Administrative city, which were under his authority and control and the defendant did not take any appropriate and correct control upon his subordinates.

The defendant knew about or deliberately ignored information that obviously showed that his subordinates: Head of Liquisa Regency, LEONITO MARTINS, Head of Covalima Regency, Drs. HERMAN SEDYONO, Deputy Commander of Pro-Integration Forces (PPI) were committing or had just committed serious human rights abuses in the form of abuse committed in a widespread or systematic fashion, and directed against pro-independence civilians. In this case, the defendant as Governor and Head of Government in East Timor Province under Law No.5/1974 on Principles of Local Government who was responsible for all aspects of social, political, economic, and cultural life as well as for upholding law and maintaining order, the defendant did not conduct or did not take any appropriate steps such as to coordinate with security forces in preventing or quelling the actions of his subordinates, nor did he turn them over to responsible authorities to be investigated, questioned, and prosecuted, which then resulted on attack to civilians as follows:

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- Attack committed by Pro-Integration group on September 4 and 5, 1999 against Pro-Independence civilians who had taken refuge in Dilli diocesan compound, Dilli, resulting in 46 people dead.

- Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in Bishop BELLO's residence in Dilli, resulting in 10 people dead and 1 person wounded.

- Attack committed by Pro-Integration group against Pro-Independence civilians who had taken refuge in Ave Maria Church in Suai (Covalima Regency), resulting in 27 people dead.

The defendant's actions were committed as follows:

- Before the implementation of popular consultation to determine East Timorese's future, the defendant hold a meeting in East Timor Province governor office in Dilli with Regency Heads in order to giving them direction, in which the defendant said that in order to face all possibilities, a political organization for ballot participants called Forum Persatuan Demokrasi dan Keadilan (FPDK)/ United Front for Democracy and Justice and Barisan Rakyat Timor-Timur/ East Timor Popular Front was needed to be established in every regencies. This organization was established to accommodate the aspiration of Pro-Integration East Timorese in facing the consultation, and also to facilitate Pam Swakarsa (militia civil guard) organization based on Law No.20/1982.

- The meeting concluded that the following social organizations should be established in every regencies:
c. Pam Swakarsa (militia civil guard) funded by each regency's government budget.
d. Grassroots organizations which grew spontaneously but whose existence were recognized de facto by the defendant and whose funding came from pro-integration people themselves:

- In Covalima Regency, the organizations established were:

- Pam Swakarsa (militia civil guard)
- FPDK (Forum Persatuan Demokrasi dan Kaedilan) / United Front for Democracy and Justice
- BRTT (Barisan Rakyat Timor Timur) / East Timor Popular Front
- MAHIDI (Mati Hidup Demi Indonesia) / Life or Dead for the Sake of Indonesia
- LAKSAUR

- In Liquisa Regency, the organizations established were:

Pam Swakarsa
FPDK (Forum Persatuan Demokrasi dan Keadilan)
BRTT (Barisan Rakyat Timor Timur)
BMP (Besi Merah Putih)

- In Dilli Regency and Administrative City, the organizations established were:

Pam Swakarsa
Aitarak
Pejuang Pro Integrasi
Milisi
FPDK, BRTT
BMP (Besi Merah Putih)
Oan Timor Badamai
Liquisa
Saka Eimere Darah Merah Putih
MAHIDI (Mati Hidup Demi Indonesia)

- After the popular consultation had been conducted, these organizations joined into the Pro-Integration Forces (Pasukan Pejuang Integrasi/PPI) and Uni Timor Satria/UNTAS under the leadership of EURICO GUTTERES.

- The organization had been reported to the defendant by the Deputy Commander of The Pro-Integration Forces (PPI) and therefore the defendant had known about its existence and has responsibility to supervise the organization.

- The defendant knew that there were irregularities at polling places during the popular consultation to determine option and the defendant also knew that there were emerging confusion, fighting, mugging, murder, burnings, and destruction such as:

1. In Liquisa Regency

- As the popular consultation in East Timor Province was approaching, particularly in Liquisa Regency, the security situation and public order began to rise, resulting in disputes, conflicts, and enmities between groups of Pro-Independence and of Pro-Integration Massa Besi Merah Putih (BMP), which the majority of its members were to become members of Pro-Integration Forces.

- The disputes, conflicts, and enmities became more extensive, when on April 3, 1999 Pro-Independence group had threaten to murder Pro-Integration Massa Besi Merah Putih (BMP) in Dato village, Liquisa District, Liquisa Regency.

- On April 4, 1999, Pro-Independence masses under the leadership of Jasinto Da Costa Pereira burned down houses belonged to Pro-Integration Massa Besi Merah Putih because Besi Merah Putih mass from Pukelara and Maubara burned down Felisberto Dos Santos' house and killed his son Elidio, a member of Pro-Independence masses.

- On April 5, 1999, Pro-Independence group felt threatened that they would be killed by Pro-Integration Massa Besi Merah Putih, Pro-Independence masses were beginning to take refuge at Pastor Rafael Dos Santos' residence in Liquisa Church compound. Pastor Henry from Maubara gave information that Pro-Integration Massa Besi Merah Putih would attack Liquisa territory.

- Based on Pastor Henry's information, Pro-Independence group led by Jasinto Dacosta Pereira and his supporters left for Maubara Liquisa border to prevent the Pro-Integration Massa Besi Merah Putih's attack plan but when they met at Batu Blete, Pro-Integration Massa Besi Merah Putih together with the Indonesian army and the Indonesian police (TNI/POLRI) shot supporters of Pro-Independence resulting in 2 people killed and 7 people wounded, among them were Jose from Hatukesi and Sirilio Dos Santos who got bullets on their tighs.

- At 1.00 p.m. Eastern Indonesian Time, groups of Pro-Independence masses from several places, which the amount of more or less than 2000 people, has taken refuge at Pastor RAFAEL DOS SANTOS' residence in Liquisa church compound. On the same time, personnels of the Indonesian army and the Indonesian police had surrounded the Liquisa Church compound, and minutes later Besi Merah Putih (BMP) mass arrived and opened fire to the air, therefore Pro-Independence group refugees became panic and scared.

- Later on, on Tuesday, April 6, 1999, around 7 a.m. Eastern Indonesian Time, more or less than 300 people from Pro-Integration Massa Besi Merah Putih led by MANUEL SOUSA strated to gather and encircle Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound, among them there were people bringing firearms, homemade firearms, machetes, samurais, knives, sticks, spikes, arrows, and other kinds of heavy tools. They shouted at Pro-Independence refugees to leave the Church compound.

- Around 8 o'clock in the morning, Pastor RAFAEL DOS SANTOS was visited by 2 Brimob personnels namely DAMIANUS DAPA and FRANSISKUS SALAMALI who demanded that JACINTO DA COSTA PEREIRA and GREGORIO DOS SANTOS to be handed over to the Pro-Integration Massa Besi Merah Putih group, but the demand was rejected by Pastor RAFAEL DOS SANTOS because he was afraid that they would be killed.

- Around 11.30 a.m. Indonesian Eastern Time, 5 (five) personnels of the Indonesian police led by 1st Lieutenant Police JHON REA visited Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound, demanding him to hand over JACINTO DA COSTA PEREIRA. Pastor RAFAEL DOS SANTOS was willingly to hand him over with a condition that JACINTO DA COSTA PEREIRA and his friends would be brought to East Timor Provincial Police Command in Dilli and Besi Merah Putih masses should be withdrawn from Liquisa.

- At that moment, Pro-Integration Massa Besi Merah Putih groups were threatening the Pro-Independence refugees and shouted "Leave this compound, or the second offence will come, eventhough you were inside the Church, we will attack the Church at 1.00 p.m. Indonesian Eastern Time", while throwing stones at Pastor RAFAEL DOS SANTOS' residence in Liquisa Church compound which was surrounded by stonewall. The situation was very threatening and frightening because the Indonesian Army troops from the District Military Command 1638/Liquisa and the Brimob/Indonesian Police personnels from Liquisa District Police Command were joining with Pro-Integration Massa Besi Merah Putih group.

- Under the condition offered by Pastor RAFAEL DOS SANTOS, 1st Lieutenant Police JOHN REA went to the District Military Command 1638/ Liquisa to report the condition and also made a report that Pro-Integration Massa Besi Merah Putih will attack Liquisa Church compound if until 12.00 noon Indonesian Eastern Time, JACINTO DA COSTA PERIERA was not handed over.

- In responding to the 1st Lieutenant JHON REA's report, the Deputy Commander of Military Command Post 164/WD, Col. Inf. MUJIONO, held a meeting with ASEP KUSWANI, as the Military District Commander 1638/ Liquisa, Drs. ADIOS SALOVA, as the Liquisa District Police Commander, and YAYAT SUDRAJAT, as the Tribuana VIII Task Force Commander, LEONETO MARTINS, as the Head of Liquisa Regency, and later on he ordered LEONETO MARTINS to tell Pastor Rafael Dos Santos that he agreed with the condition offered by Pastor Rafael Dos Santos; The order was rejected by LEONETO MARTINS with a reason that he was afraid that he would be killed if he met Pastor Rafael Dos Santos; therefore the Deputy Commander of Military Command Post 164/WD ordered the 1st Lieutenant Police JHON REA to meet Pastor Rafael Dos Santos.

- Around 12.15 p.m. Indonesian Eastern Time, when the 1st Lieutenant Police JHON REA headed for Liquisa Church compound, it was heard fires at the location and was followed by an attack to Liquisa Church compound by Pro-Integration Massa Besi Merah Putih group led by MANUEL SOUSA and JOSE AFAAT (Head of Maubara District), the Indonesian army troops, among others, JOSE MATHEUS, TOME DIOGO, ABILIO ALVES, CARLOS, ANTONIO GOMES, ISAK DOS SANTOS, GEORGE VIEGAS, MAURISIO, JEFERINO, ZAARIAS, MANUEL MARTINS, JAOB, and personnels from the Indonesian Police, among others, ALFONSO and CHICO from the Liquisa Police, and committed murder by means of shooting fire by firearms, homemade firearms, there were people slashing with machetes and samurais, there were people using bows and arrows, there were people stabbing with knives, and there were people hitting with other kinds of heavy tools against masses of Pro-Independence refugees who were taking shelter at Pastor Rafael Dos Santos' residence in Liquisa Church compound, resulting in 22 civilians from Pro-Independence group were killed, namely:

23. JACINTO DA COSTA PEREIRA
24. AGUSTINHO
25. JOANICO
26. ABRAO DOS SANTOS
27. AGUSTO MAUZINHO
28. AMEKO DOS SANTOS
29. NARSIZIO
30. HERMINO DOS SANTOS

31. FERNANDO DOS SANTOS
32. LAURINDO PEREIRA
33. MARIKI DOS SANTOS
34. MANUEL LISBOA
35. VITOR DA COSTA
36. ALBERTO OLIVEIRA
37. AMANDIO CESAR DOS SANTOS
38. CESAR DOS SANTOS
39. AGUSTINHO DOS SANTOS
40. LAURINDA DOS SANTOS
41. SANTIAGO
42. JOHNNY / MAU SOKO
43. annonymous grave of Liquisa case in Maubara graveyard
44. annonymous grave of Liquisa case in Maubara graveyard

The wounded victims, more or less than 21 people, namely:

22. JOSE RAMOS
23. FRANCISCO DOS SANTOS
24. JOAO PEREIRA
25. ABILIO DOS SANTOS
26. JOSE NUNES SERRAO
27. LUCAS SOARES
28. MATEUS PANLERO
29. RICARDO RODRIGUES PEREIRA
30. LAKUMAU
31. JANUARI
32. FELIS
33. JOAO KUDA
34. ARMANDO
35. ANTONIO
36. LUIS
37. EMILIO
38. LUCAS DOS SANTOS
39. JOAO DOS SANTOS
40. SEBASTIAO
41. RAMIRIO
42. MATIUS ALVES CORREIRA

2. In Dilli Regency/ Dilli Administrative City

- On Saturday, April 17, 1999, around 9.00 a.m. Indonesian Eastern Time, Pam Swakarsa inauguration rally was held in the East Timor Governor office courtyard. The rally was attended by several district officials such as East Timor Governor ABILIO JOSE OSORIO SOARES, DOMINGOS M. D. SOARES, SH.MS (Head Regency of Dilli), MATHIUS MAIA (Mayor of Dilli Administrative City), JOSE DA SILVA TAVARES, as Commander of the Pro-Integration Forces (PPI) and EURICO GUTTERES, as Deputy Commander of The Pro-Integration Forces or as superordinate of the Aitarak group and Jose Ximenes.

- At the rally, EURICO GUTTERES who knew that his supporters (Aitarak forces or groups/Pro-Integratian Forces, who were fully equipped with weapons, were showing resentment against the Pro-Independence group), delivered in his speech before his supporters, and the words used, among others,

- All CNRT leaders should be exterminated

- Kill all CNRT leaders
- People who were pro to independence should be killed
- Kill Manuel Viegas Carrascalao
- Carrascalao family should be killed
- Kill Leandro Issac, David Dias Ximenes, Manuel Viegas Carrascalao, kill Manuel Viegas Carrascalao family

- After the Pam Swakarsa inauguration rally was over, some members of Pro-Integratian Forces left the place and marched towards ALEANDRO ISSAC's residence, entered from back door and opened fire, destroyed the content, and shot toward parking space behind the house. Later on, they attacked Manuel Viegas Carrascalao's residence in Jl. Antonio De Carvalho No. 13 Dilli East Timor which housed 136 Pro-Independence refugee groups from Maubara-Liquisa, Turiscai, Alas and Ainaro, the result of the attack were 12 people killed namely:

5 MARIO MANUEL CARRASCALAO (MANELITO), was burried in Dilli
6. RAUL DOS SANTOS CANCELA, was burried in Maubara
7. ALVONSO RIBERO (same as above)
8. RAFAEL DA SILVA (same as above)
5. ALBERTO DOS SANTOS (same as above)
6. JOAO DOS SANTOS (same as above)
7. ANTONINO DO SOARES (same as above)
8. CRISANTO DOS SANTOS (same as above)
9. CESAR DOS SANTOS (same as above)
10. AGUSTINO B. X. LAY (same as above)
11. EDUARDO DE JESUS (same as above)
12. JANUARIO PEREIRA (same as above)

The names of 4 (four) wounded people were:

5. Witness VICTOR DO SANTOS (APIN), wounded on his left hand and middle finger.
6. Witness ALFREDO SANCHES, was stabbed on his left back and left finger.
7. Witness FLORINDO DE JESUS, was cut on his right and left hands, and his right ear was cut and shot.
8. MIKI suffered from cutting..

- On Monday, September 6, 1999, around 11.00 a.m. Indonesian Eastern Time, Pro-Integration groups came to Bishop Bello's residence in Dilli. After shooting at Bishop Bello's home, Pro-Integration groups forced Pro-Independence refugee groups who were taking shelter inside Bishop Bello's home to go out, not long after the Pro-Independence refugee groups gathered at Bunda Maria Park in front of Bishop Bello's home, a shout "FIRE" was heard and than Pro-Integration groups attacked by shooting towards Pro-Independence refugee groups, resulting in a Pro-Independence civilian named NUNU and one anonymous person were dead, Pro-Integration groups were also destroying and burning down Bishop Bello's home.

3. In Covalima Regency (Suai)

- After the ballot/popular consultation was announced on August 30, 1999, for East Timorese to choose between integration with Indonesian state, nation, and government, or declaring independence from Indonesia (to have their own state and nation), in which the anti-integration (Pro-Independence) group won the votes, intense situation was arising. High tension emerged between groups who declared Pro-Independence/anti integration and those from Pro-Integration group.

- In this intense situation, the more or less than 2000 civilians from Pro-Independence groups, priests and nuns, were taking refuge in Ave Maria Catholic Church compound.

- On September 6, 1999, an attack, using firearms and homemade firearms, occurred committed by Pro-Integration groups consisting of, among others, IZEDIO MANEK, OLIVIO MENDOZA MORUK ALIAS OLIVIA MOU, MARTINUS BERE, MOTORNUS, DAN VASCO DA CRU, who have joined Laksaur under the leadership of OLIVIO MARUK, against Pro-Independence civillians including priests and nuns who were taking shelter and were inside Ave Maria Church compound, resulting in 27 civilians, who were taking refuge inside Ave Maria Catholic Church compound, were dead:

a. 17 males consisted of:
- 14 civilians
- 3 priests
b. 10 females

For the above serious human rights violations, the defendant knew or deliberately ignored information obviously showing that his subordinates Head of Liquisa Regency, Head of Covalima Regency, Deputy Commander of the Pro-Integration Forces (EURICO GUTTERES) and other mass organizations, such as Pam Swakarsa under the direction of East Timor Provincial Government in Dilli, were committing or had just committed serious human rights abuse in the form of abuse against Pro-Independence civilians who were inside Liquisa Church compound, Ave Maria Church compound, or in other places in East Timor Province territory. For that events, the defendant did not take appropriate actions in his authority to prevent or to quell the actions, where the defendant did not do any prevention, or steps such as ordering the security personnel to prevent conflict between Pro-Integration and Pro-Independence groups nor did he turn the latter over to appropriate authorities for guidance, investigation and prosecution.

The defendant's deeds meets criminal violations towards humanity, whose behaviour could be qualified as grave human rights violations ruled and charged under article 42 paragraph (2) a and b jis article 7 b, article 9 h, article 40 Law No.26/2000 concerning the Human Rights Court.

Jakarta, February 19, 2002
Ad Hoc Prosecuting Attorney

I KETUT MURTIKA, SH

Appendix 3 B

Unofficial translation

Case File No: 01/HAM/TIM-TIM/02/2002

I. DEFENDANT

Name : **Drs. G.M. TIMBUL SILAEN**
Place of Birth : Medan/Sumatra Utara
Age/Date of Birth : 51 years/August 21, 1948
Sex : Male
Nationality : Indonesian
Address : Komplek POLRI Duren Tiga No.20 Jakarta Selatan
Religion : Christian-Protestant
Occupation : Indonesian Police
- Former East Timor Provincial Police Commander
- Current Director of Corruption at the Indonesian Police Headquarters (Pidana Korupsi)
Education : Bachelor of Economics

II. DETAINMENT

Investigator : Investigator had not detained the defendant AD HOC Prosecuting Attorney : The defendant had not been detained.

III. INDICTMENT:

ONE :

The defendant Drs. G.M. TIMBUL SILAEN as East Timor Provincial Police Commander during June 1998 to September 1998 and as Commander of Security Operations under New York Agreement (Tri Partit) dated May 5, 1999 who had the authority and responsibility to safeguard and conduct security measures and public order, security operations, law enforcement and civil service, as well as to give operational guidance and direction to police districts and their rank-and-files in his territory, but he did not use the authority and responsibility properly, in particular in the field of security and order of the society (KAMTIBNAS), herewith on April 6 and 17, 1999 and on September 5 and 6, 1999 or at least in the months of April and September 1999, located at Pastor Rafael Dos Santos's residence compound in Liquisa, Liquisa Regency, at Manuel Viegas Carascalao's residence in Jalan Antonio De Calvalho No.13, Dilli, Dilli Regency, at Bishop Bello's residence in Dilli and at Ave Maria Church compound in Suai, Covalima Regency; all of the places are located in East Timor Province or at least in one of places in Liquisa, Dilli or Covalima in East Timor Province under Human Rights Ad Hoc Court jurisdiction based on Central Jakarta District Court verdict as stated in PRESIDENTIAL DECREE No. 96, 2001 dated August 1, 2001 concerning the change of PRESIDENTIAL DECREE No. 53, 2001 on the Establishment of Human Rights Ad Hoc Court in Central Jakarta District Court; the defendant as a superordinate (East Timor Provincial Police Commander and Commander of Security Operations has commited grave human rights violation, herewith as a superordinate (East Timor Provincial Police Commander and Commander of Security Operations), he had responsibility to conduct and maintain the KAMTIBNAS in East Timor, and he held criminal responsibility for crimes against humanity in the form of murder executed as part of a widespread and systematic attack, known to the defendant that the attack aimed directly at the civilians, carried out by his subordinates under his control, because the defendant as a superordinate had the authority to command police districts and their rank-and-files in Dilli, Liquisa and Covalima as well as the militias, such as Aitarak group, Besi Merah Putih (BMP)

group and the civil guard (Pam Swakarsa) under his control in the field of KAMTIBNAS, did not exert appropriate control over his subordinates in the sense that he knew or deliberately ignored information that clearly showed that his subordinates were committing, or had just committed, grave human rights violation and took no appropriate action when it was his responsibility to prevent or stop these actions or to hand the offenders over to the appropriate authorities for investigation, question, and prosecution. The actions committed by the defendant was done in the form of:----------

In maintaining and conducting the KAMTIBNAS, the defendant as East Timor Provincial Police Commander and Commander of Security Operations, was assisted by staffs and in the field was assisted by district police commanders and their rank-and-files in East Timor territory according to the East Timor Provincial District Organizational Charts mentioned in SKEP POLRI No. POL.SKEP-14/XII/1993 dated December 31, 1993 on the Principle and Procedure of the Bodies of Regional Police Level.

The defendant as East Timor Provincial Police Commander and Commander of Security Operations deliberately knew that he has the authority, duty and responsibility to carry out the Kamtibnas in East Timor territory.

After Indonesian government made policies to conduct a popular consultation for East Timor people under PRESIDENTIAL DECREE No. 43, 1999 dated May 18, 1999 concerning the Team for Organizing and Supervising the Agreement between Indonesian Government and Portugal on East Timor Affairs, later followed by Presidential Instruction No.5, 1999 concerning the Steps of Execution with regards to the enactment of the Agreement between Indonesian Government and Portugal on East Timor Affairs, later elaborated in the Coordinating Minister of Politics and Security's Decision No.13/MENKO/POLKAM/1999 dated June 2, 1999 concerning the Task Force of the Coordinating Minister of Politics and Security as Head of the Team for Organizing and Supervising the Agreement between Indonesian Government and Portugal on East Timor Affairs, taking a policy to conduct a ballot/popular consultation for East Timor people to determine whether the East Timor Province would or would not recede from Indonesia's territory, public order and security began to rise resulting in disputes, conflicts, and enmities between pro-integration/autonomy groups consisting of Aitarak mass, BMP (Besi Merah Putih) mass, Pam Swakarsa (civil guard), with pro-independence masses in defending their groups' interests.

The disputes, conflicts, and enmities become more extensive, as on April 6, 1999, pro-independence group under the leadership of Jacinto Da Costa Pereira (leader of Dato Village) has attacked and threaten to murder pro-integration/autonomy masses in Mabuara and took 2 (two) hostages from masses of pro-integration/autonomy group.

As a result of the attack, threat of murder, and confinement, masses of pro-integration/autonomy group (under the leadership of Eurico Guetteres and Manuel Sousa), carrying home-made firearms and knives, hunted down the pro-independence masses to take revenge.

The actions of both sides - masses of pro-independence and pro-integration/autonomy groups - has been reported by Liquisa district police commander, who monitored the situation, to the Deputy Commander of Provincial Police because the Provincial Police Commander was in Jakarta at that time, and the Deputy Commander of Provincial Police then ordered the Liquisa police to back up the situation.

When the pro-integration/autonomy masses arrived in Liquisa territory - which was under Liquisa district police jurisdiction - the masses, which was supported by more or less than 100 Indonesian army/police (TNI/Polri) personnels, among others, named:

1. Tome Diego (member of TNI from Liquisa District Military Command/KODIM)
2. Antonio Gomes (member of TNI from Maubara Subdistrict Military Command/KORAMIL)
3. Isaac Dos Santos (member of TNI from Maubara KORAMIL)
4. George Viegas (member of TNI from Maubara KORAMIL)
5. Alvonso (member of Polri from Liquisa District Police)
6. Chiko (member of Polri from Liquisa District Police)

and met with masses of pro-independence group, at the very moment the masses of pro-integration/autonomy group opened fire towards masses of pro-independence group, resulting in masses of the pro-independence group felt threaten and more or less than 200 people of masses of the pro-independence group sought refuge at Pastor Rafael Dos Santos' residence in Liquisa Church compound. When the masses of pro-integration/autonomy group reached the Liquisa church compound, they asked Pastor Rafael Dos Santos to hand Jacinto Da Costa Pereira (leader of masses of the pro-independence group) over, and to release 2 (two) members of masses of the pro-integration/autonomy group that had been taken hostage by masses of the pro-independence group. But the demand was rejected by masses of pro-independence group. In responding to the answer, masses of the pro-independence group opened fire toward masses of pro-integration/autonomy group, which led masses of pro-integration/autonomy group to enter Pastor Rafael Dos Santos' residence in church compound and attacked masses of pro-independence group without any intervention and prevention from security apparatuses, especially Liquisa police force or at least the Liquisa police or security apparatuses did not try to disarm the homemade firearms and knives carried by masses of the pro-integration/autonomy group or masses of the pro-independence group. This situation led to a clash between masses of the pro-independence group and pro-integration/autonomy group, and eventually resulted in the deaths of civilians who have been taken refuge and sheltered inside the church compound. The dead persons were:

1. Cesar Dos Santos
2. Jacinto Da Costa
3. Agustino Dos Santos
4. Jacinto Consalvas
5. Laurindo Dos Santos
6. Fernando
7. Agustihno
8. Victor Manuel Lisbon
9. Joanico
10. Mausinho
11. Manuel Lisbon
12. Agusto Mauzinho
13. Victor Da Costa
14. Anuko Dos Santos
15. Alberto Oliveira
16. Abrao Dos Santos
17. Amando Cesar Dos Santos
18. Aameko Dos Santos

On that day at 8.00 p.m Indonesian Eastern Time, herewith after the attack was over, Deputy Commander of Provincial Police reported the event to Provincial Police Commander who had just arrived in Jakarta. At that time, the Provincial Police Commander instructed the Liquisa District Police Commander to conduct a legal investigation to the perpetrators either from pro-integration/autonomy group or pro-independence group.

On April 17, 1999 around 9.00 a.m. Indonesian Eastern Time during Pam Swakarsa (civil guard) rally held in East Timor Government courtyard office, which was attended by several government officials such as East Timor Governor Abelio Jose Soares, and Eurico Gutteres as Deputy Commander of the Pro-Integration Forces who was one of the speakers, delivered that:

- all CNRT leaders should be exterminated
- particularly Manuel Viegas Carascalao's family should be finished
- Kill all CNRT leaders
- People who are pro to independence should be killed
- Kill Manuel Viegas Carascalao
- Carascalao family should be killed
- Kill Leandro Isaac, David Dias Ximenes, Manuel Viegas Carascalao

Where the Dilli District Police, who were present there as the Kamtibnas apparatus, did not attempt to prevent nor to ban Eurico's provoking speech which led Eurico Guteres' pro integration/autonomy followers consisting masses of Aitarak group, masses of BMP group who were equipped with home-made firearms and sharp weapons, moved toward Manuel Viegas Carascalao's residence in Jalan Antonio De Calvaho No.13 and Leandro Isaac's residence located around Jalan Antonio De Calvaho, Dilli, both residences which were located in the territory of Dilli Police jurisdiction and were used as refuge places by more or less than 136 pro-independence civilians of masses of pro-independence groups, each from Dilli, Liquisa, Turiskai, Alas and Ainaro.

On that time, Manuel Viegas Carascalao has come to a security post of the Dilli District Police to report the actions of the pro-integration/autonomy group and demanded protection, and based on the Manuel Viegas Carascalao's report, the police officer forwarded it to the Deputy Commander of Provincial Police because the Provincial Police Commander was in Jakarta, when at that time the Deputy Commander of Provincial Police gave a direction to make any prevention, but the Dilli Police rank-and-file ignored the direction, therefore the masses of pro-integration/autonomy group was able to move on.

When masses of the pro-integration/autonomy group reached Manuel Viegas Carascalao's and Leandro Isaac's residential compounds, and realizing that the compounds were used as refuge places by masses of pro-independence group, Masses of pro-integration/autonomy group directly attacked masses of pro-independence group which led to a clash between pro-integration/ autonomy group with masses of pro-independence group without any intervention or prevention from security apparatuses especially the Dilli police, or at least the Dilli police as security apparatuses did not make any effort to disarm the homemade firearms or knives carried by both conflicting groups, which eventually resulting in the destruction of Carascalao's home due to the fire set by masses of pro-integration/autonomy group and the death of more or less than 12 civilians killed, among others, Mario Manuel Carrascalao (Manelito).

Following the event, in the afternoon, upon the arrival of the Provincial Police Commander in East Timor from Jakarta, the Deputy Commander of Provincial Police reported the attacks of Manuel Viegas Carascalao's and Leandro Isaac's residences, which were committed by masses of pro integration/autonomy group to the Provincial Police Commander, who only gave a direction to investigate both groups of pro integration/autonomy and pro-independence.

On September 5, 1999, after the implementation of ballot/popular consultation, the masses of pro-integration/autonomy group that experienced defeat in votes, the masses of pro-integration/autonomy group that suspected of counting unfairness and irregularity conducted by UNAMET and pro-independence group, and that UNAMET did not act as a neutral body. Even the objection raised by masses of pro-integration/autonomy group was not answered by UNAMET, led to the dissatisfaction from the masses of pro-integration/autonomy group, and as a consequence of the dissatisfaction the masses of pro-integration/autonomy group, which were equipped by knives and homemade firearms, attacked masses of pro-independence consisting of civilians whom they knew were taking refuge in the Dilli diocesan compound in Dilli police jurisdiction territory.

This attack has been reported by the Commander of Dilli Police or by the police officers in the field to Provincial Police Commander through walkie talkie and at that time the Provincial Police Commander gave a direction to localize the conflict, but Dilli Police and other security personnels did not take any localizing effort nor any attempt to quell or prevent the attack of masses of pro-integration/autonomy group against masses of pro-independence group, or at least Dilli Police and other security apparatuses did not attempt to disarm knives and home-made firearms carried by masses of pro-integration/autonomy group, resulted in the destruction of a building in Dilli diocesan due to the fire set by masses of pro-integration/autonomy group, and the death of 2 (two) civilians, each named:

1. Jose Malon Da Costa
2. Jose Millon Fernandes

On September 6, 1999 around 10.00 a.m. Indonesian Eastern Time, equipped with knives and homemade firearms, masses of pro integration/autonomy group marched toward Bishop Bello's residence - in Dilli Police jurisdiction territory - where they knew masses of pro-independence group consisting of civilians were taking shelter and refuge.

Upon arrival at the Bishop Bello's residence, the masses of pro-integration/autonomy group, who had already known that masses of pro-independence group had been taking shelter there, entered Bishop Bello's residence and attacked civilians of the masses of pro-independence group without any intervention and control from security apparatuses, particularly the Dilli Police, or at least the Dilli Police or security apparatuses did not attempt to disarm knives and homemade firearms belong to masses of pro-integration/autonomy group.

The attack of Bishop Bello's residence has been reported through walkie talkie by Dilli Police field officers to Provincial Police Commander and at that very moment the Provincial Police Commander issued an order to prevent the offence/attack and issued an order to protect Bishop Bello by bringing him to East Timor Provincial Police Command. But before the order was executed, masses of pro-integration/autonomy group attacked Bishop Bello's residence, resulted in the burning of Bishop Bello's residence by pro-integration/autonomy group and the death of 13 anonymous civilians.

On the same day, masses of pro-integration/autonomy group equipped with knives and homemade firearms and led by Olivio Mandoza carried forward their action by moving toward Ave Maria Church compound in Suai Covalima- a place under the jurisdiction of Covalima Police- which they knew was a place for masses of pro-independence civilians group to take shelter and refuge.

Upon arrival at that place and knowing that masses of pro-independence group were taking shelter there, masses of pro-integration/autonomy group entered the church compound and attacked civilians from masses of pro-independence group without any intervention from se-curity apparatuses, particularly the Covalima Police, which resulted in 27 civilians killed. Their names, among others, were:

1. Pastor Taesicus Dewanto
2. Pastor Hilario Madeira
3. Pastor Fransisco Soares

as mentioned in the grave excavation and autopsy Report No. TT 3002/SK.II/XI/1999 of the University of Indonesia's Department of Medical Forensic.

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

TWO:

The defendant Drs. G.M. TIMBUL SILAEN as East Timor Provincial Police Commander during June 1998 to September 1998 and as Commander of Security Operations under New York Agreement (Tri Partit) dated May 5, 1999 who had the authority and responsibility to safeguard and conduct security measures and public order, security operations, law enforcement and civil service, as well as to give operational guidance and direction to police districts and their rank-and-files in his territory, but he did not use the authority and responsibility properly, in particular in the field of security and order of the society (KAMTIBNAS), herewith on April 6 and 17, 1999 and on September 4, 1999 or at least in the months of April and September 1999, located at Pastor Rafael Dos Santos's residence compound in Liquisa, Liquisa Regency, at Manuel Viegas Carascalao's residence in Jalan Antonio De Calvalho No.13, Dilli, Dilli Regency and at UNAMET office in Liquisa; all of the places are located in East Timor Province or at least in one of places in Liquisa, Dilli or Covalima in East Timor Province under Human Rights Ad Hoc Court jurisdiction based on Central Jakarta District Court verdict as stated in PRESIDENTIAL DECREE No. 96, 2001 dated August 1, 2001 concerning the change of PRESIDENTIAL DECREE No. 53, 2001 on the Establishment of Human Rights Ad Hoc Court in Central Jakarta District Court; the defendant as a superordinate (East Timor Provincial Police Commander and Commander of Security Operations has commited grave human rights violation, herewith as a superordinate (East Timor Provincial Police Commander and Commander of Security Operations), he had responsibility to conduct and maintain the KAMTIBNAS in East Timor, and he held criminal responsibility for crimes against humanity in the form of abuse committed as part of a widespread and systematic attack, known to the defendant that the attack aimed directly at the civilians, carried out by his subordinates under his control, because the defendant as a superordinate had the authority to command police districts and their rank-and-files in Dilli, Liquisa and Covalima as well as the militias, such as Aitarak group, Besi Merah Putih (BMP) group and the civil guard (Pam Swakarsa) under his control in the field of KAMTIBNAS, did not exert appropriate control over his subordinates in the sense that he knew or deliberately ignored information that clearly showed that his subordinates were committing, or had just committed, grave human rights violation and took no appropriate action when it was his responsibility to prevent or stop these actions or to hand the offenders over to the appropriate authorities for investigation, question, and prosecution. The actions committed by the defendant was done in the form of:----------

In maintaining and conducting the KAMTIBNAS, the defendant as East Timor Provincial Police Commander and Commander of Security Operations, was assisted by staffs and in the field was assisted by district police commanders and their rank-and-files in East Timor territory according to the East Timor Provincial District Organizational Charts mentioned in SKEP POLRI No. POL.SKEP-14/XII/1993 dated December 31, 1993 on the Principle and Procedure of the Bodies of Regional Police Level.

The defendant as East Timor Provincial Police Commander and Commander of Security Operations deliberately knew that he has the authority, duty and responsibility to carry out the Kamtibnas in East Timor territory.

After Indonesian government made policies to conduct a popular consultation for East Timor people under PRESIDENTIAL DECREE No. 43, 1999 dated May 18, 1999 concerning the Team for Organizing and Supervising the Agreement between Indonesian Government and Portugal on East Timor Affairs, later followed by Presidential Instruction No.5, 1999 concerning the Steps of Execution with regards to the enactment of the Agreement between Indonesian Government and Portugal on East Timor Affairs, later elaborated in the Coordinating Minister of Politics and Security's Decision No.13/MENKO/POLKAM/1999 dated June 2, 1999 concerning the Task Force of the Coordinating Minister of Politics and Security as Head of the Team for Organizing and Supervising the Agreement between Indonesian Government and Portugal on East Timor Affairs, taking a policy to conduct a ballot/popular consultation for East

Timor people to determine whether the East Timor Province would or would not recede from Indonesia's territory, public order and security began to rise resulting in disputes, conflicts, and enmities between pro-integration/autonomy groups consisting of Aitarak mass, BMP (Besi Merah Putih) mass, Pam Swakarsa (civil guard), with pro-independence masses in defending their groups' interests.
The disputes, conflicts, and enmities become more extensive, as on April 6, 1999, pro-independence group under the leadership of Jacinto Da Costa Pereira (leader of Dato Village) has attacked and threaten to murder pro-integration/autonomy masses in Mabuara and took 2 (two) hostages from masses of pro-integration/autonomy group.

As a result of the attack, threat of murder, and confinement, masses of pro-integration/autonomy group (under the leadership of Eurico Guetteres and Manuel Sousa), carrying home-made firearms and knives, hunted down the pro-independence masses to take revenge.

The actions of both sides - masses of pro-independence and pro-integration/autonomy groups - has been reported by Liquisa district police commander, who monitored the situation, to the Deputy Commander of Provincial Police because the Provincial Police Commander was in Jakarta at that time, and the Deputy Commander of Provincial Police then ordered the Liquisa police to back up the situation.

When the pro-integration/autonomy masses arrived in Liquisa territory - which was under Liquisa district police jurisdiction - the masses, which was supported by more or less than 100 Indonesian army/police (TNI/Polri) personnels, among others, named:

1.Tome Diego (member of TNI from Liquisa District Military Command/KODIM)
2.Antonio Gomes (member of TNI from Maubara Subdistrict Military Command/KORAMIL)
3.Isaac Dos Santos (member of TNI from Maubara KORAMIL)
4.George Viegas (member of TNI from Maubara KORAMIL)
5.Alvonso (member of Polri from Liquisa District Police)
6.Chiko (member of Polri from Liquisa District Police)

and met with masses of pro-independence group, at the very moment the masses of pro-integration/autonomy group opened fire towards masses of pro-independence group, resulting in masses of the pro-independence group felt threaten and more or less than 200 people of masses of the pro-independence group sought refuge at Pastor Rafael Dos Santos' residence in Liquisa Church compound. When the masses of pro-integration/autonomy group reached the Liquisa church compound, they asked Pastor Rafael Dos Santos to hand Jacinto Da Costa Pereira (leader of masses of the pro-independence group) over, and to release 2 (two) members of masses of the pro-integration/autonomy group that had been taken hostage by masses of the pro-independence group. But the demand was rejected by masses of pro-independence group. In responding to the answer, masses of the pro-independence group opened fire toward masses of pro-integration/autonomy group, which led masses of pro-integration/autonomy group to enter Pastor Rafael Dos Santos' residence in church compound and attacked masses of pro-independence group without any intervention and prevention from security apparatuses, especially Liquisa police force or at least the Liquisa police or security apparatuses did not try to disarm the homemade firearms and knives carried by masses of the pro-integration/autonomy group or masses of the pro-independence group. This situation led to a clash between masses of the pro-independence group and pro-integration/autonomy group, and eventually resulted in wounded civilians who have been taken refuge and sheltered inside the church compound, named:

1. Jose Munes
2. Joao Kuda

3. Lucas Dos Santos
4. Emelio Breto
5. Jose Menezes Nunes Serrao
6. Abilio Dos Santos
7. Mateus Paulero

On April 17, 1999 around 9.00 a.m. Indonesian Eastern Time during Pam Swakarsa (civil guard) rally held in East Timor Government courtyard office, which was attended by several government officials such as East Timor Governor Abelio Jose Soares, and Eurico Gutteres as Deputy Commander of the Pro-Integration Forces who was one of the speakers, delivered that:

- all CNRT leaders should be exterminated
- particularly Manuel Viegas Carascalao's family should be finished
- Kill all CNRT leaders
- People who are pro to independence should be killed
- Kill Manuel Viegas Carascalao
- Carascalao family should be killed
- Kill Leandro Isaac, David Dias Ximenes, Manuel Viegas Carascalao

Where the Dilli District Police, who were present there as the Kamtibnas apparatus, did not attempt to prevent nor to ban Eurico's provoking speech which led Eurico Guteres' pro integration/autonomy followers consisting masses of Aitarak group, masses of BMP group who were equipped with home-made firearms and sharp weapons, moved toward Manuel Viegas Carascalao's residence in Jalan Antonio De Calvaho No.13 and Leandro Isaac's residence located around Jalan Antonio De Calvaho, Dilli, both residences which were located in the territory of Dilli Police jurisdiction and were used as refuge places by more or less than 136 pro-independence civilians of masses of pro-independence groups, each from Dilli, Liquisa, Turiskai, Alas and Ainaro.

On that time, Manuel Viegas Carascalao has come to a security post of the Dilli District Police to report the actions of the pro-integration/autonomy group and demanded protection, and based on the Manuel Viegas Carascalao's report, the police officer forwarded it to the Deputy Commander of Provincial Police because the Provincial Police Commander was in Jakarta, when at that time the Deputy Commander of Provincial Police gave a direction to make any prevention, but the Dilli Police rank-and-file ignored the direction, therefore the masses of pro-integration/autonomy group was able to move on.

When masses of the pro-integration/autonomy group reached Manuel Viegas Carascalao's and Leandro Isaac's residential compounds, and realizing that the compounds were used as refuge places by masses of pro-independence group, Masses of pro-integration/autonomy group directly attacked masses of pro-independence group which led to a clash between pro-integration/ autonomy group with masses of pro-independence group without any intervention or prevention from security apparatuses especially the Dilli police, or at least the Dilli police as security apparatuses did not make any effort to disarm the homemade firearms or knives carried by both conflicting groups, which eventually resulting in the destruction of Carascalao's home due to the fire set by masses of pro-integration/autonomy group and wounded civilians, named:

1. Victor Dos Santos (Apin), wounded on his left hand and middle finger
2. Alfredo Sanches, was stabbed on his left back and left finger
3. Florindo De Jesus, was cut on his right and left hands, and his right ear was cut and shot
4. Miki, suffered from cutting

Following the event, in the afternoon, upon the arrival of the Provincial Police Commander in East Timor from Jakarta, the Deputy Commander of Provincial Police reported the attacks of

Manuel Viegas Carascalao's and Leandro Isaac's residences, which were committed by masses of pro integration/autonomy group to the Provincial Police Commander, who only gave a direction to investigate both groups of pro integration/autonomy and pro-independence.

On September 4, 1999, after the implementation of ballot/popular consultation, the masses of pro-integration/autonomy group that experienced defeat in votes, the masses of pro-integration/autonomy group that suspected of counting unfairness and irregularity conducted by UNAMET and pro-independence group, and that UNAMET did not act as a neutral body. Even the objection raised by masses of pro-integration/autonomy group was not answered by UNAMET, led to the dissatisfaction from the masses of pro-integration/autonomy group, and as a consequence of the dissatisfaction the masses of pro-integration/autonomy group, which were equipped by knives and homemade firearms, destructed UNAMET office in Liquisa in Liquisa Police jurisdiction territory without any attempt to prevent and quell or at least any effort to disarm the homemade firearms and knives carried by masses of the pro-integration/autonomy group by security apparatus especially Liquisa Police, resulted in the destruction of UNAMET office in Liquisa as committed by masses of pro-integration/autonomy group and resulted in 1 (one) wounded person, named Oscandrad Seira.

This attack to UNAMET office has been reported by the Commander of Liquisa District Police to Provincial Police Commander and at that time the Provincial Police Commander gave a direction to arrest immediately the perpetrators and process them thoroughly, maintain security by adding personnels, and take a stern measure against those who had disrupted the Kamtibmas

The defendant's deeds were ruled and charged under Article 2, paragraph 2 (a) and (b) jis Article No. 7 (b) , Article 9 (h), Article 40 of the Law No 26/2000 on Human Rights Court.

Jakarta, February 19, 2002

AD HOC PROSECUTOR
JAMES PARDEDE, SH
ACTING AD HOC PROSECUTOR
DRS. SYAEFUDIN, SH
ACTING AD HOC PROSECUTOR
A.M. NAINGGOLAN, SH

Appendix 3C

Unofficial translation

Case File No: 03/HAM/TIM-TIM/02/2002

I THE DEFENDANTS

1. Name : **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 : Catholic
Occupation : ABRI/TNI official (Former Head of Covalima Regency, East Timor)
Education : Bachelor/AKABRI (Academy of Indonesian Army)

2. Name : **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 : Moslem
Occupation : ABRI/TNI official (Former Acting Commander of Suai District Military 1635, East Timor)
Education : AKABRI (Academy of Indonesian Army)

3. Name : **Drs. GATOT SUBIYAKTORO**
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 : Moslem
Occupation : POLRI official (Former Commander of Suai District Police, East Timor)
Education : Bachelor / Indonesian Police

4. Name : **ACHMAD SYAMSUDIN**
Place of Birth : Tangerang , West-Java (Province of Banten)
Age/Date of Birth : 37 years/June 21, 1964
Sex : Male
Nationality : Indonesian
Address : PLP Curug Tangerang
Religion : Moslem
Occupation : ABRI/TNI official (Former Suai Chief of Staff of District
Military Command 1635 East Timor)

Education : AKMIL (Military Academy)

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 : Moslem
Occupation : ABRI/TNI official (Former Head of Suai Subdistrict
Millitary Command East Timor)
Education : STM (Technical High School)

II. DETAINMENTThe defendants (defendants No. 1 to 5) had not beendetained during investigation and prosecution.

III. THE DEFENDANTS

PRIMARY:

--------- The five defendants are: the defendant 1. Drs.HERMAN SEDYONO as Head of Covalima Regency, thedefendant 2. LIELIEK KOESHADIANTO as Acting Commander ofSuai District Military 1635, the defendant 3. Drs. GATOTSUBIYAKTORO as Commander of Suai District Police, thedefendant 4. ACHMAD SYAMSUDIN as Suai Chief of Staff ofDistrict Military Command 1635, and the defendant 5. SUGITOas Head of Suai Subdistrict Military Command of CovalimaRegency, whose identities were mentioned above, had alliedthemselves individually or collectively with East TimorPro-Integration groups (IZEDIO MANIK, OLIVIO MENDOZAMORUK alias OLIVIA MOU, MARTINUS BERE, MOTORNUS,VASCO DA CRUZ, and MARTINS DONGKI ALFONS (LAKSAURmember), 2nd Sergeant I GEDE SANTIKA, 1st Sergeant IWAYAN SUKA ANTARA, 2nd Sergeant SONY ISKANDAR, 2ndSergeant AMERICO SERANG, 2nd Sergeant RAUL HALE, 2ndSergeant ALARICO PEREIRA, (Praka) ALFREDO AMARAL (officerof TNI of Suai District Military Command 1635), 2nd SergeantBUDI, Mayor Sergeant SYAMSUDDIN, (Serka) MADE SUARSA,1st Sergeant ARNOLUS NAGGALO, and 2nd SergeantMARTINUS BERE (Indonesian Police officer).

Each of them would be brought to the trial separately, exceptOLIVIO MENDOZA MORUK who was dead on September 6,1999 at 2.00 p.m. Eastern Indonesian Time, or at least insome times in September 1999 in Ave Maria Catholic Churchcourtyard compound in Suai East Timor, or at other placeswhere Human Rights Ad Hoc Court at the Central JakartaDistrict Court which has authority to investigate and rule(based on Article 2 PRESIDENTIAL DECREE No. 96/2001 datedAugust 1, 2001), the defendants 1,2,3,4, and 5 assuperordinates / effective military commanders did not takecontrol on their subordinates/troops which are under theireffective authority and control, or under their effectivecommand and control, herewith the defendants 1,2,3,4 and 5knew or deliberately ignored information that showedobviously that their subordinates/troops were committing orhad jus committed serious deeds conducted as parts ofwidespread or systematic attack directed against civilians andthey, the defendants 1,2,3,4 and 5, did not conduct or didnot take any proper actions which were needed within theirauthority or to prevent or quell their subordinates/troops'actions or turn the perpetrators over to appropriateauthorities for guidance, investigation and prosecution,namely, the defendant 1 as the one responsible for generalgovernance and development, the defendant 2 as the oneresponsible for security, the defendant 3 as the oneresponsible for security guidance and public orders, thedefendant 4 and the defendant 5 as those responsible forsecurity in Covalima Regency/Suai District did not take actionaccording to their authority based on enacted law, resulted inthe attack against civilians who were/sought refuge in AveMaria Church

compound in Suai, leaving more or less than 27people dead consisted of 17 males and 10 females. Among the17 male victims, 14 were civilians and 3 other were Pastors,namely 1. Pastor TARSISIUS DEWANTO 2. Pastor HILARIOMADEIRA and 3. Pastor FRANSSISCO SOARES.

--------- The deeds of the defendants 1,2,3,4 and 5 werecommitted in the form of:

--------- After the Indonesian government executed a policyto hold ballot/popular consultation for East Timorese underPRESIDENTIAL DECREE No. 3/1999 dated May 18, 1999concerning the Team for Organizing and Supervising theAgreement between Indonesian Government and Portugal onEast Timor Affairs, later followed by Presidential InstructionNo.5/1999 concerning the Steps of Execution with regards tothe enactment of the Agreement between IndonesianGovernment and Portugal on East Timor Affairs, andelaborated in the Coordinating Minister of Politics andSecurity's Decision No. KEP-13/MENKO/Polkam/6/1999 datedJune 2, 1999 concerning the Task Force of the CoordinatingMinister of Politics and Security Affairs as Head of the Teamfor Organizing and Supervising the Agreement betweenIndonesian Government and Portugal on East Timor affairs byenacting a policy to conduct a ballot/popular consultation forEast Timorese to determine whether the East Timor Provincewould join the Indonesian government or would choose to bepart of independent government (Pro-Independence) whichwas held on August 30, 1999, therefore the East TimorProvincial Government set up an organization / Pro-Integrationgroup which joined under Pam swakarsa (civil militia guard)such as MAHIDI and LAKSAUR under the leadership of OlivioMendoza Moruk alias Olivia Mou which later officiallyinaugurated by Head of Covalima Regency (defendant I) atSuai's Gedung Wanita.

--------- For the LAKSAUR's and MAHIDI's operationalorganization, equipments and trainings needs were providedby Suai District Military Command 1635 and Suai SubdistrictMilitary Command, where the defendant II maintainedresponsibility and control, whereas the payment / salary ofLAKSAUR and MAHIDI members were provided by Governmentof Covalima Regency.

---------- Later, after the result of ballot/popularconsultation for East Timorese was announced on August 30,1999 and was won by Pro-Independence group, the heatedsituation occurred and tension and fights took place betweengroups who called themselves as pro-independence andpro-integration, then the government enacted civil emergencyin East Timor.

--------- Beginning on September 3, 1999 as a result of theintense situation above, more or less than 2000 peopleconsisting of people from around Suai town, and priests andnuns, sought refuge inside Ave Maria Catholic Churchcompound in Suai.

--------- Considering the situation, on September 5, 1999,Commander of Provincial Military Command IX/Udayana issueda telegraphed order No. STP/551/1999 to Commander ofMilitary Post Command 164/WD to announce curfew in EastTimor territory.

--------- The heated situation after the popular consultationexpanded and continued when on September 6, 1999 therewas a widespread attack, namely, the actions committed byPro-Integration group consisted of, among othes, IZEDIOMANEK, OLIVIO MENDOZA MORUK alias OLIVIA MOU,MARTINUS BERE, MOTORNUS, VASCO DA CRUZ, MARTINSDONGKI ALFON (LAKSAUR member), 2nd Sergeant I GEDESANTIKA, 1st Sergeant I WAYAN SUKA ANTARA, 2nd SergeantSONY ISKANDAR, 2nd Sergeant AMERICO SERANG, 2ndSergeant RAUL HALE, 2nd Sergeant ALARICO PEREIRA, (Praka)ALFREDO AMARAL (officer of Suai District Military Command1635), 2nd Sergeant BUDI, Mayor Sergeant SYAMSUDDIN,(Serka) MADE SUARSA, 1st Sergeant ARNOLUS NANGGALO,and 2nd Sergeant MARTINUS BERE (Indonesian Police officer),who each of them would be brought to trial separately,namely, the attack against civilians including priests and nunswho

were taking refuge inside Ave Maria Catholic Churchcompound, carried out by firearms and home-made firearms,resulted in widespread consequence, namely, more or lessthan 27 civilians taking refuge at the Ave Maria churchcompound were dead, consisted of 17 males and 10 females.Among the 17 male victims, 14 were civilians and 3 otherswere Pastors, namely 1. Pastor TARSISIUS DEWANTO 2.Pastor HILARIO MADEIRA and 3. Pastor FRANSSISCO SOARESconfirmed by grave excavation and autopsy report No.TT.3002/SK-II/XI/1999 of the University of Indonesia'sDepartment of Medical Forensic.

--------- Before the attack to civilians who were inside AveMaria Catholic Church compound in Suai by Pro-Integrationgroup, beforehand they (militia members of LAKSAUR) led byOLIVIO MENDOZA MORUK alias OLIVIA MOU around 9.00 a.m.Eastern Indonesian Time gathered at the defendant I'sresidence (drs. HERMAN SEDYONO) as Head of CovalimaRegency, and at that time the defendant II (LILIEKKOESHARDIANTO) was also present and also the defendant III(GATOT KUSBIANTORO). Then the militias led by OLIVIA MOUheaded toward Ave Maria Church Suai to attack..

--------- During the attack to civilians who were inside theAve Maria Catholic Church compound in Suai, the aboveDefendants committed deeds or actions as parts of theattack, namely:

--------- The defendant 1. Drs. HERMAN SEDYONO as Headof Covalima Regency, together with the defendant 2. LILIEKKOESHADIANTO as Commander of Suai District MilitaryCommand 1635, and the defendant 3. Drs. GATOTSUBIYAKTORO as Commander of Suai Police, after hearingshots coming from Ave Maria Catholic Church compound,which was assumed that there had been an on-going clashbetween pro-integration and pro-independence groups, thenthey (the defendants 1,2 and 3) went together to thelocation of attack which was in Ave Maria Catholic Churchcompound in Suai.

--------- When the defendants (defendant 1,defendant 2,and defendant 3) arrived at and hang around the Ave MariaCatholic Church compound in Suai there was an attack byPro-Integration group, among others, LAKSAUR under theleadership of OLIVIO MORUK against civilians carried out usingfirearms and home-made firearms.

--------- During that time, the time of attack against civilianswho were taking refuge and/ shelter inside Ave Maria CatholicChurch compound in Suai, the defendant I as Head ofCovalima Regency responsible for general governance anddevelopment obviously did not prevent, impose securityagainst all posibilities of riots after ballot/popular consultationwon by pro-independence group and did not help and takecare victims caused by attack against civilians inside the SuaiChurch compound, that is, did not immediately do anyattempt to identify the killed or wounded victims and secure,save, and forward the news to victims' families.

-------- Before the attack to the Ave Maria Church Catholiccompound in Suai by Pro-Integration group was over, thedefendant 1. HERMAN SEDYONO had left the location andheaded toward his home.

-------- The defendant 2. LILIEK KOESHADIANTO as ActingCommander of Suai Military District Command 1635 who wassupposed to bear responsibility in maintaining security inCovalima Regency in East Timor Province was present at thelocation of attack against civilians at the Catholic Churchcompound in Suai then gave an order to his subordinate,namely, Chief of Staff of the Suai District Military Command1635 Major ACHMAD SYAMSUDDIN the defendant 4, to deployall forces to take control of the situation, in practice the Chiefof Staff of Suai District Military Command 1635 (defendant 4)is that the personnels or troops from the Suai District MilitaryCommand 1635 under the command of defendant MajorACHMAD SYAMSUDDIN did not secure the situation andprevent the attack, as well as did not attempt to withdrawthe troops/groups belong to LAKSAUR group but in factsupported and joined with the Pro-Integration group/LAKSAURto attack civilians who were inside/taking shelter at the-

Catholic Church compound in Suai or to allow the attackcommitted by pro Integration group (LAKSAUR) againstcivilians at the church compound.

-------- Besides that, the defendant 2 LILIEK KOESHADIANTOas Acting Commander of Suai District Military Command 1635did not do any maximum prevention to anticipate the attackto Suai Catholic Church, since September 5, 1999, there havebeen occurences as indication of the event, that is, anambush by Pro-Integration group against 130 UNAMET staffwho were going to take refuge in Dilli.

------- The defendant 3 Drs. GATOT SUBIYAKTORO asCommander of Suai Police, the one who was fully responsiblefor national security (Kamtibmas) in the territory of CovalimaRegency, who was present at location, that is, in SuaiCatholic Church compound, together with the defendant 1Drs. HERMAN SEDYONO and the defendant 2 LILIEKKOESHADIANTO at that time of the attack by Pro-Integrationgroup (LAKSAUR) against civilians who sought refuge insideSuai Catholic Church, the defendant 3 in explaining the 1999Hanoin Lorosae I Operation Plan and the 1999 Hanoin LorosaeII Operation Plan, did not conduct any necessary legal actionsand security measures to subdue the riot/attack or to allowthe attack against the civilians, in which the defendant 3 asCommander of Suai Police was supposed to take anyanticipations to prevent the attack, in fact the indication thatthe event would happen was already present at the time thepro-Independence won the ballot/popular consultation.

--------- The defendant 5 (1st Lieutenant SUGITO) as Headof the Suai Subdistrict Military Command who was supposedto be also responsible for security in his territory in fact cameto the location, that is, the Catholic Church compound in Suaiat the time after the attack by pro-Integration (LAKSAUR)took place against civilians who came to seek refuge becausethe worse security situation after the ballot/popularconsultation for East Timorese which was won by ProIndependence group.

-------- At the location the defendant 5 (1st LieutenantSUGITO) found scattered dead bodies of victims of attackcommitted by pro integration group inside and outside thechurch, including, among others, corpses of the three pastorsof the Suai Catholic Church, the defendant 5 (1st LieutenantSUGITO) did not take care of the corpses properly, such asmaking coordination with institutions or responsible parties, toidentify, to forward the news to victims' families but thedefendant 5 1st Lieutenant SUGITO issued an order to fourlocal people, among others, MOTORNUS, to put the corpsesinto a car then transported to BETUN to be buried withoutgiving notice to the families.

------- The defendants' deeds are ruled and charged underArticle 7 (b) jis Article 9 (a), Article 37, Article 42 paragraph(1) sub a, b of the Law No. 26/2000, Article 55 paragraph (2)of the Criminal Code.

Appendix 4A

Mitschrift über die Hauptverhandlung gegen Timbul Silaen am 02.05.2002 vor dem Menschengerichtshof in Jakarta

Zu Beginn der Verhandlung teilte die Staatsanwaltschaft mit, dass die 3 vorgeladenen Zeugen aus Osttimor nicht werden erscheinen können. Auf Befragen durch das Gericht gab die Staatsanwaltschaft an, dass die Zeugen grundsätzlich bereit wären, zu kommen, es stünden nur irgendwelche ausräumbaren Hindernisse entgegen. Konkretere Angaben wurden nicht gemacht.

Es wurden dann darauf hin drei offensichtlich schon vorsorglich für diesen Tag geladene Zeugen aufgerufen. Bei diesen drei Zeugen handelt es sich um Polizeioffiziere, die seinerzeit in Osttimor tätig waren und dem Angeklagten unmittelbar unterstellt waren.

Als erster Zeuge wurde **Letkol. Adios Salova** gehört. Der Zeuge machte seine Aussage nicht zusammenhängend, sondern antwortete jeweils auf Fragen zunächst der Richter, dann der Staatsanwälte und schließlich der Verteidiger. Es gab dann einen zweiten Durchgang, der ebenfalls mit den Richtern begann, bei den Staatsanwälten fortgesetzt wurde und mit Befragen der Anwälte endete, wobei es dann allerdings auch ein bisschen durcheinander ging. Der Zeuge sagte nach seiner Vereidigung nach islamischem Recht das Folgende aus:

Die Vernehmung begann etwa um 9.45 Uhr.

> „Ich bin Polizeichef von Liquiça gewesen. Zu meinen Pflichten gehörte die Aufrechterhaltung der öffentlichen Ordnung und Gewährleistung der Sicherheit der Bevölkerung. Dazu gehörte auch die moralische Anleitung der Bevölkerung, sich gesetzesgemäß zu verhalten. Mir waren etwa 100 Polizisten unterstellt. Dazu kamen zusätzlich Leute der KAMRA *(hierbei handelt es sich um eine Bürgerwehr, die von den Autonomie- bzw. Integrationskräften aufgestellt worden ist).*
>
> Am 06.04.1999 kam es zu einem Streit zwischen zwei Dörfern. Eins davon war das Dorf Dato, das andere das Nachbardorf. Als mir dies bekannt wurde, schickte ich fünf Polizisten in das Dorf Dato, damit dort der Streit geschlichtet wird. Die Mission verlief jedoch ergebnislos, da die fünf Polizisten von Jacinto, dem Bürgermeister von Dato, bedroht wurden. Nachdem die fünf Polizisten abgezogen waren, setzte die Bevölkerung von Dato ihre Terrorisierung des Nachbarortes fort.
>
> Da die Streitigkeiten zwischen beiden Orten anhielten, floh der größte Teil der Bevölkerung aus beiden Orten nach Liquiça und verteilte sich auf dort auf insgesamt 13 Stellen, wo die Flüchtlinge aufgenommen wurden. Eine dieser Stellen war die Kirche von Liquiça.
>
> Für mich und meine Kräfte war es jedoch unmöglich, die Leute, da sie an 13 Stellen verteilt waren, zu schützen. Ich forderte daraufhin Verstärkung an. Ich erhielt dann Verstärkung durch das mobile Einsatzkommando BRIMOB.
>
> Die Verstärkung habe ich über mein Funkgerät angefordert. Denn die normale Telekommunikation war schon seit März zusammengebrochen. Es war weder der zivile Telefonverkehr, noch der Diensttelefonverkehr über die Diensttelefone möglich *(der Zeuge*

machte Anspielungen, dass die Unabhängigkeitsgruppe die Telefonleitungen sabotiert hätten).

> Vor bzw. in Nähe der Kirche von Liquiça gibt es zwar einen Wachposten. Dieser Wachposten konnte jedoch nicht besetzt werden, da meine Polizeikräfte durch die Zersplitterung der Kräfte, bedingt durch die vielen Flüchtlingslager, anderweitig gebunden waren. Ich selbst befand mich in der Wache von Liquiça und konnte daher die Vorgänge vorerst nicht aus eigener Wahrnehmung feststellen. Ich habe dann erfahren, dass etliche Pro-Integrationisten zur Kirche und zum Pfarrhaus strömten und die Gebäude umstellten. Anlass dafür wird gewesen sein, dass die Unabhängigkeitsanhänger zuvor zwei Pro-Integrationisten entführt haben sollen. Über diese Vorgänge habe ich Bericht gemacht an den stellvertretenden Polizeichef in Osttimor (Wakapolda). Der Polizeichef selbst war zu diesem Zeitpunkt nicht in Osttimor. Wo er sich befand und aus welchem Grund er abwesend war, war mir nicht bekannt.

Aufgrund meiner Meldung bekam ich den Befehl, Leute zur Kirche von Liquiça zu schicken. Ich habe dann 40 Polizeikräfte abkommandiert, die sich zur Kirche begaben. Als meine Leute dort eintrafen, kam es gerade zum Zusammenstoß der beiden Gruppen, das heißt der Unabhängigkeitsanhänger einerseits und der Autonomie- bzw. Integrationsanhänger andererseits."

Auf Befragen der Staatsanwaltschaft, warum der Zeuge nicht schon von sich aus vorher Kräfte dorthin entsandt habe, erklärt der Zeuge:

> „Ich bin davon ausgegangen, dass die Unruhen am 05.04.1999 sich gelegt hätten. Am 06.04.1999 gegen 8.00 Uhr erschien eine Gemeindeschwester auf der Wache und berichtete, dass sich dort Zusammenstöße ereigneten." Daraufhin habe er die Meldung an den Wakapolda abgesetzt, daraufhin den Einsatzbefehl erhalten und dann die 40 Leute losgeschickt.

„In der Kirche waren etwa 2.000 Flüchtlinge. Die Anzahl der Belagerer betrug etwa 3.000. Unter ihnen wurde auch Eurico Guterres *(bekannter Milizenführer aus Dili)* gesehen. Die Belagerer forderten die Auslieferung Jacintos, der sich unter den Flüchtlingen in der Kirche befunden haben soll."

Auf erneutes Befragen erklärte der Zeuge:

„Um was für eine Gruppe es sich in der Kirche handelte kann ich nicht sagen. Es war Bevölkerung. Es kam dann zu Verhandlungen, die für die Pro-Integrations- und Autonomiegruppen draußen von der Polizei geführt wurden. Die Flüchtlinge in der Kirche wurden von Pfarrer Rafael dos Santos vertreten. Die Pro-Integrations- und Autonomiegruppen verlangten die Auslieferung Jacintos. Dies wurde von den Leuten in der Kirche abgelehnt. Sie waren jedoch bereit, ihre Waffen abzugeben.

Die Polizeikräfte haben sich dann als Puffer zwischen die Pro-Integrations- und Autonomiegruppen und der Gruppe in der Kirche begeben und die Kirche und auch das Pfarrhaus umstellt. In dieser Position wurden auch die Verhandlungen durchgeführt. Sie dauerten etwa bis 12.00 Uhr und wurden dann dadurch unterbrochen, dass aus der Kirche heraus ein Schuss fiel.

Von alldem habe ich jedoch persönlich nichts wahrgenommen. Denn ich war nur in der Zeit von etwa 8.00 bis 9.00 Uhr an der Kirche. Danach begab ich mich zum Kodim *(Militärdistriktkommando)*. Das Kodim befindet sich in unmittelbarer Nähe der Kirche, nämlich etwa 50 m entfernt, während meine Polizeistation ca. 4 km entfernt liegt. In der Zeit,

als ich unmittelbar an der Kirche war (8.00 bis 9.00 Uhr) habe ich keine Bewaffnung der Leute, die die Kirche umringten, wahrgenommen. Inzwischen war auch Verstärkung eingetroffen, so dass gegen Mittag etwa 100 Polizeikräfte am Einsatzort waren.

Am Abend habe ich dann selber 5 Tote und etwa 25 Verletzte festgestellt. Ich kann nicht sagen, zu welcher Gruppe die Toten und Verletzten zu rechnen waren. Es handelte sich ausschließlich um Zivilpersonen."

Auf Befragen, ob es sich bei den Gruppen um organisierte Gruppen gehandelt habe, erklärte der Zeuge:

„In dieser Gegend gab es solche organisierten Gruppen, und zwar auf der Pro-Integrations- und Autonomieseite, die BMP *(Besi Merah Putih)* und auf der Unabhängigkeitsseite die CNRT *(Nationalrat des timoresischen Widerstandes)*.

Während der Verhandlungen gingen zweimal je 2 bis 3 Polizisten zum Zwecke der Verhandlungen in die Kirche. Während dieser Zeit war die Menge draußen abwartend und scheinbar friedfertig. Pfarrer Rafael dos Santos war jedoch nicht bereit, Jacinto cs. auszuliefern." *(cs. ist eine in Indonesien gebräuchliche Abkürzung für den lateinischen Begriff com suis = und die seinen, das heißt seine Gefolgsleute).*

Auf Befragen, um wem es sich bei cs. handele, erklärte der Zeuge:

„Dazu kann ich nichts sagen. Es waren eben Leute, viele Leute aus der Bevölkerung."

Auf weiteres Befragen:

„Am 06.04.1999 waren die Kräfte der BRIMOB bereits eingetroffen. Sie waren bei den 100 Leuten, die ich im Einsatz hatte, dabei."

Auf Befragen:

„Ich hielt diese Kräfte nicht für ausreichend."

Auf Befragen der Verteidiger:

„Nach den Ereignissen habe ich den Befehl gegeben, die Täter festzunehmen. Es erfolgte dann am darauf folgenden Tag (07.04.1999) die Festnahme von 11 Personen."

Auf Befragen der Verteidiger:

„Weder ich noch meine Leute hatten die Täter ermittelt. Dies geschah vielmehr durch ein Ermittlungskommando der POLDA *(=Gebietspolizei für ganz Osttimor mit Sitz in Dili).*"

Auf weiteres Befragen der Richter:

„Die Kräfte der Pro-Integrations- und Autonomiegruppen und die der Unabhängigkeitsbewegung hielten sich in meinem Gebiet etwa die Waage. Sie waren etwa gleich stark."

Auf weitere Befragen der Richter, ob man nicht angesichts dieses Kräfteverhältnisses mehr vorsorgende Maßnahmen treffen müssen:

„Die am Morgen des 06.04.1999 aufgetretene Spannung war nicht neu. Es gab schon an den Vortagen am 03.04. und 05.04.1999 Spannungen. Zu diesen Konflikten habe ich immer Polizisten entsandt, die die Spannungen lösen konnten. Ich ging davon aus, dass

dies auch am 06.04.1999 wieder so sein würde."

Auf weiteres Befragen durch das Gericht, woher er wisse, dass der Schuss aus der Kirche gekommen sei:

„Wir haben nachträglich rekonstruieren können, dass ein Schuss aus der Kirche gefallen war. Es steckte eine Patrone an einer Stelle, die darauf schließen ließ, dass der Schuss aus der Kirche abgegeben worden war."

Auf weiteres Befragen des Gerichts:

„Es sind dann weitere Schüsse gefallen. Es sind auch Schüsse von Polizisten abgegeben worden." So seien schon am Anfang Warnschüsse abgegeben worden, um die beiden Massen, die aufeinander gerieten (dazu typische Handbewegung) auseinander zu halten.

Auf Befragen der Verteidigung:

„Jacinto war mir persönlich bekannt. Ich wusste, dass er der Bürgermeister von Dato war. Ich wusste auch, dass er die Unabhängigkeitsbewegung unterstützte."

(Schlussfolgerung der Verteidigung: „Aha, ein Bürgermeister der Republik Indonesien tritt für die Unabhängigkeit ein und wenn er bedroht wird, sucht er nicht den Schutz der Polizei, sondern den der Kirche").

Auf Befragung der Verteidigung:

„Ich kann mich zwar erinnern, dass ich von der Staatsanwaltschaft vernommen wurde. Ich kann mich aber nicht mehr daran erinnern, welche Fragen mir die Staatsanwaltschaft stellte. An die Antworten kann ich mich nur noch schwach erinnern."

Die Vernehmung endete etwa gegen 12.45 Uhr. Es trat dann eine einstündige Mittagspause ein.

(Anm./Nachtrag:
Gegen den Zeugen Letkol. Adios Salova wurde zwischenzeitlich ebenfalls ein Verfahren vor dem Ad-Hoc-Menschenrechtsgerichtshof in Jakarta durchgeführt. Salova musste sich zusammen mit dem ehemaligen Militärchef sowie dem ehem. Verwaltungschef von Liquiça für das Massaker in der Kirche von Liquiça am 6. April 1999 verantworten. Das Verfahren wurde am 19. Juni 2002 eröffnet und endete am 29. November 2002 mit Freispruch des Angeklagten. In Osttimor selbst ist bereits seit längerem ein entsprechendes Verfahren gegen Salova anhängig, blieb aber bislang ohne praktische Bedeutung, da die osttimoresische Justiz keinen Zugriff auf den in Indonesien lebenden Angeklagten hat.)

Nach der Mittagspause wurde der Zeuge **Letkol. Hulman Gultom** gehört. Der Zeuge wurde nach christlichem Recht vereidigt.

Der Zeuge erklärte auf Befragen der Staatsanwaltschaft:

„Ich habe noch in Erinnerung, dass ich von der Staatsanwaltschaft vernommen worden bin. Ich kann mich auch noch an die Fragen und meine Antworten erin-

nern.

Als Polizeichef von Dili oblagen mir die Aufrechterhaltung der öffentlichen Sicherheit und Ordnung und das Einwirken auf die Bevölkerung, sich entsprechend den Gesetzen moralisch zu verhalten. Außerdem hatte ich als Sonderaufgabe den Schutz der UNAMET *(United Nations Assistance Mission for East Timor).* Ferner hatte ich die Sicherheit für den Seehafen von Dili und den Flughafen für Dili zu leisten.

Außerdem war ich Dansatgas, Kommandeur der Satgas *(das ist eine Sondereinheit).*

Mein Vorgesetzter war der Angeklagte, diesem war ich gegenüber verantwortlich. Ihm hatte ich zu berichten. In Dili unterstanden mir die einzelnen Polizeistationen und Wachen (Polsek). Insgesamt befehligte ich 230 Polizisten.

Es gab auch KAMRA-Leute. Hiervon gab es etwa 100 Mann, die ich auch befehligte. Die KAMRA-Leute wurden von der Polizei finanziert und auch befehligt. Sie wurden aber nicht von uns bewaffnet. Ihre Aufgabe war es als zusätzlicher Sicherheitsdienst zu wirken. Die mir unterstellten 230 Leute waren etwa wie folgt eingesetzt:

> 50 Leute in meinem Polizeihauptquartier, 50 weitere Polizisten verteilt auf die jeweilige Polizeistation und Wachen; der Rest war eingesetzt im Seehafen und auf dem Flughafen sowie zum Schutz der UNAMET."

Auf Befragen:

„Außer der Polizei hatte niemand Waffen bis auf das Militär."

Auf Befragen:

„Es hat natürlich auch Leute gegeben, die illegale Waffen hatten. Wir haben jedoch etwa 1.000 Razzien zusammen mit UNAMET durchgeführt, um möglichst viele illegale Waffen zu beschlagnahmen. Wie viele Waffen wir beschlagnahmt haben, weiß ich heute nicht mehr. Über die Ereignisse am 17.04.1999 habe ich zuerst Kenntnis erhalten über einen Lagebericht meines Stellvertreters, aus dem sich ergab, dass Carrascalao um Hilfe nachgesucht hatte. Auf dieses Hilfeersuchen hin waren 7 Minuten später Polizeikräfte am Ort. Der Vorfall ereignete sich aus folgendem Anlass:

An diesem Tag gab es einen Fahnenappell der schon zuvor gegründeten Aitarak. Es handelt sich dabei um eine „Gruppe aus der Bevölkerung", die für die Integration eintrat. Bei diesem Fahnenappell sollte die frisch gegründete Gruppe vereidigt werden. Die Zeremonie fand statt am Sitz des Gouverneurs. Wer die Aitarak dorthin eingeladen hatte, weiß ich nicht. Ich hatte vorher von dem Angeklagten den Auftrag erhalten, bei der Fahnenzeremonie die Sicherheit zu gewährleisten. Dieser Befehl wurde mir vom Angeklagten zwar nicht direkt, wohl aber über Mittelsmänner in mündlicher Form erteilt. Ich selbst war nicht unmittelbar am Ort des Fahnenappells zugegen, sondern hielt mich etwa 150 m davon entfernt auf. Es waren jedoch ca. 100 Leute unmittelbar am Ort. Die Zeremonie war etwa um 11.00 Uhr zu Ende. Danach kam Manuel Carrascalao mit seinem Hilfeersuchen zur Polizei. Ich konnte deswegen die Meldung von Carrascalao nicht unmittelbar entgegennehmen, weil ich zu diesem Zeitpunkt in Balide *(ein Stadtteil von Dili)* einem anderen Fall nachgehen musste *(mehrfache Nachfrage der Staatsanwaltschaft: „Balige oder Balide?". Zur Erläuterung: Balige liegt in Nordsumatra am Toba-See - also ca. 3.000 km weiter westlich).* Ich habe dann veranlasst, dass ein Zug (Peleton) zum Haus von Carrascalao fährt. Das Haus von Carrascalao liegt etwa 4 km von der Polizeistation entfernt. Die Einsatzkräfte sind mit Einsatzfahrzeugen dort hingefahren und haben ca. 7 bis 10 Minuten benötigt." *(Bericht und Befehl erfolgten vermutlich über Funk)*

Auf weiteres Befragen des Staatsanwalts:

> „Während der Fahnenzeremonie war ich kurzfristig anwesend, jedoch nicht die ganze Zeit. Ich habe keine Waffen bei den Aitarak-Leuten gesehen. Ich wusste auch nicht, wohin diese sich nach Abschluss der Zeremonie begaben."

Auf die Frage, ob es denn eine Erklärung dafür gäbe, dass die Aitarak-Leute zum Haus von Carrascalao gezogen sind, erklärte der Zeuge:

> „Bei den Aitarak handelt es sich um Prointegrasi-Leute, die es sehr schmerzvoll fanden, dass Carrascalao und die Leute um ihn gegen die Integration und für die Unabhängigkeit waren.
>
> Auf dem Grundstück von Carrascalao befanden sich sehr viel Leute. Dies waren aber keine Flüchtlinge!"

Auf erneute Nachfrage:

> „Bei dem Fahnenappell waren etwa 200 Polizeikräfte eingesetzt; denn es wurde ein Angriff der FALINTIL (bewaffnete Armee der Unabhängigkeitsbewegung) befürchtet. Über sämtliche Vorfälle habe ich Meldungen gemacht. Auf dem Weg zum Hause von Manuel Carrascalao habe ich selbst 12 Tote gezählt. Diese waren mir alle nicht persönlich bekannt. Es handelte sich in allen Fällen um Zivilpersonen. Ich habe auch 2 Verletzte gesehen. Ich habe veranlasst, dass diese ins Krankenhaus transportiert wurden. Eine dieser beiden Personen hat es nicht überlebt."

Auf Nachfrage:

> „Ich berichtige ich habe zunächst nur 11 Tote gesehen. Der zwölfte Tote war einer der beiden Verwundeten, die den Angriff nicht überlebt haben. Die Opfer hatten Stich-, Hieb- und Schussverletzungen. Auch darüber habe ich Meldungen gemacht. Da der Kapolda nicht da war, habe ich die Meldung an den Wakapolda abgesetzt."

Auf erneute Nachfrage:

> „Über das Hilfegesuch von Manuel Carrascalao habe ich keine Meldung gemacht."

Zu den Ereignissen am 05.09.1999 erklärte der Zeuge:

> „Bei den Auseinandersetzungen um den Sitz der Diözese war ich nicht persönlich zugegen. Um einen Angriff handelte es sich meines Erachtens nicht. Zu diesem Zeitpunkt waren sehr viele Polizeikräfte durch andere Aufgaben gebunden. Ich musste zum Beispiel 50 zusätzliche Polizeikräfte am Seehafen einsetzen, da sich dort die Flüchtlinge stauten und ich deren Sicherheit gewährleisten musste. Ich hatte letztlich nur 25 Polizisten übrig. Mit diesen hatte ich auch andere Aufgaben zu erledigen. Für einen Einsatz am Sitz der Diözese blieben mir lediglich 8 Polizeikräfte. Diese entsandte ich auch dorthin.
>
> Wie gesagt, war ich nicht selber am Ort des Konflikts. Ich wurde unterrichtet über Funksprechgeräte. Mir wurde gemeldet, dass am Konfliktsort Personen mit schwarzen Hemden waren. Auf diesen schwarzen Hemden waren Logos oder Symbole aufgebracht *(offensichtlich Aitarak-Hemden).*
>
> An diesem Tag war die Hölle los in der Stadt. Grund dafür war die Veröffentlichung des

Abstimmungsergebnisses. Die Pro-Integrations- und Autonomiegruppen waren tief enttäuscht, weil sie davon überzeugt waren, die Abstimmung gewonnen zu haben. Sie vermuteten daher eine Wahlfälschung der UNAMET. Gerüchte darüber machten die Runde. Ich hatte vorher keinerlei Informationen darüber, dass der Sitz der Diözese zum Ziel von Angriffen werden könnte. Die Leute, die sich vor dem Sitz der Diözese versammelten, konnten jedoch an der Kleidung als Pro-Integrations-Leute erkannt werden. Ich selber bin dann vor Ort. Als ich eintraf, stand das Gebäude noch in Flammen. Ich habe selber 2 Tote und 1 Verletzten gesehen. Auch das Büro von Bischof Belo war in Mitleidenschaft gezogen worden. Ich habe daraufhin Meldungen an den Kapolda abgesetzt. Von meinen Leuten hatte ich Berichte bekommen, dass die Täter auch Waffen trugen. Es handelte sich jedoch um selbst gebaute Waffen."

Auf die Nachfrage, ob er nicht von anderen vergleichbaren Fällen zuvor erfahren habe, erklärte der Zeuge:

> „Nein, ich hatte keine Kenntnis von ähnlichen vorangegangenen Vorfällen, insbesondere kannte ich nicht die Ereignisse in Covalima. Ich hatte daher überhaupt keinen Anlass, mich in besonderer Weise auf einen solchen Gewaltausbruch vorzubereiten."

Auf Befragen, welche politischen Gruppen im Raum Dili tätig gewesen seien, erklärte der Zeuge:

> „Auf Unabhängigkeitsseite hat es CNRT gegeben, in dem sich die Anhänger von Gusmao gesammelt hatten. Außerdem hat es noch GRPRTT *(?, Anm. d. Übersetzers: ich habe nur die letzten drei Buchstaben dieser Abkürzung mit Sicherheit verstanden. GRPRTT scheint jedoch plausibel, da es sich hierbei um eine Initiative handelte, der Manuel Carrascalao vorstand und die ihren Sitz in seinem Haus hatte)* und IMPETTU *(eine studentische Organisation)* gegeben. Auf Integrations- bzw. Autonomieseite kannte ich Aitarak, die unter der Führung von Eurico Guterres stand.
>
> Ich selber habe zu diesen politischen Gruppen keine Position. Ich bin ein frommer Mensch. Ich lese regelmäßig in der Bibel.
>
> Mit meinen 8 Leuten vor Ort hatte ich keinerlei Chancen gegen die etwa 500 anwesenden enttäuschten Pro-Integrations- bzw. Autonomieleute vorzugehen. Beide Seiten hatten ihre Kräfte in Dili massiert."

Auf die Frage, welche vorbeugenden Maßnahmen er getroffen habe, erklärte der Zeuge:

> „Ich habe keinerlei vorbeugenden Maßnahmen treffen können. Meine Polizeikräfte waren völlig überfordert. Sie waren seit Tagen im Einsatz. Sie waren völlig übernächtigt. Es gab keine Reserven mehr. Es herrschte völliges Chaos zu diesem Zeitpunkt."

Auf weiteres Befragen:

> „Ja ich habe Schüsse gehört. Es gab Opfer auf Seiten der Unabhängigkeitsbefürworter. Es handelte sich um Zivilpersonen."

Auf Befragung, was er zur Ergreifung der Täter unternommen habe, erklärte der Zeuge:

> „Nach den Ereignissen am 17.04.1999 habe ich das Haus von Manuel Carrascalao versiegeln lassen. Es sind dann 7 Leute vorläufig festgenommen worden, von denen 3 in Untersuchungshaft gebracht wurden. Zuvor sind schon am Ort Dokumente und Schriftstücke sichergestellt worden. All solche Maßnahmen waren

am 05.09.1999 nicht mehr möglich. Am Sitz der Diözese herrschte völligen Chaos.“

Auf Befragen, ob es sich wirklich um Aitarak oder nicht um Pam Swakarsa gehandelt habe:

„Es war nicht Pam Swakarsa, es war Aitarak.“

Auf weiteres Befragen:

„Ich war zu der Zeremonie am 17.04.1999 nicht eingeladen. Die Führer dieser Veranstaltung waren Joao Tavares und auch Eurico Guterres (nach erneuter Nachfrage).“

Auf Vorhalt:

„Bei dem Fahnenappell war keine gefährliche Situation. Ich hatte meine Leute dort hingeschickt. Zunächst ein Vorauskommando der Verkehrspolizei und dann 70 weitere Polizeikräfte.“

Auf Befragen der Verteidiger:

„Ich bin zweimal von der Staatsanwaltschaft vernommen worden. Der UNAMET-Komplex in Dili war nicht für die Allgemeinheit zuständig. Hineingelassen wurden nur Anhänger der Unabhängigkeitsbewegung. Angehörige der Gegenseite also der Integrations- oder Autonomiebewegung durften das Gelände nicht betreten.

Belo wurde angegriffen, weil ihn die Leute nicht als gerecht empfanden in der politischen Entwicklung. Aber natürlich verehrten sie in als Bischof. Als Bischof Belo bedrängt wurde, suchte er zunächst Flucht bei der Polizei, dann floh er jedoch nach Australien (Kommentar der Verteidigung: Aha, Australien, nicht Jakarta!).

Das Kräfteverhältnis zwischen den Unabhängigkeitsanhängern einerseits und den Integrations- und Autonomieanhängern andererseits war etwa ausgeglichen. Es bestand deshalb ein großes Konfliktpotential.“

Auf weiteres Befragen der Verteidiger zum Komplex Angriff auf das Haus von Carrascalao:

„In dieser Sache habe ich meine Aufgabe voll erfüllt und darüber auch Meldung erstattet.“

Auf weiteren Vorhalt zum Komplex Angriff auf den Sitz der Diözese Dili:

„Dort kam es zu einem Zusammenstoß zwischen den Unabhängigkeitsanhängern einerseits und den Integrationisten andererseits. Dabei konnten aber immerhin 42 Leute gerettet werden.“

Auf die Rückfrage wovor?:

„Vor dem sicheren Tod!“

Auf weitere Nachfrage:

„Ich habe den Tod der 42 Leute dadurch verhindert, dass ich mit allen verfügbaren Kräften vor Ort war. Durch die Abgabe von Warnschüssen wurden die Täter von ihrem weiteren Tun abgehalten.“

Auf Nachfrage, ob es noch eine Reserve gab:

„Ich hatte noch einzelne Polizisten auf der Wache und dann noch die KAMRA-Leute.

Bei dem Angriff auf den Sitz der Diözese habe ich 2 Tote gesehen. Ich konnte aber diese Opfer nicht identifizieren. Ebenso konnte ich die Täter nicht identifizieren, denn es herrschte völliges Chaos. Ich konnte veranlassen, dass ein Verletzter ins Krankenhaus kommt."

Auf weiteres Befragen:

„Es ist nicht wahr, dass wir keine Vorkehrungen getroffen hätten. Priorität hatte jedoch der Schutz von Bischof Belo, seine Rettung und seine Evakuierung. Für diese Priorität hatte sich der Angeklagte entschieden und entsprechende Befehle gegeben. Vorkehrungen wie z.B. das Einsammeln von Waffen, waren zu diesem Zeitpunkt nicht mehr möglich."

Auf weiteres Befragen der Verteidiger:

„Den Angriff auf das Hauptquartier des CNRT in Becora konnte ich verhindern. Dies war nach der letzten Wahlkampfveranstaltung. Zu dieser Zeit machte die Nachricht die Runde, dass 2 Integrationsanhänger ermordet worden seien. Wir sind umgehend zum Tatort aufgebrochen und konnten das Schlimmste verhindern. Lediglich ein Fahnenmast und einige kleinere Gegenstände sind kaputt gegangen."

Auf weiteren Vorhalt:

„Es gab zwei Einrichtungen von UNAMET, die wir zu schützen hatten. Auch hier hatte der Angeklagte Prioritäten gesetzt und dem Schutz der Angestellten von UNAMET absoluten Vorrang eingeräumt. Keiner von ihnen sollte „auch nur einen Mückenstich" erleiden."

Auf erneutes Befragen durch das Gericht:

„Bezüglich der Vorgänge am Sitz der Diözese lag die Befehlsgewalt grundsätzlich bei mir, dem Kommandeur des Polres.

(die Polizei in Osttimor war örtlich wie folgt gegliedert: Das Gesamtgebiet hieß Polda (= Gebietspolizei); das Polda war untergliedert in mehrere Polres (= Polizeibezirke), wobei es sich lediglich um eine Gebietsaufteilung, nicht um eine nach Aufgaben handelte; die Polres waren dann noch einmal untergliedert in Polsek (= Polizeisektoren)).

Ich hatte also grundsätzlich die Befehlsgewalt für alle Vorgänge und Vorkommnisse in meinem Polres. Bei schwierigen Ereignissen hatte ich aber den Vorgesetzten der Polda, das heißt den Kapolda zu konsultieren.

Bei dem Überfall auf die Diözese gab es etwa 10 Opfer, bei dem Überfall auf das Haus von Manuel Carrascalao gab es etwa 12 Opfer."

Auf weiteres Befragen des Gerichts:

„Ich hielt mich nicht unmittelbar am Appellplatz auf, wo der Fahnenappell der Aitarak-Leute abgenommen wurde. Ich war etwa 100 m davon entfernt. Ich habe keine Waffen gesehen. Der nachfolgende Angriff war deshalb für mich auch nicht vorherseh-

bar. Es stimmt aber, dass bei den späteren Ereignissen - Sturm auf das Haus von Manuel Carrascalao - M 16 Waffen benutzt wurden."

Auf Nachfrage des Gerichts:

„M 16-Gewehre haben üblicherweise nur die Militärs. Es wurden auch Waffen vom Typ SK 3 verwendet."

Auf weitere Nachfrage des Gerichts:

„Nach den Ereignissen im September gab es keine Feststellungen zu den Todesursachen der einzelnen Opfer. Bei den Ereignissen im April - Sturm auf das Haus von Manuel Carrascalao - wurden jedoch Feststellungen getroffen. Die Opfer starben an Hieb-, Stich- und Schussverletzungen. Es wurden keine Details festgestellt, das heißt, welches Opfer konkret an welchen und wie vielen Verletzungen gestorben ist."

Auf weiteren Vorhalt des Gerichts, dass bei allen 3 hier verhandelten Ereignissen Menschen um Leben gekommen seien und sich dann nach dem ersten spätestens nach dem zweiten Mal aufgedrängt hätte, weitergehende Vorkehrungen zu treffen, erklärte der Zeuge:

„Solche Vorkehrungen waren im Juni und Juli möglich und haben auch funktioniert. Das ging aber nicht mehr im September.

Bei den Opfern handelte es sich sowohl um Unabhängigkeitsanhänger als auch um Integrationsanhänger. In allen Fällen waren es aber Zivilisten."

Auf weiteren Vorhalt des Gerichts:

„Im Fall des Sturms auf das Haus von Manuel Carrascalao rechneten wir mit einem Angriff der FALINTIL *(= bewaffnete Einheiten der Unabhängigkeitsbewegung).* Insoweit waren wir auch vorbereitet. Wir rechneten jedoch nicht damit, dass sich die Dinge so entwickelten, wie sie sich dann tatsächlich entwickelt haben. Im übrigen lag das Haus von Carrascalao so dicht an der Polizeistation, dass wir jederzeit dort hätten sein können."

Auf erneute Nachfrage des Gerichts:

„Die Täter beim Sturm auf das Haus von Manuel Carrascalao kamen aus den Reihen der Integrationsanhänger. Es sind auch 3 davon verhaftet worden. Aber die Ereignisse am 05. und 06.09.1999 spielten sich in einer Situation ab, die nicht mehr normal war. Deswegen waren auch keine Festnahmen mehr möglich. Bei den Tätern handelte es sich aber um Pro-Integrationisten, bei den Opfern um Unabhängigkeitsanhänger. Alle Opfer waren Zivilpersonen."

Auf Vorhalt des Gerichts, ob die vorbeugenden Maßnahmen ausreichend gewesen seien, erklärte der Zeuge:

„Das waren sie nicht. Aber uns standen keine weiteren Kapazitäten zur Verfügung. Wir hatten weitere Leute und Autos angefordert gehabt aber nichts bekommen."

Auf weiteres Befragen des Gerichts:

„Ganz Dili stand in meinem Zuständigkeitsbereich. Ich konnte aber nicht die Kontrolle über alle Bereiche ausüben. Es gab Gegenden, die sich unserer Kontrolle entzogen. Vor allem bevor UNAMET ins Land kam, gab es „no-go-areas", in die Vertreter der Republik Indonesien nicht gehen konnten."

Unter Tränen beteuerte der Zeuge:

> „Ich habe von meiner Seite alles in meiner Macht Stehende unternommen, um die Ereignisse zu verhindern. Ich war selbst auf meinen eigenen Tod vorbereitet."

Daraufhin erfolgte ein längerer Vorhalt des Gerichts:
Der Zeuge sei der erste, der bekundet habe, dass die Pro-Integrationsanhänger durch äußere Kennzeichnungen zu erkennen waren, z.B. die Aitarak-Leute durch schwarze Hemden mit einem entsprechenden Logo darauf. Hieran schloss sich die Frage an, ob es solche Kennzeichnungen auch auf Seiten der Unabhängigkeitsanhänger gab. Hierzu erklärte der Zeuge: die Unabhängigkeitsanhänger hätten sich im Wahlkampf durch entsprechende „Attribute" zu erkennen gegeben.

Auf die Frage des Gerichts, ob die Priorität der Einsätze mehr beim Verhindern der Zusammenstöße der verfeindeten Gruppen oder eher bei der Rettung der Angegriffenen und Verletzten oder bei beiden gelegen habe, erklärte der Zeuge:

> Dies sei eine „dillematische" Frage gewesen, die nur schwer hätte entschieden werden können.

Auf weiteren Vorhalt, wie man denn nun die Praxis gehandhabt habe, erklärte der Zeuge:

> „Wir haben beides gemacht."

Auf weiteren Vorhalt des Gerichts:

> „Am 17.04.1999 gab es keinerlei Hindernisse, die uns in unserer Handlungsweise hätten einschränken können. Anders war dies im September. Wir waren einfach dadurch gehindert, dass wir nicht genügend Polizeikräfte hatten. Die Situation war insoweit sehr unterschiedlich. Unsere Aufgabe, die beiden Gebäudekomplexe von UNAMET sowie weitere Einrichtungen zu schützen, haben wir nach meinem Dafürhalten gut erfüllt - allerdings nur bis zum 04.09.1999. Danach war es einfach eine revolutionäre Situation. Da konnten wir gar nichts mehr tun."

Der Staatsanwalt legte dann ein Papier vor, bei dem es sich offensichtlich um ein Flugblatt handelte. Dieses wies als den presserechtlich Verantwortlichen den Angeklagten in seiner Eigenschaft als Kapolda aus. Dieses Schriftstück wurde von allen Verfahrensbeteiligten in Augenschein genommen. Der Inhalt wurde jedoch nicht erörtert. Zu diesem Schriftstück erklärte der Zeuge:

> „Ja, dieses Schriftstück ist von dem Kapolda, dem Angeklagten, herausgegeben worden, der es auch gezeichnet hat. Der Inhalt wurde ihm aber von der Zentralregierung vorgegeben."

Auf Befragen des Angeklagten:

> „Auf den Geländen der UNAMET waren Tausende von Flüchtlingen. Diese wurden von den Polizeikräften evakuiert. Nicht evakuiert wurden die Angehörigen von UNAMET selbst, da diese schon von australischen Truppen evakuiert wurden."

Auf weiteres Befragen des Angeklagten:

> „Ja, schon vor diesen Ereignissen hat es ähnliche schwerwiegende Ereignisse gegeben. Es gab dabei viele Opfer von Polizeikräften und BRIMOB-Kräften."

Auf Befragen des Angeklagten, wieweit die einzelnen zu schützenden Objekte (UNAMET, Internationales Rotes Kreuz, Diözese, Hotel Mahkota, in dem die Journalisten untergebracht waren) örtlich auseinander lagen:

„Die lagen alle nicht allzu weit auseinander."

Die Vernehmung des Zeugen schloss gegen 16.30 Uhr. Es sollte dann noch der dritte Zeuge vernommen werden, da der nächste Prozesstag am 09.05.2002 wegen Christi Himmelfahrt ausfallen würde. Wegen der fortgeschrittenen Zeit wurde dann jedoch auf die Einvernahme dieses Zeugen verzichtet. Der Prozess wird daher erst am 16.05.2002 wieder fortgesetzt.

(Anm./Nachtrag:
Eine Anklage gegen den Zeugen Letkol. Gultom in Zusammenhang mit dem Angriff auf den Wohnsitz von Manuel Carrascalao am 17. April 1999 wurde Anfang Juni 2002 von der Generalstaatsanwaltschaft beim Ad-Hoc-Menschenrechtsgerichtshof in Jakarta eingereicht, die erste Hauptverhandlung fand am 26. Juni 2002 statt. Die Urteilsverkündung wird für Anfang Dezember 2002 erwartet.
In verschiedenen offiziellen und halb-offiziellen Akten und Presseberichten findet sich Letkol. Gultom mit den Vornamen/Schreibweisen Hilman, Hulman, Herman und Gulman wieder.)

Jakarta, den 06.05.2002

Appendix 4B

Mitschrift über die Hauptverhandlung gegen die fünf Angeklagten Herman Sedyono et al. am 07.05.2002 vor dem Menschenrechtsgerichtshof in Jakarta

Beginn der Verhandlung: ca. 9.15 Uhr

Vorbemerkung

Dieses Verfahren richtet sich gegen fünf Angeklagte. Es handelt sich dabei um die folgenden Personen:

Kol. Herman Sedyono, ehem. Bupati von Covalima,
Letkol Liliek Koeshadianto, ehem. Dandim von Suai,
Lettu Sugito, ehem. Danramil von Suai
Kapt. Achmad Syamsuddin, ehem. Kasdim von Suai.
Letkol. Gatot Subiaktoro, ehem. Polizeichef (Kapolres) von Suai.

Die Anklage umfasst u.a. das Massaker in der Kirche von Suai, bei dem Anfang September mindestens 27 Personen getötet worden sind.

> Zur Verschleierung dieses Massakers wurden 27 Leichen von dem in Osttimor gelegenen Suai in das westtimoresische Wemasa transportiert und dort im Küstenstreifen verscharrt.

Die vier angeklagten Militärangehörigen sind in Uniform erschienen, der angeklagte Polizist in Zivil. Das Erscheinungsbild im Saal ist gekennzeichnet von Uniformträgern. Aber auch viele Prozesszuschauer in Zivil scheinen aus Militärkreisen zu stammen. U.a. befand sich unter den Zuschauern Generalmajor Manurung, Chef der Rechtsabteilung des Militärs. Unter den Verteidigern finden sich einige, die schon in dem Verfahren gegen Silaen am vergangenen Donnerstag tätig waren.

Es waren fünf Zeugen angekündigt, von denen drei an diesem Tag vernommen werden sollten.

1. Zeuge:

Polizeiinspektor Sudarminto:

> „Ich bin Angehöriger des mobilen Einsatzkommandos (Brimob), in der Provinz NTT, zu der auch Westtimor gehört (zu NTT gehören mehrere Inseln neben Westtimor). Ich kenne keinen der Angeklagten persönlich. Ich habe daher auch keine Verwandtschaftsverhältnisse mit einem der Angeklagten. „

Der Zeuge wurde islamisch vereidigt.

Auf Befragen des Gerichts:

„Ich war schon vor September 1999 im Gebiet NTT tätig. Im September 1999 bin ich zur Verstärkung an die Grenze zwischen Westtimor und Osttimor auf westtimoresischer Seite versetzt worden. Dort bin ich auch heute noch tätig. Mein Einsatzbezirk ist Wemasa im Distrikt Belu. Ich bin schon einmal von der Staatsanwaltschaft zu den Vorgängen vernommen worden.

Mein Einsatz lief unter dem Gesichtspunkt der Entwaffnung von Personen, die möglicherweise von Osttimor nach Westtimor gelangen könnten. Die Aktion trug den Namen „Operation Komodo“. In diesem Rahmen war ich auch zur Verstärkung einzelner Polsek in Osttimor eingesetzt. Wir haben bei der Durchführung des Referendums geholfen. Anfangs war es ruhig. Doch plötzlich stellten sich drastische Veränderungen ein. Die Folge war, dass viele Flüchtlinge von Ost- nach Westtimor strömten. Der Chef des Polsek in Wemasa war Philipus. Chef des übergeordneten Polizeiressorts war jemand aus Aceh, dessen Namen ich vergessen habe. Dieses übergeordnete Polizeiressort war in Belu. Mein Einsatzort war an der südlichen Küste von Timor. Ich war zu keinem Zeitpunkt in Suai. Die Flüchtlinge, die über die Grenze waren, waren Zivilisten, Militärs, Beamte und andere Personen. Sie kamen in Autos, Dienstwagen, sonstigen Fahrzeugen und teilweise auch zu Fuß. Ob sie Waffen bei sich führten, konnte ich nicht feststellen. Wir hatten zwar die Anweisung, alle Grenzgänger nach Waffen zu untersuchen. Dies konnten wir jedoch nicht leisten, da der Flüchtlingsstrom so überwältigend war. Denn während wir einen untersuchten, passierten viele andere unkontrolliert die Grenze. Die Flüchtlinge waren Indonesier und Timoresen. Ich weiß nicht, ob sich unter den Flüchtlingen auch Straftäter befanden. Ich habe unter den Grenzgängern keine Verletzten gesehen. Es gab aber Leute, die von Toten berichteten.

Uns fielen drei Fahrzeuge auf, die mit eingeschaltetem Licht die Grenze passierten. Es handelte sich dabei um einen Kijang, ein Microlet und einen LKW *(Kijang ist ein Toyota-Geländewagen, ähnlich dem Cherokee von Jeep; ein Microlet ist ein Minibus)*. Wir folgten diesen Wagen, die in Richtung Strand fuhren. Vor Ort war ich dann mit dem Kapolsek. Außerdem war mein direkter Vorgesetzter Julius dabei. Julius hatte zwar einen niedrigeren polizeilichen Dienstgrad, ich war ihm jedoch aufgrund der Versetzung untergeordnet. Vor Ort stellten wir fest, dass die Fahrzeuge Leichen geladen hatten. Zu den Fahrzeugen gehörten viele Personen, teils in Zivil, teils in Militärkleidung. Die Militärkleidung wies jedoch keine Rangabzeichen und keine Namensschilder auf.

Mit einer dieser Personen in Militärkleidung habe ich mich unterhalten. Dieser erklärte mir, ich solle nicht zu nahe kommen. In Suai sei Krieg. Dort habe es viele Opfer gegeben. Man könne sie dort in Suai nicht beerdigen. Man wolle dies deshalb hier tun.

Ich habe keine weiteren Fragen an diese Person oder andere Personen dieses Konvois gerichtet. Ich konnte auch nicht weiter in die Fahrzeuge hineinsehen.

Vor der Beisetzung der Leichen wurde zunächst gebetet. Die Katholiken unter den Personen haben nach katholischem Ritus gebetet, ich selbst habe nach meinem Glauben gebetet.

Zu einem späteren Zeitpunkt wurden die Leichen exhumiert und obduziert. Die Obduktion wurde von einem forensischen Team des Krankenhauses aus Atambua vorgenommen. Ich selbst habe dabei zugesehen.“

Auf Befragen der ersten Beisitzerin:

„Die Operation Komodo begann bereits vor dem Referendum und sollte dazu die-

nen, die erforderliche Sicherheit während der Durchführung des Referendums zu gewährleisten. Mein eigentlicher Einsatzort war in Wemasa. Die Flüchtlinge kamen aus Osttimor, ich weiß aber nicht aus welchen Orten."

Auf Befragen der beisitzenden Richterin, was er unter Zuspitzung der Situation verstünde:

„Es war immer mehr Verkehr an der Grenze; der Flüchtlingsstrom wurde immer größer. Welchen Gruppen die Flüchtlinge angehörten, kann ich nicht sagen. Es handelte sich aber offensichtlich um Personen, denen bei den Auseinandersetzungen die Häuser abgebrannt worden waren. Je länger der Zustand anhielt, um so mehr Leute kamen. Ich gehe aber auch davon aus, dass einige Leute ihre Häuser selbst abgebrannt hatten, bevor sie flohen."

Auf Befragen des Gerichts, wer die Person in der Militärkleidung war, mit der er gesprochen habe:

„Es handelte sich wahrscheinlich um Militärangehörige. Ich kann dies aber nicht mit Bestimmtheit sagen. Er hatte kurze Haare."

Auf Befragen, wie kurz der Haarschnitt war, ob es sich dabei um einen typischen Militärhaarschnitt handele:

„Ich kann dazu nichts sagen, es gibt viele Leute mit kurzen Haaren. Dieser Mann gehörte zu einer Gruppe von mehr als zehn Personen."

Auf weiteren Vorhalt, ob er andere Gruppen kenne, die ähnliche Militärkleidung trügen:

„Von solchen Gruppen weiß ich nichts. Ich hatte zu diesem Zeitpunkt erst etwa einen Monat vor Ort Dienst."

Auf weiteren Vorhalt, wie viele Gruben man zur Beisetzung der Leichen ausgehoben habe:

„Das weiß ich nicht mehr, das habe ich vergessen."

Auf weiteren Vorhalt, ob alle Personen, die die Gräber aushuben, Uniformen trugen:

„Auch das habe ich vergessen.

Nachdem wir den Konvoi bemerkt hatten, habe ich den Kapolsek benachrichtigt, der dann auch eintraf. Dieser hat dann zusammen mit Julius die Sache in die Hand genommen. Ich war zwar dabei, hielt mich jedoch mehr im Hintergrund auf."

Auf Befragen des zweiten Beisitzers, ob es sich bei dem Beisetzungsort um einen Friedhof gehandelt habe oder um eine Stelle in der Wildnis:

„Es war eher eine Stelle, wo Fischer ihrer Arbeit nachgehen. Es war kein Friedhof. Die Leute haben berichtet von kriegerischen Auseinandersetzungen in der Kirche von Suai. Ich erkenne unter den Angeklagten keinen wieder, der damals mit dem Leichenkonvoi eintraf."

Auf Befragen des dritten Beisitzers, welche Personen er konkret bei dem Begräbnis gesehen habe:

„Es waren Leute aus Osttimor, die teilweise rot-weiße Stirnbänder trugen *(die National-*

flagge Indonesiens besteht aus einem roten und weißen Streifen)."

Auf die Bitte des dritten Beisitzers, noch einmal näher die Beisetzungszeremonie zu beschreiben:

„Bei den getöteten Personen handelte es sich offensichtlich um Christen. Darunter waren auch Pastoren. Deswegen wurde wahrscheinlich auch nach christlichem Ritual die Beisetzung vorgenommen. Ich selber habe aber als Moslem nach islamischem Ritus gebetet. Ob einer der Angeklagten vor Ort dabei war, kann ich nicht sagen."

Auf Befragen des vierten Beisitzers, ob er jemals in Suai gewesen wäre:

„Nein, ich war niemals in Suai, jedenfalls nicht bewusst. Ich kann nicht ausschließen, dass wir bei irgendeinem Einsatz auch durch Suai gefahren sind. Ich habe es dann jedenfalls nicht wahrgenommen. Alles was ich kenne, ist eine Brücke, auf dem Weg nach Suai."

Auf weiteres Befragen:

„Ich weiß nicht, wie weit Suai von der Grenze abliegt. Ich weiß noch nicht einmal genau, wo Suai liegt."

Auf weiteres Befragen:

„Die Leute aus dem Konvoi suchten den Beisetzungsort aus; auf gar keinen Fall die Leute des Sicherheitsapparates."

Auf Befragen des Staatsanwalts nach dem Erfolg von Kontrollen und Waffendurchsuchungen an der Grenze:

„Ja, wir wussten dann über die Art der Waffen Bescheid. Wir haben die Art der Waffen notiert, jedoch keine beschlagnahmt."

Auf die Frage, nach dem Ziel der Flüchtlinge:

„Die Flüchtlinge wollten zu den verschiedenen Flüchtlingsaufnahmelagern im Raum Wemasa."

Auf weiteres Befragen, wie viele Personen in dem Konvoi Militärkleidung trugen:

„Die Person, mit der ich gesprochen habe, trug mit Sicherheit Militärkleidung. Es gab aber auch noch weitere Personen in Militärkleidung. Wie viel das waren, kann ich nicht sagen."

Auf weiteres Befragen zur Beschreibung der Fahrzeuge:

„Ein Fahrzeug war rot, eins war gelb, das dritte war weiß." *(Sämtliche UNAMET-Fahrzeuge waren weiß lackiert. Es ist auch zu Diebstählen von UNAMET-Fahrzeugen gekommen. Bis zur Evakuierung der UNAMET-Einheiten sind sämtliche UNAMET-Fahrzeuge entweder zerstört oder gestohlen worden)*.

Auf weiteres Befragen:

„Über die Vorgänge habe ich gegenüber meinem Vorgesetzten Meldung gemacht."

Auf Befragen der Verteidigung:

„Ich war nie in Suai, ich kann über die Lage von Suai keine Aussage machen, weil ich nie eine vernünftige Karte von diesem Gebiet hatte. Wenn ich bei meiner Aussage irgendwann mal eine Entfernungsabgabe gemacht habe, beruht dies darauf, dass ich später mal in einen Atlas hinein geblickt habe. Meine Angaben sind lediglich Schätzungen gewesen."

Auf die Frage, ob die Personen bei dem Begräbnis bewaffnet waren:

„Das kann ich nicht sagen. Es waren so viele Leute. Ich habe auch nicht darauf geachtet.
Nach dem Referendum nahm der Flüchtlingsstrom gewaltig zu."

Auf weiteres Befragen, ob Druck auf die Flüchtlinge ausgeübt worden war, das Land zu verlassen:

„Nein! Niemals!"

Auf weiteres Befragen:

„Ich weiß nichts davon, ob bei dem Massaker in Suai Militär beteiligt war. Darüber hat die Person, mit der ich bei der Beisetzung gesprochen habe, nichts gesagt.

Ich hatte zwar einen höheren Rang als mein unmittelbarer Vorgesetzter. Die Koordination lief aber über meinen Vorgesetzten. Ich kam erst dazu, als die Leute in der dritten Grube beigesetzt wurden. Dies war die Grube mit den Pastoren. Die anderen Gräber waren zu diesem Zeitpunkt schon zugeschüttet. Ich konnte daher keine Feststellungen zu den Verletzungen machen, die zum Tode dieser Personen führte."

Auf weiteres Befragen, wie viele Personen beigesetzt worden sind:

„Soweit ich gehört habe, soll es sich um 27 Personen gehandelt haben."

Auf den weiteren Vorhalt, ob er nichts Genaueres sagen könne, weil er doch bei der Exhumierung dabei war:

„Ja, ich war bei der Exhumierung dabei. Es waren aber auch meine Vorgesetzten dabei, darunter der Kapolres. Es wurden aber nur drei Leichen gefunden und anschließend obduziert. Als ich bei der Beisetzung an das Grab mit den drei Pastoren trat, waren die Leichen schon in Plastiksäcke eingepackt und diese leicht mit Erde bedeckt. Die Gräber waren nicht an einem versteckten Ort, sondern leicht zu finden und allgemein zugänglich. An diesem Ort kommen oft Fischer vorbei, die dort ihrer Tätigkeit nachgehen, aber auch andere Leute.

Die Leute aus dem Fahrzeugkonvoi haben den Kapolres um Plastiksäcke für die Leichen gebeten. Dieser hat ihnen dann auch irgendetwas zur Verfügung gestellt. Worum es sich dabei im einzelnen handelte und wofür, weiß ich nicht. Ich selbst habe weder beim Ausheben der Gräber noch bei der Beisetzung mitgewirkt. Ich habe lediglich zugeschaut. Ich selbst habe die Leichen nicht direkt gesehen. Die Beisetzung aber hatte keinerlei heimlichen Charak-

ter. Alles wurde ganz offenkundig getan. Die Gräber sind an der Geländeform zu erkennen. Rings herum ist Sandstrand. Aber dort, wo die Gräber sind, finden sich leichte Erhebungen."

Auf weiteren Vorhalt der Verteidiger:

„Von der Person aus dem Konvoi, mit der ich sprach, habe ich erfahren, dass in Suai sich niemand um die Beisetzung dieser Personen gekümmert habe. Deswegen sei man hierher gekommen, um die Personen beizusetzen."

Auf weiteres Befragen der Verteidigung:

„Aus dem Umstand, dass einige Personen in dem Leichenkonvoi Militärkleidung ohne Rangabzeichen und Namen trugen, kann ich keinen Zusammenhang zwischen den Vorgängen in Suai und dem Militär herstellen."

Auf den weiteren Vorhalt der Verteidigung, dass er einen solchen Zusammenhang noch bei seiner Aussage vor der Staatsanwaltschaft hergestellt habe:

„Ich kann nicht mehr sagen, als ich heute sage."

Die Verteidiger lassen dem Zeugen Asservate vorlegen. Hierbei handelt es sich - soweit erkennbar - um verschiedene Textilien, möglicherweise Tücher, die in einem Karton aufbewahrt worden sind. Hierzu befragt erklärte der Zeuge:

„Ob es sich bei diesen Gegenständen um die Materialien handelt, in die die Leichen eingewickelt worden sind, kann ich nicht sagen. Allerdings waren diese Materialien von einer solchen Beschaffenheit wie die mir vorgelegten."

Die Staatsanwaltschaft wollte dann ein Schriftstück dem Zeugen vorlegen oder daraus vorhalten. Darauf kam es zu Einwänden der Verteidigung. Es wurde dann zwischen Gericht, Staatsanwaltschaft und Verteidigung am Richtertisch verhandelt. Der Inhalt dieser Verhandlung war nicht wahrnehmbar. Jedenfalls kam es nicht zu einem weiteren Vorhalt.

Das Gericht forderte danach den Zeugen auf, sich noch einmal die Angeklagten anzusehen, um sich dann dazu zu äußern, ob er einen davon wiedererkenne. In diesem Zusammenhang bemerkte das Gericht, dass er sich bisher die Angeklagten überhaupt nicht richtig angesehen habe. Er möge doch seine diesbezügliche Scheu überwinden. Der Angeklagte blieb bei seiner bisherigen Aussage und erklärte:

„Ich erkenne niemanden wieder."

Der Zeuge wurde gegen 11.00 Uhr entlassen.

2. Zeuge:

Julius Basabae, aus Flores, katholisch und z.Zt. im Polizeidienst in Belu im Wemasa

Auf Befragen des Gerichts erklärte der Zeuge:

„Von den Angeklagten erkenne ich einen, nämlich Sugito."

Sodann wurde der Zeuge christlich vereidigt.

Auf Befragen des Gerichts:

„Ich bin in dieser Sache schon einmal vernommen worden, und zwar von der Staatsanwaltschaft. Ich kann mich auch daran erinnern.

Zur fraglichen Zeit war ich Kapolpos in Wemasa. Ich leitete dort einen Posten, der dem Kapolsek unterstellt ist.

Am 07.09.1999 habe ich Massengräber gesehen. Darin waren 27 Personen beigesetzt. Ich weiß das deswegen, weil ich mit dem Kapolsek dort vor Ort war."

Die Antwort auf die Frage, ob er die 27 Leichen selber gesehen habe oder davon nur aus Berichten wüsste, blieb unverständlich.

„Am Morgen dieses Tages habe ich drei verdächtige Fahrzeuge gesehen, die in Richtung Strand fuhren. Darüber habe ich Meldungen erstattet und bin zusammen mit dem Kapolsek zu den Fahrzeugen gefahren. Es handelte sich um ein Microlet, einen Lastwagen und ein drittes Fahrzeug. Wir waren insgesamt zu dritt dort, d.h. neben mir der Kapolsek und der Zeuge vor mir. Der Kapolsek hat sich mit einer Person aus dem Konvoi unterhalten. Es waren vier Leute. Einige davon waren in Uniform, andere waren Zivilisten. Offenbar gab es einen, der als Sprecher für alle auftrat. Ich habe auch Waffen gesehen, es handelte sich dabei um selbstgebaute Waffen. Die Leute kamen aus Suai. Sie konnten, aus welchen Gründen auch immer, die Leichen dort nicht beisetzen. Dort soll etwas Schlimmes passiert sein."

Auf die Frage, woher er wisse, dass es sich um 27 Leichen handelte:

„Das habe ich gesehen."

Auf die Frage, an welchen Verletzungen die Leute verstorben seien, war die Antwort undeutlich.

Auf weiteres Befragen:

„Bei den 27 Leichen handelte es sich um zehn Frauen und Kinder und 17 Männer. Es waren gewöhnliche Leute. Aber unter den 17 Männern waren auch drei Pastoren dabei. Diese drei Pastoren waren Hilario, Francisko und Dewanto. Dass es sich bei den drei Pastoren um die Vorgenannten handelte, habe ich aus den Berichten der Leute aus dem Leichenkonvoi erfahren. Die ganze Beisetzung dauerte etwa zwei Stunden. Die genaue Uhrzeit weiß ich nicht mehr. Es war jedenfalls tagsüber und am Vormittag.

Bevor die Gräber geschlossen wurden, wurde zunächst gebetet. Nach Schließung der Gräber wurden die Gräber auch gekennzeichnet.

Ich weiß nicht, wer die Gruppe des Leichenkonvois führte. Aber der Angeklagte Sugito war dabei."

Auf Befragen der Beisitzerin:

„Die Fahrzeuge mussten auf dem Weg zum Strand an unserem Posten vorbei. Es handelte sich um drei Zivilfahrzeuge. Auf die Nummernschilder habe ich zunächst nicht geachtet. Als wir dann aber am Strand waren, habe ich mir die Fahrzeuge genauer angesehen. Es handelte sich um zwei Fahrzeuge mit zivilem Kennzeichen. Das Microlet hatte kein Nummernschild. Die beiden Kennzeichen habe ich mir notiert."

Der Zeuge zieht einen Zettel aus der Tasche und die gibt die Kennzeichen der Fahrzeuge, die er seinerzeit notiert hat, an.

„Einer aus dem Leichenkonvoi hat sich mit dem Kapolres unterhalten. Er trug eine Uniform ohne Abzeichen und Namensschild. Er hatte kurze Haare. Aber das soll es auch unter Zivilisten geben. Sugito habe ich erkannt, weil ich ihm schon zuvor bei Ausübung des Grenzdienstes begegnet war. Mein Bezirk Belu grenzt nämlich unmittelbar an den Bezirk Covalima an, in dem auch die Stadt Suai gelegen ist. Unsere Aufgabe war es, die Leute, die aus diesem Gebiet rüber in unser Gebiet kommen, zu erfassen. Es gab keine direkte Kommunizierung dieser beiden Bezirke (Kabupaten) über die Grenze hinweg. Daher waren wir auch nie vorher darüber unterrichtet, was auf uns zukam.

Die Gruppe bei dem Begräbnis bestand aus mehr als zehn Leuten. Ich habe die Leichen aus der Nähe gesehen, als sie noch nicht verpackt waren. Auf die konkreten Verletzungen habe ich nicht geachtet. Die Leichen waren alle noch bekleidet. Die Kleidung wies zwar Blutspuren auf. Ich konnte jedoch nicht sehen, woher die Blutspuren unter der Verkleidung herkamen."

Auf weiteres Befragen des Gerichts, ob die Beisetzung irgendwelche besonderen Merkmale trug:

„Ich fand die Beisetzung irgendwie ganz normal.

Unter den Toten befanden sich keine Uniformierten. Ich kannte selbst nur einen der Pastoren. Die anderen Personen kannte ich nicht.

Bezüglich der Personen aus dem Leichenkonvoi muss ich sagen, dass darunter auch etliche Zivilisten waren. Zu der Zeit waren aber in Osttimor viele Personen organisiert. Es gab auch Zivilisten, die Uniformen trugen.

Sugito hat bei dem Begräbnis nichts gesagt.

Weitere Informationen aus Suai konnten wir damals nicht einholen."

Auf Vorhalt des dritten Beisitzers, der Zeuge habe in seiner staatsanwaltschaftlichen Vernehmung die Gruppe Laksaur erwähnt:

„In meinem Gebiet gab es die Gruppe Laksaur nicht. Von dieser Gruppe habe ich nur vom Hörensagen gewusst. Wenn ich Sugito mit dieser Gruppe in meiner staatsanwaltschaftlichen Vernehmung im Zusammenhang gebracht habe, dann weiß ich dies ebenfalls nur vom Hörensagen."

Auf Befragen des zweiten Beisitzers, woran er den Unterschied zwischen regulären und selbstgebauten Waffen erkannt habe:

„Die selbstgebauten Waffen sind aus Holz."

Es folgt dann eine unbeholfene weitschweifende Erklärung des Zeugen, die im einzelnen wiederzugeben schwer ist.

Auf den erneuten Vorhalt, warum die Leute nicht in Suai begraben wurden:

„Das weiß ich nicht. Wer unter den mehr als zehn Leuten die Befehle gab oder Wortführer war, kann ich nicht sagen. Aber zweifellos war es so, dass sie

einen Wortführer hatten oder dass einer die Befehle gab. Ich habe mich mit diesen Leuten nicht unterhalten. Auf den Gräbern wurden Holzkreuze aufgestellt."

Auf Befragen durch die beisitzende Richterin:

„Die Gräber waren ganz eindeutig auf Gebiet der Provinz NTT."

Auf Befragen des Staatsanwalts:

„Die Fahrzeuge kamen aus Suai und fuhren in Richtung Strand."

Der Zeuge gibt jetzt noch einmal aus seinen Notizen die Autonummern an!

„Warum ein Fahrzeug ohne Nummernschild war, weiß ich nicht. Ich habe die Vorgänge um das Referendum in Osttimor nicht mehr verfolgt. Ich habe nur festgestellt, dass die Flüchtlinge immer mehr wurden. Warum dies so war, weiß ich nicht. Aus den Gesprächen mit den Leuten weiß ich nur, dass diese der Auffassung waren, sie hätten die Wahl verloren."

Auf weiteres Befragen der Staatsanwaltschaft, aus wie vielen Personen die Gruppe des Leichenkonvois bestand:

„Es waren mehr als zehn. Davon trugen etwa zwei Personen Waffen."

Auf weiteres Befragen der Staatsanwaltschaft, ob diese Leute irgendwelche Wünsche oder Bitten an den Zeugen oder seine Kollegen gerichtet hätten:

„Ich selbst habe dabei geholfen, die Leichname der toten Pastoren auszuladen. Sugito war nur dabei. Er hat aber selbst nichts gemacht."

Es folgt jetzt eine Rüge der Verteidigung, die sinngemäß dahin geht, dass der Staatsanwalt unzulässige Wiederholungsfragen stellt. Der Vorsitzende erklärt, dass Fragen zur weiteren Aufklärung des Sachverhalts bei Unklarheiten durchaus zulässig und sinnvoll sind.

Auf Befragen der Verteidigung:

„Ich weiß nicht, ob die Flüchtlinge zur Flucht gezwungen wurden. Ich habe jedenfalls nichts darüber gehört. Aus den Gesprächen am Grab habe ich nichts über eine Beteiligung des Militärs an dem Massaker in Suai gehört."

Auf die Frage der Verteidigung, wie die Toten beigesetzt wurden:

„Die Toten wurden nach christlichem Ritus beigesetzt. Die anwesenden Muslime haben aber nach islamischen Ritus gebetet.

Ich selbst war noch nie in Suai. Ich hatte keine Zuständigkeiten über meinen Bezirk hinaus.

Über eine Verbindung des Angeklagten Sugito mit Laksaur weiß ich nur vom Hörensagen."

Auf Befragen der Verteidigung:

„Ich selbst kann schießen. Ich kann selbstgebaute Waffen von regulären Waffen unter-

scheiden. Ob die Waffen, die ich gesehen habe, funktioniert haben, weiß ich nicht. Ich kann auch nicht sagen, ob sie geladen waren. Ob es Spielzeugwaffen waren, kann ich nicht sagen. Ich habe mir dazu auch keine Gedanken gemacht.

Bei der Bestattung gab es einen Vorbeter. Wer das war, weiß ich nicht. Diese Person kannte ich nicht. Ich selbst habe mit gebetet.

Der Begräbnisort liegt auch nicht versteckt und er ist leicht zugänglich. Das Holz, aus dem die Kruzifixe gemacht wurden, war Strandgut oder lag dort jedenfalls am Strand herum."

Auf weiteres Befragen der Verteidiger:

„Ich habe meine Aussagen bei der Staatsanwaltschaft ohne jeden Druck gemacht. Ich habe selbst die Gruben gesehen. Sie waren etwa einen Meter tief. Die Männer wurden in ein Grab gelegt, die Frauen in ein anderes. Ich habe mich nicht mit den anderen unterhalten. Ich hatte auch keine Lust dazu."

Auf Vorhalt der Verteidiger, ob er bei seiner staatsanwaltschaftlichen Vernehmung in Kupang gewusst habe, wer Beschuldigter sei:

„Nein, das habe ich nicht gewusst."

Es folgt nun die Vorlage der Asservaten, wie schon beim vorangegangenen Zeugen. Auf Befragen des Gerichts:

„Einen Teil dieser Dinge habe ich schon gesehen. Dies war damals beim Begräbnis. Bei der Exhumierung habe ich diese Dinge nicht gesehen, denn ich war nicht bei der Exhumierung dabei. Ich hatte damals Urlaub."

Auf Befragen der Verteidiger:

„Ob die mir vorliegenden Textilien identisch sind mit denen, die ich bei der Beisetzung sah, kann ich nicht sagen. Sie waren aber von der gleichen Art."

Nachdem offensichtlich die Vernehmung beendet schien, druckste der Zeuge herum und fragte, ob er noch etwas sagen könne. Darauf erklärte der Vorsitzende, dass er dies tun könne, wenn es in einem Zusammenhang mit dem Prozess stünde.

Daraufhin wollte der Zeuge nichts mehr sagen. Er äußerte sich etwa dahingehend, dass das, was er auf den Herzen habe, nicht so wichtig sei.

Daraufhin drängte ihn der Vorsitzende, sich zu erklären. Nunmehr erklärte der Zeuge:

„Ich bin hier auf eigene Kosten von Westtimor hierher gereist. Dies war eine lange Reise mit dem Schiff und hat für mich viel Geld gekostet. Ich muss auch irgendwo in Jakarta unterkommen. Ich bitte daher um Reisekostenerstattung."

Die Staatsanwaltschaft stimmt dem durch heftiges Kopfnicken zu. Wie die Reisekostenerstattung geregelt wurde, hat sich nicht mehr im Detail feststellen lassen.

Schließlich fügte der Zeuge noch hinzu:

Hier vor dem Menschenrechtsgerichtshof ginge es ja um Menschenrechte und dazu müsse er sagen, dass er wegen seiner Rolle als Zeuge einfach Angst habe und sich bedroht fühle.

Ende der Vernehmung gegen 13.45 Uhr.

Es setzte dann eine Unterbrechung für die Mittagspause von einer Stunde ein. Der dritte Zeuge, **Philipus Kanakadja**, wurde dann wohl auch vernommen. An dieser Vernehmung konnte jedoch nicht mehr teilgenommen werden, da andere Termine anstanden.

Appendix 4C

Mitschrift über die Hauptverhandlung gegen Jose Abilio Osorio Soares am 08.05.2002 vor dem Menschenrechtsgerichtshof in Jakarta

Beginn der Verhandlung: 9.00 Uhr

Das Gericht besteht aus fünf Personen, darunter der Vorsitzenden und einer Beisitzenden.

In der Verteidigung Anwälte, die auch schon in den anderen Verfahren tätig sind.

1. Zeuge:

Adam Damiri, damaliger Militärkommandant (Pangdam) des Territorialkommandos Kodam IX Udayana mit Sitz in Bali (zuständig für die Provinzen Bali, NTB, NTT und seinerzeit Osttimor) unterdessen aufgestiegen in den Generalstab. Er steht im Rang eines Generalmajors und war seit Anfang der 80er Jahre wiederholt in verschiedenen Positionen in Osttimor tätig.

Auf Befragen der Staatsanwaltschaft:

> „Ich war Oberbefehlshaber des Territorialkommandos, zu dem u.a. auch Osttimor gehörte. Meine dienstliche Beziehung zum Gouverneur von Osttimor beschränkte sich auf Koordinationsaufgaben. Ich war nicht Mitglied der Muspida (hierbei handelt es sich um eine Koordinierungsstelle zwischen Militär und Zivilverwaltung, die auf allen regionalen Verwaltungsebenen tätig ist). Die Verständigung mit dem Gouverneur erfolgte entweder unmittelbar zwischen ihm und mir durch Telefon oder mittelbar durch Untergebene.

Bezüglich der Ereignisse am 04., 05. und 06. April 1999 habe ich ständige Berichte über den Danrem erhalten (Danrem ist der oberste militärische Befehlshaber in Osttimor). Es handelte sich dabei um Tagesberichte, die ich schriftlich erhielt. Darin waren Ereignisse aufgeführt, die die besondere Aufmerksamkeit erforderlich machten. Zu den genauen Inhalten kann ich heute nichts mehr sagen, da ich dies vergessen habe.

Bezüglich des 17.04.1999 weiß ich, dass einen Zusammenstoß auf dem Grundstück des Manuel Carrascalao gab. Auch darüber erhielt ich einen Bericht. Bei diesem Vorfall gab es zwölf Tote, wenn ich mich richtig entsinne. Aus diesen Berichten weiß ich auch, dass es auf dem Grundstück von Carrascalao ein Flüchtlingslager gab und dass es zu Zusammenstößen kam, als Pro-Integrationskräfte an dem Grundstück vorbei kamen. Aus dem Bericht war auch zu entnehmen, dass Hieb- und Stichwaffen festgestellt wurden, jedoch keine Schusswaffen. Der Bericht enthielt nur die Zahl der Toten, keine Namen.

Von PPI habe ich schon einmal gehört. Aber ich habe denen nie Hilfe geleistet. Von einem Zusammenhang zwischen PPI und Pam Swakarsa habe ich nichts gehört. Bei Pam Swakarsa handelt es sich um eine reguläre „Bürgerwehr".

Es hat auch eine Person gegeben, die sich Panglima Perang nannte, aber Näheres weiß ich darüber nicht. Ich weiß auch nichts über die Rolle von Joao Tavares." *(Joao Tavares war im Gerichtssaal anwesend; er gilt als ein Führer der Milizen).*

Auf Befragen der Verteidiger:

> „Ich bekam täglich einen Bericht vom Kommandanten des Korems. Dies war aber nur eine Zusammenfassung der Tagesberichte der 13 Kodims (Korem = Militärregionalkommando; Kodim = Distriktmilitärkommando). Wenn in diesen Tagesberichten etwas Auffälliges war, gab ich entsprechende Anweisungen, darunter Personen zu verhaften, Flüchtlingen zu helfen usw. Empfänger dieser Anweisungen war der Danrem (Kommandant des Korem)."

Auf Befragen des Staatsanwalts:

> „Es gab auch einen Bericht über die Ereignisse am Sitz des Bischofs Belo. Es wurden Tote vermeldet, aber keine Verletzten. Außerdem wurde über den Brand am hinteren Teil des Hauses von Bischof Belo berichtet.
>
> Anlass für die Zusammenstöße soll gewesen sein, dass sich Flüchtlinge auf das Gelände des Bischofs Belo zurückgezogen hätten. Diese seien von den Pro-Integrationsgruppen als ihre Gegner - nämlich die Unabhängigkeitsanhänger - identifiziert worden. Außerdem gab es auf dem Gelände noch Wahlurnen. Das hat die Pro-Integrationisten erst recht provoziert. Über Waffen habe ich in dem Bericht nichts gelesen. Von dem dreiseitigen Abkommen zwischen Indonesien, Portugal und der UN vom 05.05.1999 über die Durchführung eines Referendums in Osttimor weiß ich. Ich habe dieses Abkommen jedoch nie gelesen. Ich habe mich darauf beschränkt, auf die daraus folgenden Instruktionen, die mir noch zu geben waren, zu warten."

Auf Befragen des Staatsanwaltes, was denn dann aufgrund des Abkommens gemacht worden sei:

> „Wir haben gar nichts gemacht. Denn wir durften ja auch nichts machen. Wir durften noch nicht einmal mit Waffen herumlaufen, für alles brauchten wir die Erlaubnis der UNAMET."

Auf weiteres Befragen des Staatsanwalts:

> „Das Korem hat auch immer wieder über Entwaffnungsaktionen durch das Militär berichtet. Es wurden jedoch immer nur Pro-Integrationsgruppen entwaffnet. Die Entwaffnungsaktionen richteten sich jedoch nie gegen Unabhängigkeitsgruppen, insbesondere auch nicht gegen die Falintil. Es wurden damals KPS (sog. Friedenskommitees) eingerichtet, die mit Vertretern aller Seiten besetzt waren. Alle Aktionen waren aber immer nur einseitig gegen die Integrationsanhänger gerichtet. Deswegen muss das Einsammeln von Waffen insgesamt als Misserfolg gewertet werden."

Auf Befragen:

> „Seinerzeit galt in Osttimor noch indonesisches Recht."

Auf weiteres Befragen, warum er dann nichts gegen bewaffnete Zivilisten habe unternehmen können:

> „Wir ließen doch pausenlos Waffen einsammeln. Dies waren keine einzelnen Aktionen. Ich habe darüber aber keine eigene Wahrnehmung, sondern weiß dies nur aus den Berichten den Danrem."

Nach Vorhalt des Gerichts aus dem dreiseitigen Abkommen (New-York-Abkommen), dass die

Sicherheit von Indonesien zu gewährleisten sei:

> „Nach diesem Abkommen hat POLDA (Bereichspolizeikommando für Osttimor) die Sicherheit zu gewährleisten. Das Militär hat nur untergeordnete Hilfestellungen dabei leistet. (Der Zeuge hat diese Ausführungen auf sehr konkrete Wiedergaben aus dem New-York-Abkommen, das er ja nicht gelesen haben will, gestützt).
>
> Bezüglich der Geltungsdauer des New-York-Abkommens ging ich davon aus, dass dieses von seinem Abschluss an galt. Es galt wohl auch bis Ende September oder Oktober, bis zu dem Zeitpunkt, als wir Osttimor verlassen mussten.
>
> Wir waren auch ziemlich erfolgreich. Es gab viele ruhige Wochen. Auch das Referendum selbst verlief ja ruhig. Dies wurde auch ausdrücklich von der Internationalen Gemeinschaft so anerkannt.
>
> Ich weiß nicht, warum die Bekanntgabe des Ergebnisses des Referendums vorgezogen wurde. Angeblich soll dies geschehen sein, weil sie mit dem Auszählen schneller waren, als vorgesehen.
>
> Aufgabe der KPS war es, dem Volk zu dienen. In den KPS fanden sich Vertreter von KOMNAS HAM (Nationale Menschenrechtskommission), der Kapolda und der Danrem, Falintil, Pro-Integrationsgruppen und Unabhängigkeitsanhänger sowie Regierungsvertreter.
>
> Die vorzeitige Bekanntgabe des Ergebnisses des Referendums war ein sehr zweifelhaftes Unterfangen. Das Verhalten von UNAMET war eindeutig parteiisch. Insofern war das Verhalten der Pro-Integrationsgruppen eine logische Reaktion. Allerdings hätte den Wahlfälschungen, die begangen wurden, mit friedlichen Mitteln begegnet werden müssen. Wir haben ja auch einen entsprechenden Protest seitens des Militärs bei dem Chef von UNAMET, Ian Martin, eingereicht. Ich habe meine Befehle direkt von General Wiranto (damaliger Oberbefehlshaber der Streitkräfte) empfangen.
>
> Am 04. und 05. September lag die Verantwortung für die Sicherheit noch beim Kapolda. Danach ging sie über an eine Gruppe, bestehend aus Kapolda, UNAMET und Danrem. Zu diesem Zeitpunkt war ich selbst in Osttimor. Es gab Ereignisse in Dili und Suai.
>
> > In Suai kam es zu einem Zusammenstoß zwischen den unterschiedlichen Gruppen. Dies weiß ich aber nur aus Berichten. Ich selber war in Suai nicht dabei.“

Auf Nachfrage des Gerichts:

> „Auch in Liquica kam es zu einem Zusammenstoß zwischen den unterschiedlichen Gruppen, auf dem Geländes des Bischofs von Liquica *(Liquica hat keinen Bischof).*
>
> Sporadische Zusammenstöße und ähnliche Vorfälle gab es überall. Deshalb habe ich einen Contingency Plan für den Fall gemacht, dass uns alles aus dem Ruder läuft. Die Muspida funktionierte ja schon nicht mehr. Ich schlug Wiranto vor, mir jede Verantwortung für die Sicherheit in Osttimor zu übertragen. Diese wurde mir auch am 05.09.1999 übertragen.“

Auf Befragen des Gerichts, wie es weiter gegangen sei:

> „Am 07.09.1999 wurde mir die Verantwortung wieder entzogen. Grund dafür war, dass der Notstand, der am 05.09.1999 eingetreten war, nicht mehr bestand. Ich hatte lediglich den alleinigen Oberbefehl über alle Einrichtungen in Osttimor für 28

> Stunden, d.h. von den Abendstunden des 05.09.1999 bis in die frühen Morgenstunden des 07.09.1999. Danach wurde der militärische Notstand ausgerufen, d.h. bestimmte militärische Einsätze waren danach erlaubt. Alle Macht und Verantwortung lag somit in den Händen des Militärs. Der zuständige Kommandeur dafür in Osttimor war Kiki Syahnakri. Ich weiß nicht, wie lange dieser militärische Notstand anhielt. Wenn ich mich nicht täusche, war dies bis Ende September / Anfang Oktober - also bis zu dem Zeitpunkt, als INTERFET in Osttimor eintraf. In dieser Zeit wurde jede Menge staatliches Eigentum zerstört. Dies wurde von den Unabhängigkeitsanhängern gemacht, die von den Bergen herunter kamen."

Der Zeuge bittet das Gericht darum, noch weitere Ausführungen dazu machen zu dürfen. Als ihm dies gestattet wird, fängt er an, die Geschichte Osttimors aus militärischer Sicht seit 1975 zu schildern, d.h. dass es aus Sicht des Militärs dort schon immer Rebellen gab, die widerrechtlich indonesischen Interessen zusetzten.

Auf weiteres Befragen des Gerichts, warum er der Auffassung sei, dass UNAMET nicht neutral gewesen sei:

> „Als lokale Arbeitskräfte wurden ausschließlich Anhänger der Unabhängigkeitsbewegung eingestellt. Bei der Ablehnung von Bewerbern mit einer anderen politischen Meinung wurde als Ablehnungsgrund oft vorgeschoben, diese würden nicht über ausreichende englische Sprachkenntnisse verfügen. Auch die Wahllokale wurden sehr einseitig ausgewählt. D.h. die Wahllokale wurden in den Hochburgen der Unabhängigkeitsbewegung platziert. Dies war die Wurzel des Problems."

Auf Befragen der vorsitzenden Richterin:

> „Zu unseren Aufgaben gehörte der Schutz der staatlichen Einrichtungen, des staatlichen Vermögens, des Vermögens der Ölgesellschaft, der Einrichtungen von UNAMET usw."

Auf Befragen des erste beisitzenden Richters:

> „Ich war unmittelbar Wiranto gegenüber verantwortlich."

Auf die Frage des Gerichts, ob der Angeklagte sich an den Zeugen gewandt habe mit der Bitte, ihn bei der Gewährleistung der Sicherheit zu unterstützen:

> „Nein, der Angeklagte hat sich diesbezüglich nicht an mich gewandt. Das war auch nicht nötig, weil der Angeklagte ja selber von sich aus sehr viel unternommen hat, um das Schlimmste zu verhüten. So hat er am 21. April zusammen mit Bischof Belo und anderen ein Friedensabkommen ausgehandelt. Dieses Abkommen ist sogar von Xanana Gusmao *(osttimoresischer Unabhängigkeitsführer und heutiger Präsident der Demokratischen Republik Osttimor)* unterschrieben worden."

Auf Nachfrage des Richters „Ach was, der war dort?":

> „Nein, Gusmao war nicht in Osttimor. Er war zu dieser Zeit in Haft in Jakarta. Er hatte aber Bevollmächtigte."

Auf den Vorhalt des Gerichts aus den staatsanwaltschaftlichen Aussagen, was er denn angeordnet habe:

> „Ich habe befohlen, die Sicherheit zu gewährleisten und gut auf die Wahlurnen aufzupassen."

Auf die richterliche Frage, ob es wahr sei, dass auf dem Gelände von Bischof Belo Wahlurnen gewesen seien:

> „Das weiß ich nicht, das ist eine Sache von UNAMET (siehe eingangs gemachte Aussage). Wie viel Gespräche es zwischen mir und dem Angeklagten gegeben hat, um Fragen abzustimmen, weiß ich nicht.
>
> Zu den Vorgängen von Suai weiß ich, dass zwischen zwei Dörfern Streit bestand über eine Wasserquelle, die zwischen den Dörfern lag und von der beide Dörfer abhingen. Diese Quelle kam irgendwann zum Versiegen, worauf eine Gruppe sich in die Kirche von Suai begab. Ich meine, dass das Versiegen der Quelle auf einen Sabotageakt der Unabhängigkeitsanhänger zurückzuführen ist. Damit wollten sie die Integrationisten schädigen und gleichzeitig ihre eigenen Leute zur Flucht zwingen, um dann die Flucht als politisches Argument zu benutzen, wie sehr ihre eigenen Leute bedrängt werden würden.
>
> Welchem der beiden Lager die Opfer von Suai angehörten, weiß ich nicht. Ich weiß nur, dass unter den Opfern auch drei Pastoren waren.
>
> > Auf die Leute, die nach Westtimor geflohen sind, hat das Militär keinerlei Druck ausgeübt. Druck wurde immer nur von den Unabhängigkeitsanhängern ausgeübt. Von Milizen wusste ich nichts. Ich hatte nur Kenntnis von der Pam Swakarsa."

Auf Vorhalt des Gerichts, ob er nicht aus Berichten des militärischen Geheimdienstes von Waffen gewusst habe, die im Umlauf waren:

> > „Nein, von solchen Berichten weiß ich nichts. Die Arbeit des Geheimdienstes war durch schlechtes Wetter stark behindert."

Auf Fragen des zweiten Beisitzers:

Der Zeuge erläutert noch einmal die Kommandolinie, wie er es bereits eingangs getan hat. Zu dem Begriff „Muspida - Plus" erläutert er ebenfalls die Struktur der Muspida wie er es eingangs getan hat. Das „Plus" erklärte er damit, dass er zu dieser eigentlich regionalen Einrichtung, die demnach auch in Dili tagte, hinzugezogen wurde, obwohl er seinen Standort auf Bali hatte.

Auf weiteres Befragen des Gerichts:

> > „Es ist richtig, dass es ab einem bestimmten Zeitpunkt keine funktionierende Staatsgewalt mehr in Osttimor gab. Es gab keine Verwaltung, es gab keine Gerichte und es gab auch keine Staatsanwaltschaft mehr."

Auf Vorhalt des dritten beisitzenden Richters, dass das Militär die gesetzliche Aufgabe hätte, eine moralische Führungsrolle in ihrem Zuständigkeitsbereich zu übernehmen:

> „Diese Aufgabe wurde in Osttimor vom Danrem, also dem regionalen Kommandanten wahrgenommen. Ich selber hatte diesen lediglich zu kontrollieren. Unsere Aufgabe war es, dem ständigen Terror, der aus den Bergen kam, zu begegnen. Dieser Terror kam von den bewaffneten Gruppen der Fretilin, der Separatisten. Es waren Störenfriede, die auf dem Gelände von Carrascalao und in Kirchen und im Haus von Bischof Belo Zuflucht suchten.
>
> Es gab ähnlich wie bei der Polizei die Kamra, beim Militär die Wanra. Es handelte sich dabei um Bürgerwehren, die im Bedarfsfall mit ausrangierten Waffen des Militärs bewaffnet wurden. Ob diese Gruppen auch unter die Pam Swakarsa zählten, weiß ich nicht."

Auf Befragen des vierten beisitzenden Richters beschreibt der Zeuge noch einmal ganz detailliert, welche Aufgabe die einzelnen Polizei- und Militärstellen aufgrund des Abkommens vom 05. Mai 1999 hatten. Sodann erklärte der Zeuge:

> „Nach dem Abkommen musste sich das Militär noch neutral verhalten. Unsere Aufgabe war es, die Durchführung des Referendums sicherzustellen und die Sicherheit zu gewährleisten."

Auf Befragen des vierten Beisitzers, ob es wegen Verletzung dieser Pflichten jemals disziplinarische Maßnahmen gegen einzelne Angehörige des Militärs gegeben habe:

> „Nein, niemals!"

Auf weiteres Befragen erklärte der Zeuge noch einmal die Unterschiede zwischen Kamra und Wanra. Sodann erklärte der Zeuge:

> „Über Pam Swakarsa weiß ich nicht Bescheid. Befehle habe ich nur an den Danrem gegeben. Berichte habe ich auch nur vom Danrem erhalten. Weder habe ich Befehle an Dritte gegeben, noch von dritter Seite Berichte erhalten.
>
> Es ist richtig, dass die Wanra militärisch von uns trainiert wurde."

Auf den Vorhalt der Verteidiger, aus den Prozessunterlagen ergäbe sich, dass der Angeklagte Soares Berichte habe verschwinden lassen und dass dies nicht möglich sei, weil Geheimdienstberichte der Polizei und des Militärs nicht an den Gouverneur gelängen, erklärte der Zeuge:

> „Das ist richtig."

Auf die Frage der Verteidiger, ob Unabhängigkeitsanhänger, die ihre Waffen nicht abgegeben hätte und als Unruhestifter aufgefallen seien, vor Gericht gestellt worden seien:

> „Nein."

Auf die Frage der Verteidiger, ob von den Unabhängigkeitsanhängern, die aus den Bergen gekommen seien, um zu plündern und Staatseigentum zu zerstören, einer vor Gericht gestellt worden sei:

> „Nein! Auch nicht von UNAMET oder INTERFET."

Auf die Frage der Verteidiger, „Sind Polizistenmörder vor Gericht gestellt worden?":

> „Nein!"

Auf die Frage der Verteidiger, „Wurde der Wahlfälscher Belo vor Gericht gestellt?":

> „Nein."

Auf die Frage der Verteidiger, ob es richtig ist, dass er Mitglied der Muspida in Osttimor war, obwohl er selbst in Bali saß, er gleichzeitig aber in dem entsprechenden Gremium der anderen drei ihm unterstellten Provinzen nicht tätig war:

> „Ja, das ist richtig."

Auf Fragen der Verteidiger, was der Zeuge zur Rolle des Angeklagten in den Gewalttätigkeiten sagen könne:

„Er hat sein Bestes gegeben, um Gewalttätigkeiten zu verhindern."

Auf Fragen der Verteidiger, ob die Wahlfälschungen Anlass für die Unruhen waren:

„Ja!"

Die vorstehenden Aussagen des Zeugen waren begleitet von ständigen Auseinandersetzungen zwischen Staatsanwaltschaft, Verteidigern und Gericht, ob es sich bei diesen Fragen überhaupt um Fragen oder lediglich um Erklärungen bzw. vorweg genommenes Plädieren der Verteidiger handele. Nach Ermahnung, dass Fragen zu stellen und nicht Erklärungen abzugeben seien, haben die Verteidiger dann ihre Auffassung in Frageform an den Zeugen zum Ausdruck gebracht.

Nach diesem Fragenkomplex bemängelt die Verteidigung die unzulänglichen Unterlagen, die die Staatsanwaltschaft dem Gericht vorgelegt hat. So sei in einem Fall von 170 Toten die Rede. Objektivierbare Berichte hierzu fehlten jedoch. Insbesondere gäbe es keine Obduktionsberichte. Die Verteidigung verlangte, dass solche Berichte dem Gericht vorzulegen seien.

Auf Befragen der Verteidiger, was PPI bedeutet:

> „PPI heißt Pemuda pro Integrasi" („Jugend für die Integration"; die Abkürzung heißt richtigerweise: Pasukan Pejuang pro Integrasi = Kampfeinheiten für die Integration).

Auf weiteres Befragen der Verteidiger:

> „Ab wann UNAMET in Osttimor verantwortlich war, ist schwer zu sagen. Es muss ab Mai 1999 gewesen sein und zwar nach dem New-York-Abkommen. Ab wann UNAMET konkret vor Ort die Verantwortung übernommen hat, kann ich nicht sagen. Sie sind irgendwann nach dem 05. Mai sukzessive nach Osttimor gekommen."

Auf Vorhalt eines Schriftstückes (möglicherweise eines Flugblattes oder einer Fotokopie eines Zeitungsartikels), das das New-York-Abkommen zum Gegenstand hatte und vermutlich auch die Unterzeichner des Abkommens abbildete, durch die Verteidigung:

> „Die meisten Leute haben doch das New-York-Abkommen nie gelesen. Der Wortlaut war ihnen nicht bekannt. Deswegen war es doch so leicht, die Leute über den Inhalt dieses Abkommens zu belügen."

Auf weiteres Befragen der Verteidiger:

> „Auch nach Ankunft von UNAMET hatte die Republik Indonesien weiterhin die Souveränität über Osttimor."

Auf weiteres Befragen der Verteidiger zu der Einrichtung der Wahllokale:

> „Die Wahllokale wurden ausschließlich von UNAMET eingerichtet. Die Plätze hierfür wurden auch von UNAMET ausgesucht. Eigentlich hätten wir dabei konsultiert werden müssen. Dies ist jedoch nicht geschehen. Der lokale Staff von UNAMET stand unter der Führung von Ian Martin. Dieser hat sich die Leute ausschließlich aus den Reihen der Unabhängigkeitsbewegung geholt. Die Wahl ist

> durch die einseitige Auswahl der Wahllokale und ihrer Standorte manipuliert worden. Auch die Zugangsregelung zu den Wahllokalen und vieles mehr, was ich bereits gesagt habe, haben das Wahlergebnis verfälscht."

Auf weiteres Befragen der Verteidigung, wie denn von Souveränität der Republik Indonesien die Rede sein könne, wenn das Militär in dieser Zeit keine Waffen habe tragen dürfen:

> „Die Polizei trug Waffen. Diese durften aber nicht näher als 100 Meter an die Abstimmungslokale heran. Von UNAMET trugen Waffen lediglich die Rescue Officers und die Angehörigen der CivPol (Civil Police)."

Nach Vorhalt des Wortlauts der Regelung des New-York-Abkommens bezüglich der Durchführung des Referendums und der sich hieran anschließenden Frage der Verteidiger, wie sich denn nun die Durchführung tatsächlich gestaltet habe:

> „Ich weiß nicht, wer der verantwortliche Leiter von CivPol war. Tatsächlich war es aber so, wenn Unruhen während der Durchführung des Referendums entstanden, waren immer nur indonesisches Militär oder indonesische Polizei vor Ort. CivPol hat sich verkrochen. Das Referendum war deshalb nicht frei und fair. Die Polizei durfte auch keine Präventivmaßnahmen treffen. Sie durfte immer erst einschreiten, nachdem etwas passiert war. Das Militär durfte dabei keine Waffen tragen. CivPol tauchte nie auf."

Daraufhin verlangen die Verteidiger die Ladung eines Vertreters der UN als Zeugen. Sie verbinden dies mit der Erklärung, dass die Ladung eines solchen Zeugen nicht schwierig sein könnte, da ja die UN in Jakarta ein Büro unterhielt. Daraufhin erklärte die vorsitzende Richterin, dass es ebenso wünschenswert wäre, wenn die Verteidiger ihre Behauptungen mit entsprechenden Beweismitteln untermauern könnten.

Auf Befragen des Gerichts, woher der Zeuge seine Kenntnis darüber habe, dass auf dem Grundstück von Bischof Belo Wahlurnen gelagert worden seien:

> „Dies weiß ich nur vom Hörensagen."

Auf weiteres Befragen des Gerichts, ob PPI und Pam Swakarsa identisch seien, macht der Zeuge ausschweifende aber letztlich inhaltslose Angaben (geeiert).

Auf weiteres Befragen des Gerichts, warum denn in Atambua Waffen gefunden werden konnten, wo doch überhaupt keine Waffen getragen werden sollten:

> „Als die Portugiesen das Land verließen, haben sie schließlich 200.000 Waffen hier gelassen. Die müssen doch irgendwo geblieben sein." (Atambua liegt in Westtimor; die Waffenfunde stehen im Zusammenhang mit Milizen, die ebenfalls aus Osttimor kommend in Westtimor osttimoresische Flüchtlinge in Schach gehalten haben).

Auf Befragen der vorsitzenden Richterin, ob der Angeklagte zu den Ausführungen des Zeugen Stellung nehmen möchte:

> „Nein, ich kann dazu nichts weiter sagen. Ich kann mich nur für diese Aussage bedanken."

Der Zeuge entschuldigt sich dafür, dass er zum letzten Verhandlungstermin verhindert war. Bezüglich der von der Richterin angesprochenen Beweise erklärt er, dass es diese alle gäbe. Damit ist die Vernehmung des Zeugen beendet. Der Zeuge steht auf, salutiert militärisch und

verabschiedet sich dann mit offensichtlich aufgedrängtem Handschlag bei jedem einzelnen Richter, den Staatsanwälten und den Verteidigern persönlich. Als letztes schüttelte der General dem angeklagten Gouverneur die Hand.

Ende der Vernehmung gegen 12.10 Uhr.

(Anm./Nachtrag:
Ein Verfahren, in dem sich der Zeuge Mayjen Adam Damir zu verantworten hat, wurde am 2. Juli 2002 vor dem Ad-Hoc-Menschenrechtsgerichtshof in Jakarta eröffnet.)

2. Zeuge:

Es wurde dann der zweite Zeuge aufgerufen. Dieser wurde noch vereidigt. Es handelt sich um **Mathius Maia**, zur Zeit arbeitsloser Beamter, früherer Bürgermeister von Dili. Der Zeuge wurde daraufhin vereidigt. Es trat dann jedoch zunächst die Mittagspause ein.

Der Zeuge konnte nicht weiter angehört werden, da für den Unterzeichneten ein Besprechungstermin am Nachmittag anstand.

Appendix 5A

Liste der Abkürzungen und Begriffe

a) alphabetisch

ABRI - *Angkatan Bersenjata Republik Indonesia* - die indonesischen Streitkräfte vor ihrer Wiederauftrennung in Militär (TNI) und Polizei (POLRI)

Ainaro - ehem. Kabupaten in Osttimor

Aitarak - „Dorn"; bekannteste Miliz in Osttimor, insb. in der Region um Dili, unter Führung von Eurico Guterres

AKABRI - *Akademi ABRI* - Heeresakademie

AKMIL - *Akademi Militer* - Militärakademie

Alas - Ortschaft im ehem. Kabupaten Manufahi

Alfa / Tim Alfa - Miliz in Lautem unter Führung von Joni Marquez

Ambeno - s. Oekussi

APBD - *Anggaran Pendapatan dan Belanja Negara Daerah* - Haushalt der regionalen Verwaltung/Regierung

Atabae - Ortschaft im ehem. Kabupaten Bobonaro

Atambua - Verwaltungshauptstadt des Kabupaten Belu, Provinz NTT

Babinsa - *Bintara Pembina Desa* - Dorfführungs-Unteroffizier

Bali - indonesische Provinz; Sitz des Kodam IX Udayana

Balibo - Ortschaft im ehem. Kabupaten Bobonaro

Bappeda - *Badan Perencanaan Pembangunan Daerah* - regionale Entwicklungsplanungsbehörde

Batugade - Ortschaft im ehem. Kabupaten Bobonaro

Baucau - Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten in Osttimor

Belu - Kabupaten in Westtimor, Provinz NTT

BGH - Bundesgerichtshof

Binpolda - *Bintara Polisi Daerah* - Bereichspolizeiunteroffizier

BKO - *Bantuan Kendali Operasi* - Hilfstruppen von außerhalb (meist BRIMOB oder TNI), die dem Kommando der Polizei unterstellt sind

BMP - *Besi Merah Putih* - „Rot-weißes Eisen"; Miliz in Osttimor, insb. in Liquica u. Maubara, unter Führung von Manuel Sousa; rot-weiß sind die indonesischen Nationalfarben

Bobonaro - ehem. Kabupaten in Osttimor

BRI - *Bank Rakyat Indonesia* - Indonesische Volksbank

Brimob - *Brigade Mobil* - Mobile Einsatzbrigade der Polizei

BRTT - *Barisan Rakyat Timor-Timor* - Volksfront von Osttimor; Gruppe unter Vorsitz von Lopes da Cruz, ehem. Sonderbotschafter Indonesiens für die Osttimorfrage; politischer Flügel der PPI

BTT - *Batalyon Tempur Teritorial* - territoriales Kampfbataillon

Bupati - Bezirksregent

BVerfG - Bundesverfassungsgericht

Cailaco (Kailako) - Ortschaft im ehem. Kabupaten Bobonaro

Camat - Regent eines Unterbezirks

CivPol - Civil Police - Zivilpolizei der UN gemäß des New York-Abkommens vom 5.5.1999

CNRT - *Conselho National de Resistencia Timorese* - Nationalrat des timoresischen Widerstandes; 1988 von Xanana Gusmao als breites Widerstandsbündnis aller Gruppierungen, die für das Selbstbestimmungsrecht Osttimors eintraten, zunächst unter dem Namen CNRM gegründet. Nach Wegfall seiner Daseinsberechtigung als Widerstandsbündnis wurde der CNRT vor den ersten Wahlen in Osttimor aufgelöst, um den Weg frei zu machen für eine Mehrparteiendemokratie.

Covalima (Kovalima) - ehem. Kabupaten in Osttimor

Dadarus Merah Putih - s. DMP

Dandim - *Komandan Distrik Militer* - Kommandant eines Distriktmilitärkommandos

DanKi - *Komandan Kompi* - Kompaniechef

Danrem - *Komandan Resort Militer* - Kommandant eines Militärbezirks (Korem)

Dansatgas - *Komandan Satuan Tugas* - Kommandeur einer Sondereinheit

DDR - Deutsche Demokratische Republik

Dili - Hauptstadt Osttimors und Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten

DMP - Dadurus [Dadarus] Merah Putih - „rot-weißer Tornado"; Miliz in Ritabou, nahe Maliana, unter Führung von Natalino Monteiro

DPR - *Dewan Perwakilan Rakyat* - Parlament

DSMPTT - *Dewan Solidaritas Mahasiswa dan Pelajar Timor-Timur* - Solidaritätsrat der Studenten und Schüler von Osttimor

EGMR - Europäischer Gerichtshof für Menschenrechte

EMRK - Europäische Menschenrechtskonvention

Ermera - ehem. Kabupaten in Osttimor

Falintil - *Forcas Armadas Libertacao Timor Leste* - Streitkräfte zur Befreiung Osttimors; bewaffneter Arm des Widerstandes

FBPOTT - Forum Bersama Pro Otonomi Timor Timur - gemeinsames Forum für die Autonomie von Osttimor (Zusammenschluss aus FPDK u BRTT)

FPDK - *Forum Persatuan Demokrasi dan Keadilan* - Forum der Einheit für Demokratie und Gerechtigkeit; Gruppe unter Vorsitz von Basilio Araujo; politischer Flügel der PPI

Fretilin - *Frente por Timor Leste Independente* - Befreiungsfront für Osttimor; größte politische Partei Osttimors

Gada Paksi - *Garda Muda Penegak Integrasi* - Junge Garde zur Aufrechterhaltung der Integration - die älteste, bereits 1997 vom damaligen Kopassus-Kommandeur Generalleutnant Prabowo und Gouverneur Abilio Soares ins Leben gerufene, Miliz in Osttimor unter Führung des späteren Aitarak-Kommandeurs Eurico Guterres.

GRPRTT - Gerakan Rekonsiliasi Persatuan Rakyat Timor Timur - Versöhnungsbewegung zur Einigung des osttimoresischen Volkes; politische Organisation unter der Führung von Manuel Carrascalao. Bereits am 14.12.1997 stellte der Gouverneur Osttimors, Jose Abilio Osorio Soares fest: „GRPRTT is a separatist organization, [...] they have to be punished." (Mate-BEAN, 16.12.97).

Gubernur - Gouverneur einer Provinz

Halilintar - „Donnerkeil"; Miliz in Bobonaro unter Führung von Joao Tavares

Hansip - *Pertahanan Sipil* - Zivile Verteidigungsstreitmacht

ICC - *International Criminal Court* - Internationaler Strafgerichtshof

ICTY - *International Criminal Tribunal for the former Yugoslavia* - Internationaler Strafgerichtshof für das ehemalige Jugoslawien

Impettu - *Ikatan Mahasiswa dan Pelajar Timor Timur Se-Indonesia* - Gesamtindonesischer Verband der osttimoresischen Studenten und Lernenden

Inpres - *Instruksi Presiden* - Anweisung des Präsidenten

Instruksi Presiden Nr. 5/1999 - Anweisung des Präsidenten über die Schritte der Umsetzung im Rahmen der Übereinkunft zwischen der Republik Indonesien und Portugal über das Osttimor-Problem

INTERFET - *International Force for East Timor* - internationale Eingreiftruppe für Osttimor unter Leitung der australischen Armee und Oberbefehl von Generalmajor Peter Cosgrove

IPOLEKSOSBUDAG - *Ideologi, Politik, Sosial, Budaya, Agama* - Ideologie, Politik, Soziales, Kultur und Religion

Kabupaten - Bezirk

Kamra - *Keamanan Rakyat* - Sicherheit des Volkes; Bürgerwehr angesiedelt bei der Polizei

Kamtibmas - *Keamanan dan Ketertiban Masyarakat* - öffentliche Sicherheit und Ordnung

Kapolda - *Kepala Polisi Daerah* - Polizeichef eines Polizeibereiches (Polda)

Kapolpos - *Kepala Polisi* - Polizeichef eines Polizeipostens (Polpos)

Kapolres - *Kepala Polisi Resort* - Polizeichef eines Polizeibezirks (Polres)

Kapolsek - *Kepala Polisi Sektor* - Polizeichef eines Polizeisektors (Polsek)

Kapt. - *Kapten* - Hauptmann

Kasdim - *Kepala Staf Distrik Militer* - Stabschef eines Militärdistriktes (Kodim)

KDH Tk I - *Kepala Daerah Tingkat I* - Chef der oberen Regionalverwaltungsebene (Provinz)

KDH Tk II - *Kepala Daerah Tingkat II* - Chef einer unteren Regionalverwaltungsebene (Kabupaten, Kotamadya)

Kecamatan - Unterbezirk

KEP-13/MENKO/POLKAM/6/1999 - Ministerbeschluss über die Diensteinheiten des Koordinationsministers für Politik und Sicherheit der Republik Indonesien

Kepmen - *Keputusan Menteri* - Ministerbeschluss

Keppres - *Keputusan Presiden* - Präsidentenbeschluss

Keppres 53/2001 - Präsidentenbeschluss über die Einrichtung eines Menschenrechtsgerichtshofes am Staatlichen Gericht in Zentral-Jakarta

Keppres 96/2001 - Präsidentenbeschluss über die Änderung des Präsidialdekrets (KEPPRES) Nr. 53 von 2001 über die Einrichtung eines Menschenrechtsgerichtshofes am Staatlichen Gericht in Zentral-Jakarta

Keppres Nr. 43/1999 - Präsidentenbeschluss über das Team zur Sicherheit der Durchführung des Übereinkommens zwischen der Republik Indonesien und Portugal bezüglich des Osttimor-Problems

Kodal - *Komando Pengendalian Keamanan* - Kommando zur Wahrung der Sicherheit auf Grundlage des New York-Abkommens

Kodam - *Komando Daerah Militer* - Militärbereichskommando des Heeres; die ehemalige Provinz Osttimor unterstand dem Kodam IX Udayana mit Sitz in Denpasar, Bali

Kodim - *Komando Distrik Militer* - Distriktmilitärkommando; Osttimor war in 13 Kodims unterteilt

Komnas HAM - *Komisi Nasional Hak Asasi Manusia Indonesia* - Nationale Menschenrechtskommission

Komnas Perempuan (Komnas of Women) - *Komisi Nasional Perempuan* - Nationale Kommission für Frauen

Kompi - Kompanie; milit. Einheit mit Mannschaftsstärke 180 - 250 Mann

Kopassus - *Komando Pasukan Khusus TNI-Angkatan Darat* - Sondertruppenkommando des Heeres

Koramil - *Komando Rayon Militer* - Unterdistriktmilitärkommando

Korem - *Komando Resort Militer* - militärisches Bezirkskommando; für Osttimor war das Korem 164/Wira Dharma mit Sitz in Dili zuständig.

Kotamadya - Stadt mit Bezirksstatus

KPP-HAM - *Komisi Penyelidik Pelanggaran HAM di Timor Timur* - Untersuchungskommission zur Aufklärung der schweren Menschenrechtsverletzungen in Osttimor; von Komnas HAM am 22.9.1999 eingesetzt.

KPS - *Komisi Perdamaian dan Stabilitas* - Komitees für Frieden und Stabilität; unter Federführung von Komnas-HAM wurden diese Komitees in Dili und Baucau als Foren zur Verständigung der verfeindeten Seiten eingerichtet. An den KPS waren u.a. Vertreter des CNRT, der Falintil und der Milizen sowie der Gouverneur Osttimors und der Kapolda beteiligt. Mehrfach getroffene Friedensabkommen der KPS blieben ohne Wirkung.

KUHAP - *Kitab Undang-Undang Hukum Acara Pidana No. 8/1981* - Strafprozessordnung

KUHP - *Kitab Undang-Undang Hukum Pidana* - Strafgesetzbuch

Kupang - Hauptstadt der Provinz NTT auf Westtimor

Laksaur - Miliz in Covalima, Osttimor, unter Führung von Olivio Moruk

Lautem - ehem. Kabupaten in Osttimor

Letkol - *Letnan Kolonel* - Oberstleutnant

Lettu - *Letnan Satu* - Oberleutnant

Lettu. Pol. - *Letnan Satu Polisi* - Polizeioberleutnant

Liquica - Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten in Osttimor

Los Palos - Verwaltungshauptstadt des ehem. Kabupaten Lautem

Mahidi - *Mati atau hidup untuk integrasi Indonesia* - Leben oder Tod für Indonesien; Miliz in Osttimor, insb. Covalima und Ainaro, unter Führung von Cancio Lopes de Carvalho; der Name Mahidi ist vermutlich eine Anspielung auf den Ausbilder der Miliz, Generalmajor Mahidin Sibolaen

Makodim - *Markas Besar Kodim* - Hauptquartier eines Distriktmilitärkommandos

Makoramil - *Markas Besar Koramil* - Hauptquartier eines Unterdistriktmilitärkommandos

Manatuto - ehem. Kabupaten in Osttimor

Manufahi - ehem. Kabupaten in Osttimor

Massa Besi Merah Putih - die Massen der BMP, s.o.

Maubara - Ortschaft und gleichnamiger ehem. Kecamatan im Kabupaten Liquica

Mayjen - *Mayor Jenderal* - Generalmajor

Menkopolkam - *Menteri Koordinasi Politik dan Keamanan* - Koordinationsminister für Politik und Sicherheit

Milisi - Milizen

Milsas - *Militarisasi* - Reservisten der TNI

MPR - *Majelis Permusyawarahan Rakyat* - Beratende Volksversammlung, höchstes Verfassungsorgan der Republik Indonesien, bestehend aus 500 Abgeordneten des DPR und 200 Vertretern sog. funktionaler Gruppen.

Muspida - *Musyawarah Pimpinan Daerah* - Koordinationsorgan zwischen zivilen und militärischen Stellen in den Regionen. Auf Provinzebene sind der Gouverneur, der Kapolda und der Pangdam bzw. Danrem an der Muspida beteiligt.

Naga Merah/Red Dragon - „roter Drache"; Miliz in Ermera

NATO - *North Atlantic Treaty Organization* - Organisation der Signatarmächte des Nordatlantikpakts, Verteidigungsbündnis

New York-Abkommen vom 5.5.1999 - Übereinkunft der Republik Indonesien und der Republik Portugal über die Osttimorfrage

NGO - *Non Governmental Organisation* - Nichtregierungsorganisation

NRW - Nordrheinwestfalen (deutsches Bundesland)

NTB - *Nusatenggara Barat* - West-Nusatenggara, Provinz in Ostindonesien

NTT - *Nusatenggara Timur* - Ost-Nusatenggara, Provinz in Ostindonesien

Oan Timor Ba Damai - gemeint ist offensichtlich *Klibur Oan Timor Ba Dame* (KOTBD) - Assoziation für Frieden in Osttimor, eine Pro-Integrationsgruppe unter Führung von Drs. Gil Alves, einem Schwager des ehem. Gouverneurs von Osttimor, Jose Abilio Osorio Soares.

Oekussi (Ambeno) - ehem. Kabupaten in Osttimor (Exklave auf westtimoresischem Gebiet)

P3TT - *Panitia Penjajakan Pendapat Timor-Timor* - Komitee für die Umsetzung der Volksabstimmung in Osttimor

P4OKTT Task Force - *Panitia Pelaksana Pengamanan untuk Menuju Jajak Pendapat dan Otonomi Khusus di Timtim* - Komitee zur Ausübung der Sicherheit in Hinblick auf die Volksabstimmung und weitreichende Autonomie in Osttimor; Sondereinheit unter der Aufsicht des Koordinationsministers für Politik und Sicherheit

Pam Swakarsa - *Pasukan Pengamanan Swakarsa* - Selbsthilfesicherheitstruppen, Bürgerwehr

Pancasila - Staatsideologie, die fünf Grundprinzipien beinhaltet: 1.- den Glauben an einen allmächtigen Gott, 2.- Humanität, 3.- nationale Einheit, 4.- auf Konsens basierende Demokratie und 5.- soziale Gerechtigkeit.

Pangdam - *Panglima Kodam* - Oberbefehlshaber eines Militärbereichskommandos (Kodam)

Panglima Perang - Kriegs-Befehlshaber; Eigenbezeichnung des Führers der PPI, Joao Tavares

Peleton - Zug (platoon); milit. Einheit mit Mannschaftsstärke 30 - 50, max. ca. 100 Mann

PLN - *Perusahaan Listrik Negara* - staatliche Elektrizitätsgesellschaft

POL.SKEP-14/XII/1993 über die Grundzüge der Organisationsstruktur und Verfahrensabläufe der regionalen Polizeieinheiten der Polizei der Republik Indonesien

Polda - *Polisi Daerah* - Polizeibereich, zuständig für eine oder mehrere Provinzen, oberste regionale Hierarchieebene unterhalb der nationalen Polizeiführung

Polpos - *Polisi Pos* - Polizeiposten, Untergliederung von Polsek, unterste Hierarchieebene

Polres - *Polisi Resort* - Polizeibezirk, regionale Untergliederung von Polda

POLRI - *Polisi Republik Indonesia* - Polizei der Republik Indonesien

Polsek - *Polisi Sektor* - Polizeisektor od. -abschnitt, regionale Untergliederung von Polres

Pos Kamling - *Pos Keamanan Lingkungan* - Wachposten für die Sicherheit der Umgebung; nachbarschaftlich organisierte Wachposten in allen Wohngegenden Indonesiens

Posko - *Pos Komando* - Kommandoposten

PP - *Peraturan Pemerintah* - Rechtsverordnung

PP No. 2/2002 - Rechtsverordnung über den Verfahrensablauf des Schutzes von Opfern und Zeugen schwerer Menschenrechtsverletzungen

PP No. 3/2002 - Rechtsverordnung über Kompensationen, Wiedergutmachungen und Rehabilitation für die Opfer schwerer Menschenrechtsverletzungen

PPI - *Pasukan Pejuang Pro Integrasi* - Kampftruppen für die Integration; in der Anklageschrift gegen Herman Sedyono u.a. auch als *Pasukan Pembela Integrasi* - Truppen zur Verteidigung der Integration bezeichnet; Dachorganisation der Milizen unter Führung von Joao Tavares und seinem Vize Eurico Guterres

Praka - *Prajurit Kepala* - Gefreiter vom Dienst

Pratu - *Prajurit Satu* - Gefreiter

Pro-Integrations-/Autonomiegruppen - i.e.S. Kräfte, die sich beim Referendum 1999 für die Option der von Indonesien angebotenen „weitreichenden Autonomie“ Osttimors unter Verbleib in der Republik Indonesien aussprachen. Das Militär und die nationalistischen Kräfte Indonesiens benutzen diesen Begriff gleichbedeutend für all diejenigen Gruppen, die im internationalen Sprachgebrauch als „Milizen“ bezeichnet werden.

Propinsi - Provinz

Pro-Unabhängigkeitsgruppen - Kräfte, die sich beim Referendum 1999 gegen die Option der von Indonesien angebotenen „weitreichenden Autonomie“ Osttimors unter Verbleib in der Republik Indonesien und somit für die Unabhängigkeit aussprachen.

Red Dragon - s. Naga Merah

Saka Ermere Darah Merah Putih - eine dem Übersetzer unbekannte Gruppe. Bekannt ist die Miliz Saka, die in Baucau unter Führung von Sgt. Joanico da Costa, einem Angehörigen der Elitetruppe der indonesischen Armee, Kopassus, aktiv war. Bekannt ist ebenfalls die Miliz Naga Merah (roter Drache), die in Ermera aktiv war sowie die Miliz Besi Merah Putih (s.o.). „Saka Ermere Darah Merah Putih“ lässt auf eine Verquickung der Namen dieser drei Organisationen schließen.

Satgas - *Satuan Tugas* - Sondereinheit

Serda - *Sersan Dua* - Unteroffiziersrang (Sergeant), entspr. Stabsunteroffizier

Serma - *Sersan Mayor* - Hauptfeldwebel

Sertu - *Sersan Satu* - Unteroffiziersrang (Sergeant), entspr. Feldwebel

SGI - *Satuan Tugas Intelijen* - militärische Geheimdiensteinheit

SH - *Sarjana Hukum* - Juraabschluss

SKEP - *Surat Keputusan* - Beschluss

StGB - Strafgesetzbuch der Bundesrepublik Deutschland

StPO - Strafprozessordnung der Bundesrepublik Deutschland

Suai - Verwaltungshauptstadt des ehem. Kabupaten Covalima

TimTim - *Timor Timur* - indonesische Bezeichnung der ehemaligen Provinz Osttimor

TNI - *Tentara Nasional Indonesia* - Nationale Indonesische Armee

TNI-AD - *TNI Angkatan Darat* - Heer

Tribuana task force - von Kopassus gebildete SGI-Sondereinheit (s.o), angesiedelt an den Korem unter Kommando von Col. Yayat Sudrajat

Turiscai - Ortschaft im ehem. Kabupaten Manatuto

UN - *United Nations* - Vereinte Nationen

UNAMET - *United Nations Assistance Mission in East Timor* - Mission der Vereinten Nationen auf Grundlage des New York-Abkommens vom 5.5.1999 zur Vorbereitung und Durchführung des Referendums unter Leitung von Ian Martin

UNTAET - *United Nations Transitional Administration for East Timor* - Übergangsverwaltung der Vereinten Nationen bis zur offiziellen Unabhängigkeit des Landes am 20.5.2002 unter Leitung von Sergio de Mello

UNTAS/Uni Timor Satria - *Unidades Nacional Timor Aswain* - Vereinigung der Helden Ost-Timors; Ende Januar 2000 (!) als Dachverband von Pro-Integrationsvertretern gegründet (der Name UNTAS soll offensichtlich Assoziationen mit Einrichtungen der UN wie UNTAET und UNAMET wecken)

UU - *Undang-Undang* - Gesetz

UU 20/1982 - Gesetz über die grundlegenden Bestimmungen zur Wahrung der Sicherheit der Republik Indonesien

UU 26/2000 - Gesetz über die Errichtung eines Menschenrechtsgerichtshofs

UU 5/1974 - Gesetz über die Grundlagen der Regierungsausübung in den Regionen

VStGB - Völkerstrafgesetzbuch der Bundesrepublik Deutschland

Wadanrem - *Wakil Komandan Resor Militer* - stv. Kommandant eines Militärbezirks (Korem)

Wakapolda - *Wakil Kepala Polisi Daerah* - stv. Polizeichef eines Polizeibereiches (Polda)

Walikotamadya - Bürgermeister einer Stadt mit Bezirksstatus

Wanra - *Perlawanan Rakyat* - Kampf des Volkes; Bürgerwehr angesiedelt beim Militär

Wemasa - Ortschaft im Kabupaten Belu, Westtimor, in Nähe der Grenze zu Osttimor

Westtimor - westlicher Teil der Insel Timor, zur indonesischen Provinz NTT gehörend

b) thematisch

staatliche Verwaltung:

MPR - *Majelis Permusyawarahan Rakyat* - Beratende Volksversammlung, höchstes Verfassungsorgan der Republik Indonesien, bestehend aus 500 Abgeordneten des DPR und 200 Vertretern sog. funktionaler Gruppen.

DPR - *Dewan Perwakilan Rakyat* - Parlament

Propinsi - Provinz

Kabupaten - Bezirk

Kotamadya - Stadt mit Bezirksstatus

Kecamatan - Unterbezirk

Gubernur - Gouverneur einer Provinz

Bupati - Bezirksregent

Walikotamadya - Bürgermeister einer Stadt mit Bezirksstatus

Camat - Regent eines Unterbezirks

KDH Tk I - *Kepala Daerah Tingkat I* - Chef der oberen Regionalverwaltungsebene (Provinz)

KDH Tk II - *Kepala Daerah Tingkat II* - Chef einer unteren Regionalverwaltungsebene (Kabupaten, Kotamadya)

Geographie:

TimTim - *Timor Timur* - indonesische Bezeichnung der ehemaligen Provinz Osttimor

Bali - indonesische Provinz; Sitz des Kodam IX Udayana

NTT - *Nusatenggara Timur* - Ost-Nusatenggara, Provinz in Ostindonesien

NTB - *Nusatenggara Barat* - West-Nusatenggara, Provinz in Ostindonesien

Westtimor - westlicher Teil der Insel Timor, zur indonesischen Provinz NTT gehörend

Kupang - Hauptstadt der Provinz NTT auf Westtimor

Dili - Hauptstadt Osttimors und Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten

Ainaro - ehem. Kabupaten in Osttimor

Ambeno - s. Oekussi

Baucau - Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten in Osttimor

Bobonaro - ehem. Kabupaten in Osttimor

Covalima (Kovalima) - ehem. Kabupaten in Osttimor

Ermera - ehem. Kabupaten in Osttimor

Lautem - ehem. Kabupaten in Osttimor

Liquica - Verwaltungshauptstadt des gleichnamigen ehem. Kabupaten in Osttimor

Manatuto - ehem. Kabupaten in Osttimor

Manufahi - ehem. Kabupaten in Osttimor

Oekussi (Ambeno) - ehem. Kabupaten in Osttimor (Exklave auf westtimoresischem Gebiet)

Los Palos - Verwaltungshauptstadt des ehem. Kabupaten Lautem

Maliana - Verwaltungshauptstadt des ehem. Kabupaten Bobonaro

Suai - Verwaltungshauptstadt des ehem. Kabupaten Covalima

Alas - Ortschaft im ehem. Kabupaten Manufahi

Atabae - Ortschaft im ehem. Kabupaten Bobonaro

Balibo - Ortschaft im ehem. Kabupaten Bobonaro

Batugade - Ortschaft im ehem. Kabupaten Bobonaro

Cailaco (Kailako) - Ortschaft im ehem. Kabupaten Bobonaro

Maubara - Ortschaft und gleichnamiger ehem. Kecamatan im Kabupaten Liquica

Turiscai - Ortschaft im ehem. Kabupaten Manatuto

Belu - Kabupaten in Westtimor, Provinz NTT

Atambua - Verwaltungshauptstadt des Kabupaten Belu, Provinz NTT

Wemasa - Ortschaft im Kabupaten Belu, Westtimor, in Nähe der Grenze zu Osttimor

DDR - Deutsche Demokratische Republik

NRW - Nordrheinwestfalen (deutsches Bundesland)

Militär:

ABRI - *Angkatan Bersenjata Republik Indonesia* - die indonesischen Streitkräfte vor ihrer Wiederauftrennung in Militär (TNI) und Polizei (POLRI)

Kopassus - *Komando Pasukan Khusus TNI-Angkatan Darat* - Sondertruppenkommando des Heeres

SGI - *Satuan Tugas Intelijen* - militärische Geheimdiensteinheit

TNI - *Tentara Nasional Indonesia* - Nationale Indonesische Armee

TNI-AD - *TNI Angkatan Darat* - Heer

Kodam - *Komando Daerah Militer* - Militärbereichskommando des Heeres; die ehemalige Provinz Osttimor unterstand dem Kodam IX Udayana mit Sitz in Denpasar, Bali

Korem - *Komando Resort Militer* - militärisches Bezirkskommando; für Osttimor war das Korem 164/Wira Dharma mit Sitz in Dili zuständig.

Kodim - *Komando Distrik Militer* - Distriktmilitärkommando; Osttimor war in 13 Kodims unterteilt

Koramil - *Komando Rayon Militer* - Unterdistriktmilitärkommando

Pangdam - *Panglima Kodam* - Oberbefehlshaber eines Militärbereichskommandos (Kodam)

Danrem - *Komandan Resort Militer* - Kommandant eines Militärbezirks (Korem)

Wadanrem - *Wakil Komandan Resor Militer* - stv. Kommandant eines Militärbezirks (Korem)

Dandim - *Komandan Distrik Militer* - Kommandant eines Distriktmilitärkommandos

Kasdim - *Kepala Staf Distrik Militer* - Stabschef eines Militärdistriktes (Kodim)

Babinsa - *Bintara Pembina Desa* - Dorfführungs-Unteroffizier

Makodim - *Markas Besar Kodim* - Hauptquartier eines Distriktmilitärkommandos

Makoramil - *Markas Besar Koramil* - Hauptquartier eines Unterdistriktmilitärkommandos

Mayjen - *Mayor Jenderal* - Generalmajor

Letkol - *Letnan Kolonel* - Oberstleutnant

Lettu - *Letnan Satu* - Oberleutnant

Kapt. - *Kapten* - Hauptmann

Serma - *Sersan Mayor* - Hauptfeldwebel

Sertu - *Sersan Satu* - Unteroffiziersrang (Sergeant), entspr. Feldwebel

Serda - *Sersan Dua* - Unteroffiziersrang (Sergeant), entspr. Stabsunteroffizier

Praka - *Prajurit Kepala* - Gefreiter vom Dienst

Pratu - *Prajurit Satu* - Gefreiter

AKABRI - *Akademi ABRI* - Heeresakademie

AKMIL - *Akademi Militer* – Militärakademie

BTT - *Batalyon Tempur Teritorial* - territoriales Kampfbataillon

Tribuana task force - von Kopassus gebildete SGI-Sondereinheit (s.o), angesiedelt an den Korem unter Kommando von Col. Yayat Sudrajat

P4OKTT Task Force - *Panitia Pelaksana Pengamanan untuk Menuju Jajak Pendapat dan Otonomi Khusus di Timtim* - Komitee zur Ausübung der Sicherheit in Hinblick auf die Volksabstimmung und weitreichende Autonomie in Osttimor; Sondereinheit unter der Aufsicht des Koordinationsministers für Politik und Sicherheit

Hansip - *Pertahanan Sipil* - Zivile Verteidigungsstreitmacht

Milsas - *Militarisasi* - Reservisten der TNI

Polizei:

POLRI - *Polisi Republik Indonesia* - Polizei der Republik Indonesien

Polda - *Polisi Daerah* - Polizeibereich, zuständig für eine oder mehrere Provinzen, oberste regionale Hierarchieebene unterhalb der nationalen Polizeiführung

Polres - *Polisi Resort* - Polizeibezirk, regionale Untergliederung von Polda

Polsek - *Polisi Sektor* - Polizeisektor od. -abschnitt, regionale Untergliederung von Polres

Polpos - *Polisi Pos* - Polizeiposten, Untergliederung von Polsek, unterste Hierarchieebene

Kapolda - *Kepala Polisi Daerah* - Polizeichef eines Polizeibereiches (Polda)

Wakapolda - *Wakil Kepala Polisi Daerah* - stv. Polizeichef eines Polizeibereiches (Polda)

Kapolres - *Kepala Polisi Resort* - Polizeichef eines Polizeibezirks (Polres)

Kapolsek - *Kepala Polisi Sektor* - Polizeichef eines Polizeisektors (Polsek)

Kapolpos - *Kepala Polisi* - Polizeichef eines Polizeipostens (Polpos)

Binpolda - *Bintara Polisi Daerah* - Bereichspolizeiunteroffizier

BKO - *Bantuan Kendali Operasi* - Hilfstruppen von außerhalb (meist BRIMOB oder TNI), die dem Kommando der Polizei unterstellt sind

Brimob - *Brigade Mobil* - Mobile Einsatzbrigade der Polizei

Posko - *Pos Komando* - Kommandoposten

Satgas - *Satuan Tugas* - Sondereinheit

Dansatgas - *Komandan Satuan Tugas* - Kommandeur einer Sondereinheit

Lettu. Pol. - *Letnan Satu Polisi* - Polizeioberleutnant

weitere Dienstgrade s.u. Militär

Peleton - Zug (platoon); milit. Einheit mit Mannschaftsstärke 30 - 50, max. ca. 100 Mann

Milizen und Pro-Integrationsgruppen:

Milisi - Milizen

Pro-Integrations-/Autonomiegruppen - i.e.S. Kräfte, die sich beim Referendum 1999 für die Option der von Indonesien angebotenen „weitreichenden Autonomie“ Osttimors unter Verbleib in der Republik Indonesien aussprachen. Das Militär und die nationalistischen Kräfte Indonesiens benutzen diesen Begriff gleichbedeutend für all diejenigen Gruppen, die im internationalen Sprachgebrauch als „Milizen“ bezeichnet werden.

Pam Swakarsa - *Pasukan Pengamanan Swakarsa* - Selbsthilfesicherheitstruppen, Bürgerwehr

Pos Kamling - *Pos Keamanan Lingkungan* - Wachposten für die Sicherheit der Umgebung; nachbarschaftlich organisierte Wachposten in allen Wohngegenden Indonesiens

Kamra - *Keamanan Rakyat* - Sicherheit des Volkes; Bürgerwehr angesiedelt bei der Polizei

Wanra - *Perlawanan Rakyat* - Kampf des Volkes; Bürgerwehr angesiedelt beim Militär

Aitarak - „Dorn“; bekannteste Miliz in Osttimor, insb. in der Region um Dili, unter Führung von Eurico Guterres

Alfa / Tim Alfa - Miliz in Lautem unter Führung von Joni Marquez

BMP - *Besi Merah Putih* - „Rot-weißes Eisen“; Miliz in Osttimor, insb. in Liquica u. Maubara, unter Führung von Manuel Sousa; rot-weiß sind die indonesischen Nationalfarben

Dadarus Merah Putih - s. DMP

DMP - Dadurus [Dadarus] Merah Putih - „rot-weißer Tornado“; Miliz in Ritabou, nahe Maliana, unter Führung von Natalino Monteiro

Gada Paksi - *Garda Muda Penegak Integrasi* - Junge Garde zur Aufrechterhaltung der Integration - die älteste, bereits 1997 vom damaligen Kopassus-Kommandeur Generalleutnant Prabowo und Gouverneur Abilio Soares ins Leben gerufene, Miliz in Osttimor unter Führung des späteren Aitarak-Kommandeurs Eurico Guterres.

Halilintar - „Donnerkeil“; Miliz in Bobonaro unter Führung von Joao Tavares

Laksaur - Miliz in Covalima, Osttimor, unter Führung von Olivio Moruk

Naga Merah/Red Dragon - „roter Drache“; Miliz in Ermera

Mahidi - *Mati atau hidup untuk integrasi Indonesia* - Leben oder Tod für Indonesien; Miliz in Osttimor, insb. Covalima und Ainaro, unter Führung von Cancio Lopes de Carvalho; der Name Mahidi ist vermutlich eine Anspielung auf den Ausbilder der Miliz, Generalmajor Mahidin Sibolaen

Massa Besi Merah Putih - die Massen der BMP, s.o.

Red Dragon - s. Naga Merah

PPI - *Pasukan Pejuang Pro Integrasi* - Kampftruppen für die Integration; in der Anklageschrift gegen Herman Sedyono u.a. auch als *Pasukan Pembela Integrasi* - Truppen zur Verteidigung der Integration bezeichnet; Dachorganisation der Milizen unter Führung von Joao Tavares und seinem Vize Eurico Guterres

FPDK - *Forum Persatuan Demokrasi dan Keadilan* - Forum der Einheit für Demokratie und Gerechtigkeit; Gruppe unter Vorsitz von Basilio Araujo; politischer Flügel der PPI

FBPOTT - Forum Bersama Pro Otonomi Timor Timur - gemeinsames Forum für die Autonomie von Osttimor (Zusammenschluss aus FPDK u BRTT)

BRTT - *Barisan Rakyat Timor-Timor* - Volksfront von Osttimor; Gruppe unter Vorsitz von Lopes da Cruz, ehem. Sonderbotschafter Indonesiens für die Osttimorfrage; politischer Flügel der PPI

Oan Timor Ba Damai - gemeint ist offensichtlich *Klibur Oan Timor Ba Dame* (KOTBD) - Assoziation für Frieden in Osttimor, eine Pro-Integrationsgruppe unter Führung von Drs. Gil Alves, einem Schwager des ehem. Gouverneurs von Osttimor, Jose Abilio Osorio Soares.

UNTAS/Uni Timor Satria - *Unidades Nacional Timor Aswain* - Vereinigung der Helden Ost-Timors; Ende Januar 2000 (!) als Dachverband von Pro-Integrationsvertretern gegründet (der Name UNTAS soll offensichtlich Assoziationen mit Einrichtungen der UN wie UNTAET und UNAMET wecken)

Saka Ermere Darah Merah Putih - eine dem Übersetzer unbekannte Gruppe. Bekannt ist die Miliz Saka, die in Baucau unter Führung von Sgt. Joanico da Costa, einem Angehörigen der Elitetruppe der indonesischen Armee, Kopassus, aktiv war. Bekannt ist ebenfalls die Miliz Naga Merah (roter Drache), die in Ermera aktiv war sowie die Miliz Besi Merah Putih (s.o.). „Saka Ermere Darah Merah Putih“ lässt auf eine Verquickung der Namen dieser drei Organisationen schließen.

Panglima Perang - Kriegs-Befehlshaber; Eigenbezeichnung des Führers der PPI, Joao Tavares

Kompi - Kompanie; milit. Einheit mit Mannschaftsstärke 180 - 250 Mann

DanKi - *Komandan Kompi* - Kompaniechef

Pro-Unabhängigkeitsgruppen:

Pro-Unabhängigkeitsgruppen - Kräfte, die sich beim Referendum 1999 gegen die Option der von Indonesien angebotenen „weitreichenden Autonomie“ Osttimors unter Verbleib in der Republik Indonesien und somit für die Unabhängigkeit aussprachen.

CNRT - *Conselho National de Resistencia Timorese* - Nationalrat des timoresischen Widerstandes; 1988 von Xanana Gusmao als breites Widerstandsbündnis aller Gruppierungen, die für das Selbstbestimmungsrecht Osttimors eintraten, zunächst unter dem Namen CNRM gegründet. Nach Wegfall seiner Daseinsberechtigung als Widerstandsbündnis wurde der CNRT vor den ersten Wahlen in Osttimor aufgelöst, um den Weg frei zu machen für eine Mehrparteiendemokratie.

Fretilin - *Frente por Timor Leste Independente* - Befreiungsfront für Osttimor; größte politische Partei Osttimors

Falintil - *Forcas Armadas Libertacao Timor Leste* - Streitkräfte zur Befreiung Osttimors; bewaffneter Arm des Widerstandes

DSMPTT - *Dewan Solidaritas Mahasiswa dan Pelajar Timor-Timur* - Solidaritätsrat der Studenten und Schüler von Osttimor

Impettu - *Ikatan Mahasiswa dan Pelajar Timor Timur Se-Indonesia* - Gesamtindonesischer Verband der osttimoresischen Studenten und Lernenden

GRPRTT - Gerakan Rekonsiliasi Persatuan Rakyat Timor Timur - Versöhnungsbewegung zur Einigung des osttimoresischen Volkes; politische Organisation unter der Führung von Manuel Carrascalao. Bereits am 14.12.1997 stellte der Gouverneur Osttimors, Jose Abilio Osorio Soares fest: „GRPRTT is a separatist organization, [...] they have to be punished." (Mate-BEAN, 16.12.97).

Internationale Organisationen:

UN - *United Nations* - Vereinte Nationen

UNAMET - *United Nations Assistance Mission in East Timor* - Mission der Vereinten Nationen auf Grundlage des New York-Abkommens vom 5.5.1999 zur Vorbereitung und Durchführung des Referendums unter Leitung von Ian Martin

UNTAET - *United Nations Transitional Administration for East Timor* - Übergangsverwaltung der Vereinten Nationen bis zur offiziellen Unabhängigkeit des Landes am 20.5.2002 unter Leitung von Sergio de Mello

INTERFET - *International Force for East Timor* - internationale Eingreiftruppe für Osttimor unter Leitung der australischen Armee und Oberbefehl von Generalmajor Peter Cosgrove

CivPol - Civil Police - Zivilpolizei der UN gemäß des New York-Abkommens vom 5.5.1999

NATO - *North Atlantic Treaty Organization* - Organisation der Signatarmächte des Nordatlantikpakts, Verteidigungsbündnis

Weitere Institutionen und Begriffe:

Komnas HAM - *Komisi Nasional Hak Asasi Manusia Indonesia* - Nationale Menschenrechtskommission

Komnas Perempuan (Komnas of Women) - *Komisi Nasional Perempuan* - Nationale Kommission für Frauen

KPP-HAM - *Komisi Penyelidik Pelanggaran HAM di Timor Timur* - Untersuchungskommission zur Aufklärung der schweren Menschenrechtsverletzungen in Osttimor; von Komnas HAM am 22.9.1999 eingesetzt.

Kodal - *Komando Pengendalian Keamanan* - Kommando zur Wahrung der Sicherheit auf Grundlage des New York-Abkommens

KPS - *Komisi Perdamaian dan Stabilitas* - Komitees für Frieden und Stabilität; unter Federführung von Komnas-HAM wurden diese Komitees in Dili und Baucau als Foren zur Verständigung der verfeindeten Seiten eingerichtet. An den KPS waren u.a. Vertreter des CNRT, der Falintil und der Milizen sowie der Gouverneur Osttimors und der Kapolda beteiligt. Mehrfach getroffene Friedensabkommen der KPS blieben ohne Wirkung.

Muspida - *Musyawarah Pimpinan Daerah* - Koordinationsorgan zwischen zivilen und militärischen Stellen in den Regionen. Auf Provinzebene sind der Gouverneur, der Kapolda und der Pangdam bzw. Danrem an der Muspida beteiligt.

P3TT- *Panitia Penjajakan Pendapat Timor-Timor* - Komitee für die Umsetzung der Volksabstimmung in Osttimor

NGO - *Non Governmental Organisation* - Nichtregierungsorganisation

IPOLEKSOSBUDAG - *Ideologi, Politik, Sosial, Budaya, Agama* - Ideologie, Politik, Soziales, Kultur und Religion

Kamtibmas - *Keamanan dan Ketertiban Masyarakat* - öffentliche Sicherheit und Ordnung

Pancasila - Staatsideologie, die fünf Grundprinzipien beinhaltet: 1.- den Glauben an einen allmächtigen Gott, 2.- Humanität, 3.- nationale Einheit, 4.- auf Konsens basierende Demokratie und 5.- soziale Gerechtigkeit.

APBD - *Anggaran Pendapatan dan Belanja Negara Daerah* - Haushalt der regionalen Verwaltung/Regierung

Menkopolkam - *Menteri Koordinasi Politik dan Keamanan* - Koordinationsminister für Politik und Sicherheit

Bappeda - *Badan Perencanaan Pembangunan Daerah* - regionale Entwicklungsplanungsbehörde

BRI - *Bank Rakyat Indonesia* - Indonesische Volksbank

PLN - *Perusahaan Listrik Negara* - staatliche Elektrizitätsgesellschaft

NSDAP - *Nationalsozialistische Deutsche Arbeiterpartei* - Regierungspartei unter Hitlers Nazi-Regime

NS - Nationalsozialismus, nationalsozialistisch

SS - *Sturmstaffel* - paramilitärische Einheit im Nationalsozialismus

NJW - Neue Juristische Wochenschrift

taz - die tageszeitung

Rechtswesen:

UU - *Undang-Undang* - Gesetz

PP - *Peraturan Pemerintah* - Rechtsverordnung

Keppres - *Keputusan Presiden* - Präsidentenbeschluss

Kepmen - *Keputusan Menteri* - Ministerbeschluss

Inpres - *Instruksi Presiden* - Anweisung des Präsidenten

SKEP - *Surat Keputusan* - Beschluss

SH - *Sarjana Hukum* - Juraabschluss

ICC - *International Criminal Court* - Internationaler Strafgerichtshof

ICTY - *International Criminal Tribunal for the former Yugoslavia* - Internationaler Strafgerichtshof für das ehemalige Jugoslawien

EGMR - Europäischer Gerichtshof für Menschenrechte

BVerfG - Bundesverfassungsgericht

BGH - Bundesgerichtshof

Zitierte gesetzliche Regelungen u. vertragliche Abkommen:

UU 26/2000 - Gesetz über die Errichtung eines Menschenrechtsgerichtshofs

UU 5/1974 - Gesetz über die Grundlagen der Regierungsausübung in den Regionen

UU 20/1982 - Gesetz über die grundlegenden Bestimmungen zur Wahrung der Sicherheit der Republik Indonesien

KUHAP - *Kitab Undang-Undang Hukum Acara Pidana No. 8/1981* - Strafprozessordnung

KUHP - *Kitab Undang-Undang Hukum Pidana* - Strafgesetzbuch

Keppres 53/2001 - Präsidentenbeschluss über die Einrichtung eines Menschenrechtsgerichtshofes am Staatlichen Gericht in Zentral-Jakarta

Keppres 96/2001 - Präsidentenbeschluss über die Änderung des Präsidialdekrets (Keppres) Nr. 53 von 2001 über die Einrichtung eines Menschenrechtsgerichtshofes am Staatlichen Gericht in Zentral-Jakarta

Keppres Nr. 43/1999 - Präsidentenbeschluss über das Team zur Sicherheit der Durchführung des Übereinkommens zwischen der Republik Indonesien und Portugal bezüglich des Osttimor-Problems

PP No. 2/2002 - Rechtsverordnung über den Verfahrensablauf des Schutzes von Opfern und Zeugen schwerer Menschenrechtsverletzungen

PP No. 3/2002 - Rechtsverordnung über Kompensationen, Wiedergutmachungen und Rehabilitation für die Opfer schwerer Menschenrechtsverletzungen

KEP-13/MENKO/POLKAM/6/1999 - Ministerbeschluss über die Diensteinheiten des Koordinationsministers für Politik und Sicherheit der Republik Indonesien

Instruksi Presiden Nr. 5/1999 - Anweisung des Präsidenten über die Schritte der Umsetzung im Rahmen der Übereinkunft zwischen der Republik Indonesien und Portugal über das Osttimor-Problem

POL.SKEP-14/XII/1993 über die Grundzüge der Organisationsstruktur und Verfahrensabläufe der regionalen Polizeieinheiten der Polizei der Republik Indonesien

New York-Abkommen vom 5.5.1999 - Übereinkunft der Republik Indonesien und der Republik Portugal über die Osttimorfrage

EMRK - Europäische Menschenrechtskonvention

StGB - Strafgesetzbuch der Bundesrepublik Deutschland

StPO - Strafprozessordnung der Bundesrepublik Deutschland

VStGB - Völkerstrafgesetzbuch der Bundesrepublik Deutschland