

***SEEKING TRUTH AND
RESPONSIBILITY:
REPORT OF THE EXPERT ADVISOR
TO THE CTF***

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**PART I: JAKARTA DOCUMENTS:
KPP HAM and AD HOC COURT**

CHAPTER 1

INTRODUCTION

This part of the Report assesses the three bodies of documents in relation to the legal process the Republic of Indonesia undertook to address the gross violations of human rights before, during, and after the announcement of the popular consultation in East Timor, which led to the secession of the then Indonesia's 27th province into the independent, sovereign nation of Timor-Leste. The three bodies of documents are namely: the report and evidence presented in the National Commission of Human Rights' Inquiry Team (KPP HAM) report, the investigative dossiers (BAP) that document the investigation process commenced by the Attorney General's Office following the KPP HAM report, and the court documents from the twelve trials before the Jakarta Ad Hoc Human Rights Court of the defendants accused of gross violations of human rights. The report of the findings of this research on the Indonesian process will be structured in three parts. This chapter elaborates the context of the research itself and the working definitions. The second chapter shall contain three separate analyses on the three bodies of documents. The third chapter shall set out the findings of the research, including the weaknesses of each body of documents.

The Popular Consultation held in East Timor in 1999 marked a new strategy in dealing with East Timor in the post Soeharto Era. President Habibie proposed a new approach to resolve the East Timor problem. The proposal provided two options for the East Timorese, namely the option to give East Timor special autonomy, or on the contrary to refuse special autonomy, which also meant to become independent from Indonesia. This was then formulated in the New York Agreement on May 5th, 1999 between the governments of Indonesia and Portugal. Based on this agreement, the Indonesian government agreed to hold a Popular Consultation. Furthermore, they agreed to be responsible for maintaining security and peace in East Timor in order too ensure that the Popular Consultation would be fair and peaceful, and free from any intimidation, violence, or intervention by any parties.

As part of this agreement, the duty to ensure peace and security was transferred from the TNI to the Police. The consultation that was held on the 30th of August resulted in the victory of the pro-independence option, which was chosen by around 78.5 percent of the voters.

During the months leading up to the Popular Consultation, political tensions mounted and often escalated into violence in communities across East Timor. The question of responsibility for that violence, and for the even larger scale outbreaks after the defeat of the pro-autonomy option, was the central focus of a number of investigations conducted both internationally and in East Timor. Because of the violence before, during, and after the Popular Consultation, there was a great deal of international scrutiny which led to the establishment of an inquiry team of the Indonesian National Commission of Human Rights to investigate gross violations of human rights over these incidents. The report of this inquiry team led to a formal legal process by the Attorney General's office, that in itself led to twelve trials.

Due to international pressure and to avoid the possibility of the establishment of an international tribunal, the Indonesian government enacted Law No. 26/2000 on the Human Rights Court which provided foundation for the establishment of the Ad Hoc Human Rights Court. The East Timor cases were actually the first to be tried in the Ad Hoc court. There were twelve trials heard before the court, six of which resulted in acquittal of the defendants. While six defendants were convicted, on appeal all but one of the convictions was reversed and the charges dropped. This result generated criticism internationally and from domestic NGO circles.

By analyzing the above documents, it is expected that the following main questions will be answered:

1. Were there gross violations of human rights in 1999 East Timor? This includes addressing the historical, military, and political context surrounding the period.
2. If the answer to the second question is yes, then what institutions were responsible for the gross violations of human rights?

It should be noted here that since the documents examined were from the legal process seeking accountability from those under Indonesia's jurisdiction, the answer to the second question will be, unavoidably, about the relation between the gross violations of human rights and Indonesia's authority present in East Timor at the time. That is, the focus of the KPP HAM investigation and that of the Prosecutor for the Ad Hoc Court was on Indonesian commanders, officers, and government officials who were, in accordance with the New York Agreement, in charge of maintaining order in the region. In particular these bodies concentrated on the crimes committed against pro-independence groups and supporters that had been widely observed and reported on by UN officials and other international observers. From the international perspective, and that of many Timorese, the vast majority of the crimes appeared to have been committed by pro-autonomy militia groups, with the knowledge, support, and sometimes direct participation of Indonesian institutions. It was these charges that were investigated by KPP HAM and the Prosecution.

This perspective, however, does not preclude other parties' responsibility if they also committed gross violations of human rights in East Timor at the time. Yet because of the focus of the investigative efforts of the Attorney General's office and the KPP HAM on Indonesian institutions and individuals, little was done to investigate crimes committed against the pro-autonomy groups. This fact must be kept in mind when reading this report. The working principle here is that *whichever* party commits gross human right violations should be held accountable, and *there is no justification* for impunity for the use of extrajudicial violence as a means to resolve an issue, even if the acts are retaliation to another party's criminal conduct.

I. Underlying Definitions Utilized in the Research

I.a. Gross Violations of Human Rights and Crimes Against Humanity

Gross violations of human rights in this research is interpreted as the violations of rights protected by International treaties, especially by parties that according to International

Law are responsible to protect them. There are several approaches to interpreting gross violations of human rights. The KPP HAM report, for example, refers to the International Covenant on Civil and Political Rights (ICCPR) and defines gross violations of human rights as grave breaches of fundamental rights, which are considered as non - derogable rights, or rights that can not be suspended for any reason in either times of peace or war, under the ICCPR.¹ Among others are the right to life, the right to not be subjected to torture, and the right that prohibits any form of slavery. In addition, this research also interprets the term as what is stipulated in the Law No. 26/2000, which provides the domestic legal foundation for the use of the term. The Act provides that gross violations of human rights consist of two substantial crimes, namely crimes against humanity and genocide.

I.b. Crimes Against Humanity

The report focuses upon the elements of crimes against humanity, not only to follow the form of criminality pursued by the legal process, but also because it can be used to form a framework to differentiate the patterns and causes of violence in 1999 East Timor from mere random occurrences. This report uses the official guidelines of The Supreme Court of Indonesia as its frame of reference for defining crimes against humanity and for the interpretation of Law No. 26/2000 by the Indonesian human rights courts. Crimes against humanity as defined in the Rome Statute of the International Criminal Court (ICC) and adopted by the Supreme Court guidelines are:

For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*

¹ See article 4(2) ICCPR.

- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this Paragraph or any crime within the jurisdiction of the Court;*
- (i) Enforced disappearance of persons;*
- (j) The crime of apartheid;*
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

As can be derived from the definition, and as explained in the guidelines issued by the Indonesian Supreme Court in 2006, any act to be considered as a crime against humanity has to meet the following requirements²:

- (1) That the act is conducted as a part of a widespread or systematic attack which is directed against a part of the civilian population.*
- (2) The perpetrator knows that his acts are a part of or have an intention to be a part of a widespread or systematic attack against a part of the civilian population.*

In defining and interpreting these elements the Indonesian Supreme Court guidelines look to the jurisprudence of the ICTR (international criminal tribunal for crimes committed in Rwanda) and ICTY (international tribunal for crimes committed in the former Yugoslavia). Referring to the judgment of the Akayesu case (ICTR), the Supreme Court guidelines provide that:

“ the word widespread is referring to the number of victims and this concept includes a massive, frequent or repetitive, big scale of acts that is conducted collectively and potentially have a serious effect ”³

Whereas the word systematic as the guideline explained quoting the Akayesu judgment, “reflects a ‘particular pattern or method that is organized as a whole by using a fixed pattern.’”⁴ In addition, the guidelines also highlight that it is important to describe when the perpetrators can be considered part of a widespread and/or systematic attack. In order

² See Indonesian Supreme Court, 2006, “ Guidelines: Elements of the Crime of Gross violation of human rights and command responsibility,” p. 28

³ Supra note 1, Supreme Court, 2006, p. 25

⁴ Supra note 1, Supreme Court, 2006, p. 25

to explain this aspect, it is important to prove a sufficient relation between the perpetrator's act and the attack.⁵

With regard to civilian population, the guideline does not specifically define the term. But it provides some parameters to recognize those to be considered as the civilian population. Referring to the Geneva Conventions of 1949, the term "civilian population,"

*"covers every individual who does not actively join in the enmity, or a party which is no longer a combatant, including armed forces who have given up (hors de combat) because they are ill, injured, detained, or other reasons."*⁶

"No longer a combatant" means that they were not armed or were not part of an organized armed group and/or were, at the time violence inflicted upon them, not in combat. This is very important to note as some party might say that since a person is suspected to be, for instance, a militia, this person is liable to be shot in whatever position he is at the time he is found. For example, an unarmed civilian, not engaged in combat but suspected of being a member of an armed group, is protected as part of the civilian population, but is subject to the law if they have unlawfully engaged in armed activities. Such a person may be arrested through the legal process, but not killed or tortured or abused. For example, arbitrary, extra-legal detention of such persons may constitute "imprisonment or deprivation of liberty" as a crime against humanity.

II. The Structures and Terms Relevant to This Research

In order to assist in reading the report of this research, please refer to **Appendix I** for an explanation of the structures and terms of military command. One important structural question regards the position of the police in the structure. As known, the Police were a part of the Armed Forces until March 1999. The question remains whether the de facto separation had taken place immediately, or if during the period addressed by Indonesia's legal process for gross violations of human rights in East Timor the Police were still reporting to, or under the order of, the Military.

⁵ Supra note 1, Supreme Court 2006, pp. 26-27

⁶ Supra note 1, Supreme Court, 2006, p. 27

The Civilian Government structure in 1999 in East Timor was similar to other provinces before the implementation of autonomy. The leader at the provincial level was the Governor, appointed by and accountable to the President through the Ministry of Home Affairs. A province, often referred to as Region Level I, consists of several Region Level IIs- namely the districts, regencies, or cities. Each district consists of several sub-districts, and each sub-district consists of several villages. Each village consists of some Rukun Tetangga and Rukun Warga - namely the neighborhood units.

The legal procedures for the violence in 1999 in East Timor conducted by the government of Indonesia was in accordance to Law No. 26/2000 and the procedural Law No. 8/1981 (KUHAP). It consisted of the following steps:

1. *Penyelidikan*: Inquiry or Preliminary Investigation [Executing agency: The National Commission on Human Rights –*Komnas HAM*]
2. *Penyidikan*: Investigation [Executing agency: the Attorney General – *Jaksa Agung*] The document containing the result of investigation is called Berita Acara Penyidikan (BAP) or Investigative Dossier. The Investigative Dossier shall contain a section called “*Berita Acara Pendapat*” or “Legal Opinion”, or often referred to as a “*Resume*”, wherein the investigators provide the summary of evidence such as testimonies, etc., as well as their Legal Conclusion on whether or not the investigated person is suspected to have been involved in an act considered as a crime by the existing Law. The equivalent of this part in Common Law System is the Charges.
3. *Penuntutan*: roughly translated as “Prosecution,” where the executing agency assesses the evidence and constructs indictments against the suspects and submits the case(s) to the court [Executing agency: the Attorney General– *Jaksa Agung*]
4. *Persidangan*: Trial
 - a. *Pembacaan Dakwaan*: The reading of the Indictment
 - b. *Eksepsi*; The response and objections of the Defense against the indictment

- c. *Jawaban Penuntut umum*: Response from the Prosecutor
- d. *Putusan Sela*: Intermediate Judgment, the ruling of the motions filed in the *eksepsi* and the prosecutor's response
- e. *Pembuktian*: Witness and Evidence Examination
- f. *Tuntutan Pidana* or *requisitoir*: the reading of the charges against the defendant based on the witness and evidence examination
- g. *Pledoi*: the reading of the defense' account in view of the witness and evidence examination
- h. *Replik*: the response of the prosecutor to the *pledoi*
- i. *Duplik*: the response of the defense to the *replik*
- j. *Putusan*: the reading of the Panel of the Judges' judgment

The presiding panel of judges in a gross violations of human rights case trial in the Ad Hoc Human Rights court always consists of five judges, two career judges and three non-career representatives appointed from civil society- such as academics and/or legal practitioners.

III. The Limitations of This Research

This research is limited to the aforementioned bodies of documents as well as the evidence that could be obtained that was listed in the KPP HAM report, the BAP, and the trial documents. Yet it should be emphasized here that this research is limited in terms of the time provided to complete it and also the assistance in the provision of documents. The full list of evidence submitted by KPP HAM has been unavailable for this research. It consists of 134 testimonies and a large body of documents that should be thoroughly examined in future research. This research has concentrated on the documents referred to in the KPP HAM report that were able to be retrieved. Also, in regard to the BAP's, the documentary evidence of the investigation remained unavailable for the writing of this report, but the list of these documents were attached at the end of each Investigative Dossier (BAP), and is also attached in this report.

Thus, what has been reviewed in this research is the KPP HAM Report, the BAPs (including the resume) and the Court Judgments (which commonly also quote the indictment and the final charges by the Prosecutor after the presentation of evidence and testimonies are completed as well as the summary of testimonies and evidence presented before the court). Due to constraints on human resources and time, the main evidence reviewed was all of the witness testimonies and a number of documents. More complete findings would involve further research into the lists of evidence attaché to the BAPs and the documentary and testimonial databases of the KPP HAM.

CHAPTER 2

ANALYSIS OF KPP HAM REPORT

I. Background

It is widely acknowledged that the establishment of the Team for Inquiry on Violations of Human Rights in East Timor of The National Commission for Human Rights of Indonesia (KPP HAM) was heavily influenced by the international pressure applied due to the rampant violence that occurred in relation to the Popular Consultation in East Timor in 1999. Even the report of KPP HAM elaborated this as part of the background of its establishment. It was clearly stated that the issuance of the decree to establish KPP HAM was closely correlated to the Special Session of The UN Commission of Human Rights, which issued a resolution demanding the Government of Indonesia hold accountable those responsible for the systematic violence and violations of human rights, and insure international humanitarian law is fully applied to individuals under or within its jurisdiction.⁷ The resolution, which did not accommodate the many demands for the establishment of an International Criminal Court in the fashion of ICTY and ICTR, clearly took into account the announcement by the Government of Indonesia at the opening of the Special Session on 23 September 1999 that it had established a fact finding commission for the violations of human rights in East Timor, namely the KPP HAM.

With that particular background, the inquiry process of KPP HAM was expected to follow international standards to show Indonesia's sincerity in its effort to seek accountability, as stipulated in the resolution. Indeed, compared to the other two bodies of documents analyzed in this document, KPP HAM's report relies on a framework of international criminal law in investigating the rampant crimes occurring before, during, and after the announcement of the result of the popular consultation. As will be further

⁷ KPP HAM Report, point 13-14

elaborated in the next chapter, one of the key differences between the report and the investigation and court documents is a greater awareness of the extraordinary nature of crimes against humanity or gross human rights violations.

Therefore the KPP HAM investigation was initiated with the intent to explore whether or not international crimes had occurred in East Timor- namely crimes against humanity and genocide.⁸ Because of this, much effort was employed in the inquiry to explore elements that differentiate the crimes in East Timor from random or ordinary crimes. As will be explained in the sections below, one of the differentiating elements of this report is that it is based on other investigations and trials with a focus on the question of institutional responsibility and the relationship between the field perpetrators and the Indonesian Government, Military and Police.

As noted above because of time limitations and questions of access, it was not possible to examine all the data collected and stored by KPP HAM. The KPP HAM report mentioned that it was based on several types of data, starting from the secondary and tertiary data with regards to the violations of human rights (namely the mass media coverage as well as reports issued by various institutions as well as individual complaints filed) which then is analysed and verified through active methods to unearth primary data, such as the examination of documentary and physical evidence, and interviews with witnesses at the field and summoning witnesses and interviewing them in the Komnas HAM office in Jakarta.

Thus, this analysis of the content of the report and the evidence has been conducted relying on the transcripts of testimonies of witnesses interviewed by KPP HAM and some documents that we requested and were provided by Komnas HAM. Ideally we should have been able to use an inter-institutional arrangement ensuring more open access to the rest of the evidence in its archives.

⁸ KPP HAM Report, Point 26

Indeed, the flexibility in assessing a wide range of evidence as mentioned above is most likely to be one factor that enabled the comprehensiveness of the report. As will be apparent in the sections discussing the investigation and the court process, KPP HAM was better able to reveal the facts in great detail, because it was not restricted by Indonesia's procedural law, which only allows certain forms of evidence to be admitted in court.⁹

While endeavouring to not be overtly legalistic and yet also addressing the key questions of the research, this analysis of the KPP HAM report will be structured in the following manner. First, the scope of time and place of the inquiry will be elaborated as a part of the introduction to the massiveness of the crimes during the particular period in East Timor. In this section there will also be a discussion of the quantity of incidences of violence in East Timor, the cases it adopted as its major cases, and the report's conclusion of the type of violations of rights that have occurred during the time. The second section will elaborate on the pattern of the crimes. In particular, the indications of the existence of a policy that unites the crimes as parts of a collective action will be examined. The third section will contain the conclusions that can be reached from the findings in regards to the key questions, as well as the gaps identified in the KPP HAM report.

II. The Massiveness of The Violations of Human Rights in 1999 in East Timor

The inquiry process of the KPP HAM was focused on the violence occurring in East Timor during January-September 1999, in particular the period after President Habibie announced the resolution to the East Timor matter by consulting the population in regards to the choice between remaining integrated with Indonesia as an autonomous region or to be an independent state. The KPP HAM report was compiled solely from the evidence available in Indonesia at the time of the writing of the first report, which is then refined by the second. In the initial part of the KPP HAM report it is stated that there were five major incidents in the stated period that became the focus of the inquiry, namely the Dili Diocese Case, Bishop Belo's residence, the Liquica Church Case, the Maliana POLRES

⁹ Based on the Procedural Law the evidence can be submitted at trial are only a) Witness testimony b) Expert witness accounts c) Defendant accounts, d) Documents and d) Circumstantial evidence.

Case and the Suai Church Case.¹⁰ Yet in the course of the report, there were actually 13 cases of violence that were examined closely with the addition of one section on gender-based violence.¹¹ The total docket of cases include the attack and mass killing in Liquica church, the killing of civilians in Kailako, Bobonaro, an alleged Falintil ambush of Manuel Gama, a killing of civilians in Bobonaro, the attack on Manuel Carascalao's house, a riot in Dili (25-26 August 1999), the attack on Dili Diocese, the attack on Bishop Belo's house, the burning of civilian settlements in Maliana, the attack on Suai church compound, the killing of civilians in Maliana Polres Headquarters, the murder of Sander Thoenes, the killing of clergy in Los Palos, as well as three gender based crimes. The report is also quick to point out that the violence was not only limited to those incidents. It noted that throughout the period actually there had been at least 394 fatalities in East Timor in 142 different cases. These cases include 59 cases in Dili, 3 cases in Aileu, 3 cases in Ainaro, 4 cases in Ambeno, 3 cases in Baucau, 24 cases in Bobonaro, 8 cases in Covalima, 3 cases in Ermera, 14 cases in Lautem, 1 case in Manufahi, 1 case in Viqueque. There were also 2 cases in Belu and 1 case in Kupang – both in NTT.

The following table shall try to map the major cases in the report. The information in the table below is as quoted from the KPP HAM investigation from their depositions from the witnesses. Thus, this is based on the evidence in the KPP HAM report and appears as cited in the report and is not necessarily representative of the final conclusions about these cases.

¹⁰ KPP HAM Report, point 28

¹¹ KPP HAM Report, point 93-149

No.	Name of Incident	Time	Place	Victims	Perpetrating Institution
1	Attack at Liquica Church	4-6 April 1999	Started in Maubara, then moved to Liquica	Two people died, seven injured on the border of Maubara-Liquica; Approx. 30 people killed at Liquica Church	Besi Merah Putih Militia, Kodim, Brimob, Police
2	Killings at Kailako, Bobonaro	12 April 1999	Kailako, Bobonaro	Six people were kidnapped and killed	Koramil Kailako, Halilintar Militia
3	Blockading of Manual Gama group	12 April 1999	On the road from Maliana to Kailako	Three people killed, four people injured	Member of Falintil group
4	Killings of Civilians in Bobonaro	12-13 April 1999	Bobonaro	Six people were kidnapped and killed	Halilintar militia, Kodim Bobonaro
5	Attack on Manuel Carrascalao Residence	17 April 1999	Dili	15 people were killed	Besi Merah Putih Militia, Aitarak Militia
6	Riots in Dili	25-26 August 1999	Dili	More than eight people were killed	Aitarak Militia, Pro-Independence group, Brimob
7	Attack on Dili Diocese	4-5 September 1999	Dili	25 people were killed (Bishop Belo's testimony)	Pro-integration militia
8	Attack at Bishop Belo's Residence	6 September 1999	Dili	Two people were killed (Bishop Belo's testimony), actual number of victims are unknown	Aitarak militia
9	Burning of people's houses at Maliana	4 September 1999	Maliana	Unconfirmed number of people were killed and kidnapped	Dadarus Merah Putih militia, Halilintar milita, officers from local Kodim
10	Attack at church	4-6	Suai	Approx. 50	Laksaur Merah Putih

	complex of Suai	September 1999		people	militia, Mahidi militia, Lorosae Contingent police, Lorosae Contingent Brimob, TNI territorial battalion , Bupati of Kovalima
11	Killings at Maliana Resort Police Station	8 September 1999	Maliana	More then three people were killed (actual number is unknown)	Dadarus Merah Putih militia; TNI, Brimob, local police and Lorosae Contingent Police (omission)
12	Killing of Sander Thoenes	21 September 1999	Becora, Dili	one dead	Group of unknown people, in TNI uniform and armed with automatic weapons
13	Killing of religious group of people at Lospalos	25 September 1999	Between Lospalos and Baucau	Nine people killed	Alfa Team militia under the instruction of a Kopassus unit
14	Gender based violence (sexual slavery) – case 1	September 1999	Wemasa village	Approx. 30 victims of sexual violence	Laksaur militia
15	Gender based violence (sexual slavery) – case 2	September 1999	victims were from Ainaro, East Timor, kidnapped, taken to and raped in Malaka Barat, East Nusa Tenggara	2 victims of kidnapping and sexual violence	Mahidi militia
16	Gender based violence (sexual slavery) – case 3	June 1999	Maubara, Liquica	23 women, victims of sexual violence	BMP militia

One of the strengths of the KPP HAM report is that it classified cases according to a clear definition of what it considers as gross violations of human rights which clarifies its investigation and in doing so helped in clarifying why the report had started by mapping the interrelation of the government and the military with the armed groups.¹² The KPP HAM report explains in point 57 that gross violations of human rights in general become

¹² KPP HAM report, Chapter II

state responsibilities, as stipulated in various international instruments such as the International Covenant of Civil and Political Rights (ICCPR) and The Convention Against Torture and Cruel, Inhuman and Degrading Punishment and Treatment. Based upon the above instruments, the KPP Ham report classified the types of gross violations of human rights it found to have occurred in 1999 in East Timor as the following: cruel, inhumane treatment, violation against the right to life (the first right listed in ICCPR), violation of the right to personal integrity (the 2nd), right to liberty (the 3rd), right to movement and to residence (the 5th) as well as the right to own/retain property (13th). The report then proceeded to illustrate the spread of the violations of human right from January to September 1999:

Table 2: The Spread of Gross Violations of Human Rights (Jan-Dec 1999)

Month	Types of violations of human rights				
	01	02	03	05	13
January '99	17	11	7		2
February '99	5		2		4
March '99		1	1	2	
April '99	190	19	24	1	41
May '99	2	5	2		1
June '99		7			1
July '99		3			1
August '99	28	13			4
September '99	142	24	6	14	29
October '99	7	7			1
December '99	3				1
Total	394	90	42	17	85

[quoted from KPP HAM report, point 60]

By mapping the above, KPP HAM tried to show the indications of how throughout the period there had been **massive** gross violations of human rights which included mass killing, torture, and assault, enforced disappearance, violence against women and children (including rape and sexual slavery), enforced migration, scorched earth policy, and destruction of property. The massiveness is shown by the amount of victims and the spread of the violence within the period. KPP HAM then proceeded to emphasize that the gross violations of human rights are actually part of crimes against humanity - *because the incidents are a massive, intensive collection of attacks against a civilian population*. The KPP HAM report maintains that these incidents of violence were caused not only due to the inability of Indonesia's security apparatus to prevent and protect the population but also the because of its deliberate efforts to allow the crimes to be committed. This, the KPP HAM report argues, undercuts the argument of civil war and spontaneous actions as stated officially by the government of Indonesia.¹³ The question to be explored below will be to what extent the evidence relied on by KPP HAM supports this conclusion.

The KPP Report also explored individual accountability in accordance to its mandate and the stipulations of international law.¹⁴ Based on the preliminary evidence collected showing the interrelation among perpetrators, the KPP HAM report recommends for further investigation more than 100 people who are suspected to be responsible either directly or indirectly in the crimes. The list includes four high ranking military officials.¹⁵

This research will not focus on this dimension of individual accountability, however, but rather will emphasize the analysis of the KPP HAM's conclusions and some of the body of evidence available to be re-analyzed regarding the institutions accountable for crimes against humanity in 1999 in East Timor.

¹³ KPP HAM report, p. 21, no. 72.

¹⁴ The report quoted the Jurisprudence of the Nuremberg International Tribunal in 1946 which emphasized that the crimes against international law should not be considered as something abstract. Only by prosecuting individuals committing the crimes, the stipulations of international law can be enforced. See KPP HAM report, point 57.

¹⁵ The four high-ranking military officials include Gen. Wiranto, Johnny Lumintang, Zacky Anwar Makarim, and H. R. Garnadi. It should be noted here that H.R. Garnadi is a retired military officer who at the time worked as an expert of the military. The KPP HAM Report however, classified him as one of the high ranking military officials should be investigated. This may have been caused by the perception in Soeharto era that all military officials, retired or not, whether or not they are occupying civilian positions, still attained the military powers.

II.a. Forms of crimes

The KPP HAM report gives strong indications that gross violations of human rights have been committed. The report groups these crimes into four types of gross violations of human rights.

1. KPP HAM reports that **mass killings**¹⁶ occurred in most regencies. The killings at Liquica Church and the attack on Suai Church provides clear accounts of the extrajudicial nature of the killing.¹⁷

One example of the massiveness of the attack that included the mass killings is shown by the testimony of Fares da Costa, a victim witness of the Ave Maria Church attack in Suai. He attested that the men were killed on the spot while the women were brought to the Kodim. This was done by stabbing and shooting, and some of the killings were done by Indonesia's state apparatus. The testimony reads:¹⁸

[in response to the question whether the Head of District, Herman Sedyono, and Sugito shot at the masses] "they shot... they came, they saw, they shot... the Head of District and the Danramil were [using] automatic weapons"

[in response to the question of the number of the corpses, the witness stated, "I went to the nuns, the nuns were not there, I saw the corpses, and there were 50 corpses there when I came out [in response to the question were there more bodies aside from the 50] "there were, next to the new church... [the ones counted] were only around the old church

They were preceded by the rapid attack on the churches, which were then followed by summary killing of civilians who were seeking a refuge inside the church. This includes the killing of three priests of Suai Church.¹⁹ A mass killing was also committed in the Maliana Police district office,²⁰ when the militias attacked and killed civilians seeking

¹⁶ KPP HAM report, p.18

¹⁷ KPP HAM report, p.18

¹⁸ Transcription of Fares da Costa's Testimony, Komnas HAM.

¹⁹ Based on a witness' statement, Priest Hilario was shot in his chest once, and Igidio Manek, a member of Laksaur, repeatedly trod over his dead body, while Priest Francisco was stabbed until he died. His body was mutilated by Americo, a member of Laksaur. Priest Dewanto was killed in the old church. See KPP HAM report, p 31

²⁰ This mass killing was directed against refugees seeking protection in the Police station compound in Maliana, Bobonaro. The victims, among others, were the head of Maliana Village, and an interim official

protection in the Bobonaro police office. Among the victims were the head of the village of Maliana, local parliament members of Maliana, and the head of subdistrict Maliana. In addition, large scale crimes also happened in Lospalos causing the deaths of clergy²¹, in Suai, causing 27 fatalities of civilians and a priest, in Liquica causing at least 15 deaths, and at least 15 casualties in the attack of Manual Carascalao's house. Enforced disappearances directed against groups supporting independence happened in Kailako, Dili, Bobonaro and Liquica. It was committed by kidnapping or arbitrarily arrested victims, before they were finally executed (summary execution).²² In addition, KPP HAM stated that enforced disappearances reportedly happened in the areas of refugees' shelters.²³

2. **Torture and assault** were also perpetrated against members of the civilian population who were believed to be supporters of independence. In many cases, these attacks were preceded by arbitrary arrest to extract information, and continued with torture and assault before finally, in some cases, the victims were killed.²⁴ For example, a victim named Longinus was allegedly arrested in his house, and dragged to another place where he was subjected to torture and finally was killed.²⁵ His body was then buried. Other assaults committed after the announcement of the result of the Referendum were committed in the form of terrorizing the population and making death threats as part of each attack. The invasion and destruction of public infrastructure was also widespread as part of this kind of attack.²⁶

3. **Gender-based violence** directed against women including sexual slavery, when young women are enforced to sexually serve militias, enforced prostitutions and rapes. Sexual

of the Chief of the local legislative assembly, and the head of the subdistrict Maliana. See KPP HAM report, p. 33

²¹ There are around 9 victims. KPP HAM report, p. 35.

²² KPP HAM report, p. 19.

²³ KPP HAM report, p. 42.

²⁴ See KPP HAM report, p. 42.

²⁵ See KPP HAM's REPORT, p.19.

²⁶ KPP HAM report, p19.

slavery and rapes also occurred in civilian settlements, military stations, and refugees' settlement, before and after the referendum.²⁷

4. **Forced transfer** of the civilian population increased the number of refugees, which is estimated to have reached around 250,000 people in East Nusa Tenggara. Forced transfer was committed by attacking and burning settlements. Shortly after the defeat of the pro-autonomy option, there were enforced migrations against the civilian population preceded by terror and intimidation. This often repeated pattern appears to have especially targeted pro-independence supporters. According to KPP HAM, this pattern strengthens the validity of the allegation of the existence of a plan leading to the violence, contrary to the argument of civil war and spontaneous actions as reiterated officially by the government of Indonesia.²⁸ This plan included a scorched earth policy that targeted many districts in East Timor and included looting, robbery, and destruction of civilians' property, ruining around 70% of civilian settlements.²⁹

II.b. Perpetrators

The KPP HAM report concludes that the involvement of the pro-integration militias in the physical or actual perpetration of the crimes is undisputable. Numerous testimonies collected in the course of the investigation affirmed that the militias were the main attackers in the incidents, including at Liquica Church, the attack against Manuel Carascalao's house, the attack on Ave Maria Church in Suai, and the attack against the Dili Diocese.³⁰ The presence of the militias, from both sides, in East Timor had been prevalent before, but the presence intensified during the period the inquiry was conducted. KPP HAM supported its conclusions about the presence of armed militias in the 13 districts of East Timor at the time using the following chart:

²⁷ This is based on the report of the Commission Anti Violence Against Women. Unfortunately the data provided in the report was limited and contained the same information as quoted in KPP HAM's Report without providing new information.

²⁸ KPP HAM report, p. 21 no 72.

²⁹ KPP HAM report, p. 21 no 75.

³⁰ See the transcript of the testimony of Pastor Rafael Dos Santos, Joao Ferera, Fares da Costa, and Georgina de Fatima.

Armed Militias in 13 Districts of East Timor With Respective Areas of Operation

<i>No</i>	<i>Name of Militias</i>	<i>Area of Operation</i>	<i>Amount of Personnel</i>	<i>Arms</i>	<i>Name of Commander</i>
1.	Tim Alfa	Lautem	300	Armed, number unavailable	Joni Marques
2.	Saka/Sera	Baucau	970	250 pieces	Chief Sergeant Kopasus Joanico da Costa
3.	Pejuang 59-75 Junior/ Makikit	Viqueque	200	200 pieces	Martinho Fernandes and Lafaek Saburai
4.	Ablai	Manufahi	400	70 pieces	Nazario Corterel
5.	AHI	Aliu			
6.	Mahidi	Ainaro	2000	500 pieces	Cancio de Carvalho
7.	Laksaur	Covalima	500	200 pieces	Olivio Mendoca Moruk
8.	Aitarak	Dili	1.521	120 pieces	Eurico Guterres
9.	Sakunar	Ambeno	Data not available	Data not available	Data not available
10.	BMP	Liquisa	4.000	Armed, number unavailable	Manuel de Sousa
11.	Halilintar	Bobonaro	Data not available	Armed, number unavailable	Joao Tavares
12.	Jati Merah Putih	Lospalos	Data not available	Armed, number unavailable	Data not available
13.	Darah Integrasi	Ermera	Data not	Armed,	Data not available

			available	number unavailable	
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[The KPP HAM report point 56]

The above table was compiled by the KPP HAM report, stating “various sources” as the origin of the data. Although this research cannot verify the documentation without examining the full documentary database, the existence of the militias are also affirmed in some of the testimonies³¹.

The militias, according to KPP HAM, should not be mistaken as unorganized mobs of supporters. These are organizations with a long history, which will be elaborated further in the section discussing the pattern of crimes in East Timor. Preliminarily, it will be discussed here that these organizations were entities with a clear source of funding and resource provision, namely from the civilian government of Indonesia and the Indonesian Armed Forces. They also were organized with a very clear hierarchy. One example of this can be seen in one document, namely in the Decree of Establishment of Pam Swakarsa in the District of Dili (unnumbered, not dated at the head of the letter as it is supposed to, only dated in the signatory part in May 1999, no specific date mentioned). Pam Swakarsa literally means independent security- referring to an integrated approach to maintain security and order by involving not only members of the government and security apparatus, but also components of the community. This in itself was peculiar, as this entity is given the authority to take measures to maintain order, which is usually an authority reserved for official policing civilian force of the government, namely the Police. Eurico Guterres, the Commander of the Aitarak militia in Dili, was named as the Coordinator of the Pam Swakarsa Operation in the document. More will be elaborated about this point later. However, there is a part of the document that shows the organized form of Aitarak, namely the attachment that listed the names of the members included in the Dili Pam Swakarsa force:

³¹ See the transcript of testimony of Fransisco Calbuadi and Pastor Rafael Dos Santos, date of interview respectively 25 January 2000 and 11 December 1999.

DAFTAR NAMA-NAMA KOMPI A PASUKAN AITARAK
(PAM SWAKARSA)
CAICOLI

DAFTAR NAMA-NAMA KOMPI A PASUKAN AITARAK
(PAM SWAKARSA)
VILA VERDE

DAFTAR NAMA-NAMA KOMPI A PASUKAN AITARAK
(PAM SWAKARSA)
MASKARINAS

DAFTAR NAMA-NAMA KOMPI A PASUKAN AITARAK
(PAM SWAKARSA)
LAHANE

DAFTAR NAMA-NAMA KOMPI B PASUKAN AITARAK
(PAM SWAKARSA)
COMORO

DAFTAR NAMA NAMA KOMPI B PASUKAN AITARAK
(PAM SWAKARSA)
BAIRO PITE

DAFTAR NAMA NAMA KOMPI B PASUKAN AITARAK
(PAM SWAKARSA)
BAIRO PITE

DAFTAR NAMA-NAMA DANKI DAN ANGGOTA KOMANDO PASUKAN AITARAK
KOMPI B

DAFTAR NAMA-NAMA ANGGOTA TAMBAHAN KOMPI B AITARAK

DAFTAR NAMA-NAMA ANGGOTA TAMBAHAN KOMPI B AITARAK

DAFTAR NAMA-NAMA KOMPI C PASUKAN AITARAK
(PAM SWAKARSA)

DAFTAR NAMA NAMA KOMPI D PASUKAN AITARAK
(PAM SWAKARSA)
HERA

DAFTAR NAMA-NAMA ANGGOTA PASUKAN KOMANDO AITARAK
KECAMATAN HERA METINARO

DAFTAR NAMA-NAMA PASUKAN KOMANDO AITARAK
LEOREMA BAZARTETE

As shown in the headings of list of names of Aitarak Troops as members of PAM SWAKARSA, the military-like structure of organization is apparent. They exist in each sub district of Dili, and they are organized into “kompi’s or “companies”- A, B, and C. Company A are distributed across Caicoli, Vila Verde, Mascarheinas, and Lahane. Company B across Comoro, Bairo Pite, and Company C in Becora and Hera. Also listed among the names are ranks, for example of the “Danki” or “Commanders of Companies.” Each list of names is signed by Eurico Guterres as the Commander of Aitarak Troops, Sector B.

The organized nature of the militias - especially the military-like structure-can be attributed to its close relation to the military, which will be elaborated next.³²

III. The Pattern of Crimes in 1999 in East Timor

As repeatedly pointed out, the KPP HAM report concentrated on analyzing the pattern of the crimes in East Timor. This section shall discuss its findings as to the pattern by looking at its establishment of the existence of a common objective between the parties investigated in the inquiry process, including the historical context of the parties cooperating to attain the objective. Afterwards there will be further elaboration on the specific forms of relationships between the parties - including support given for perpetrating crimes to further the objective. This analysis aimed to show that there are clear indications of an underlying policy that connect the crimes and that certain institutions are accountable for them through physical (direct) and non-physical (indirect) perpetration. This section of the report concludes with a brief outline of other indications of patterns showing that the incidents were indeed a collective action aimed to destroying part or the whole civilian population

Crimes against Humanity, as the report explained, were committed in connection with both policies issued by military authorities and local government officials responsible to control the situation at the time the violence occurred. They were also committed directly through the massive violence directed against the civilian population committed by militias. The policies, the report concludes, have allowed and provided the opportunity for the crimes to be committed.³³

III.a. The Common Objective

Ever since the integration of East Timor in 1975 into The Unified State of The Republic of Indonesia (NKRI) it has been the policy of The Republic of Indonesia to maintain its power over the area despite some protests internationally, which held that this “integration” was an illegal act of invasion and colonization. Rejection of integration also

³² The organization of Aitarak and its relation to PAM Swakarsa will also be discussed at length in a later chapter on the Serious Crimes Unit investigations.

³³ KPP HAM report, p. 17, no. 58.

persisted within East Timor under the banner of CNRT³⁴ and its armed wing, Falintil. While it was not within the jurisdiction of KPP HAM to assess gross violations of human rights that occurred before January 1999, the report did examine the history of the approach that the military had employed in managing the movement for independence in East Timor, which was consistently apparent up until October 1999. The approach involved the armament and organization of civilians to assist the army, and the employment of extra judicial measures such as killings, abuses, and terror. One testimony that gave the most extensive elaboration was that of Tomas Aquino Goncalves, who in his testimony admitted to have been the former Head of District of Ermera until 1988. However, before and after that he was heavily involved in the paramilitary activities sponsored by the TNI:

“[I am] Tomas Aquino Goncalves, former Partisan High Commander from 1974-1976. At the time I was leading a group of youth consisting of 216 people. At the time we entered Atambua and to further the cause of our struggle to integrate with Indonesia we were assisted by TNI, in this sense Mr. Yunus Sofiah himself was our trainer... he also did infiltration operations, holding guerrilla (warfare) until 1975 October [when] he left Balibo ... and we joined Rajawali (unit) lead by Mr. Girbi Suryantoro and Mr. Ali Musa ... (all of them were) Kopasus (The Special Force of AD) all of them were Parako³⁵, at that time the name was Parako.... ”³⁶

This approach of arming and organizing militias continued, as explained by Joni Marques, who was the Commander of Team Alfa, that operated in East Timor until the period of inquiry by the KPP HAM and committed various crimes. He was recruited by a Kopasus member named Luhut Panjaitan, with the rank of either Captain or Lieutenant Colonel, in 1986 to form a militia group in Lospalos.

³⁴ CNRT was the title of the umbrella group that included all the organizations that supported independence in 1999. Throughout the struggle for independence this group had different names and took various organizational forms, including the CNRM prior to 1999. For the purposes of this report, CNRT refers to the pro-independence, or “Resistance”, organization that was operative in 1999, and its previous forms.

³⁵ Parako as explained by witness is the previous name of Kopassus, which is The Indonesian Special Force (transcript of Interview on 8 December 1999, p. 1)

³⁶ Transcript of Interview on 8 December 1999, p.1

“At that time a team was formed named Tim Alfa... We were summoned to participate in training...at their (Kopasus) place and not long after we were given arms. Given arms to help them finding Falintil’s position in the forest” [in response to the question whether or not they were given military ranks] “No, we were as volunteers... what’s the term... as the tip of the spear of the Kopasus or the tip of the arrow of the Kopasus. [Kopasus were] the elite force of Indonesia, the people with red berets.”³⁷

Joni Marques’ involvement in this paramilitary group did not stop but was continuous from 1996 until 1999.³⁸ He stated:

“In 1998 we were still (conducting) operations, our operation with Kopasus, so together we went to the forest seeking Falintil... After the referendum option developed, they [Kopassus] told us to abduct the community or people who- what you might call it- not red and white people...From August 30th onwards we already started terrorizing people, so people we considered as not red and white we took. Before August we only checked the people we wanted to take, then (later) we abducted. So the names, if we already knew they weren’t red and white people, we wrote the names and we submitted to Kopasus. This occurred everywhere, but the ones we did only in Los Palos.

To the question, “What happened afterwards?”, Marques replied:

“we [then] abducted and murdered them.”³⁹

On the basis of such evidence, KPP HAM concluded that the military was involved in the recruitment, training, organizing, and operational direction of the militias. Their common objective was, as already mentioned, to retain East Timor as the then 27th Province of the Republic.

³⁷ Transcript of Interview [undated, 1999] p. 2-3

³⁸ The prosecution of Jhoni Marques by the SPSC will be treated at length in the SPSC section of this report.

³⁹ supra 38

It was clear that the many of the people involved in the militias were trained previously by the military. For example, Eurico Guteres was trained also by the military as attested in the document, “The List of Garda Paksi Trainees in 1996, KOREM 164/WD, Melati Task Force.” Garda Paksi itself is an abbreviation of “The Youth Guard for Integration.”

**DAFTAR PENEMPATAN PERSONIL
PELATIHAN GADA PAKSI
DI TIAP-TIAP BARAK**

NOMOR		N A M A	JNS	DIK	N O M O R		K E T
URT TPT TDR	BAG				PESERTA	REGISTER	
1	2	3	4	5	6	7	8
	A.	<u>SATLAK - A</u>					
	I.	<u>BARAK ACEH</u>					
		<u>LANTAI - I</u>					
		<u>PELETON - 1 (37 ORG)</u>					
1.	1.	Eurico Guteres	L	SMA	950001	GP-01/IA/1995	
2.	2.	Jose X Da Costa	L	SMA	950002	GP-02/IA/1995	
3.	3.	Analdeto Da Rosario	L	SMA	950003	GP-03/IA/1995	

In the list of names of participants per-barrack, in Aceh Barrack there is Eurico Guterez in Platoon I

This particular training document listed trainees from the 13 Districts of East Timor. Although the subjects of the training seemed to be on civilian skills, such as carpentry, masonry, furniture building, farming, fishery, agriculture, PTC, horticulture, food production, Mix Farming and Sewing, the document itself was signed by the Commander of Melati Task Force who was the Commander of the Korem’s Intelligence Unit. The document also stated that during the training the participants were accommodated in military barracks. This implies that “sewing,” “furniture building,” and “fishing” were not the real activities which were the subject of the training.

This evidence becomes more persuasive when linked by the KPP HAM with Goncalves’ testimony about the past role of the military intelligence unit in East Timor:

“[after the retirement as the Head of District] I was always used by the SGI (the Intelligence Unit). At that time I was used by Mr. Simbolon himself, him being the first commander of SGI, and by the subsequent commanders, including Yayat Sudrajat. But at the time the name (of the unit) had been changed into Tribuana... in 1984... I was often invited to certain meetings in secret to prepare militias to face the current problem... in the reform era the people here had the tendency to vote for independence. Therefore [because] I [was] from the integration party, he (Yayat Sudrajat) still trusted me to start forming militias in all districts”⁴⁰

In the same testimony Goncalves explained that in each area there would be one or more “kompi” or “company” (as also shown in the constellation of Aitarak forces above). The people recruited would be given induction training consisting of indoctrination, intelligence, use of arms etc.

Despite this evidence that there was active and specific support on the part of the government for the pro-autonomy cause and its armed supporters, during the course of the KPP HAM investigation, there was no dispute that the official policy of the Government of Indonesia included neutrality as one of its stated, underlying principles. Several testimonies from high level policy makers in East Timor during the period emphasized an official stance of neutrality.

For example, Timbul Silaen’s testimony explained:

“... as I said... even I was branded as Pro-Indonesia, why should I arrest Pro Autonomy... But I said, I had to be neutral.”...⁴¹

Adam Damiri’s Testimony states:⁴²

[in response to the question of the strategy to ensure the victory of the pro-integration movement]

⁴⁰ Supra 37 p. 2

⁴¹ See the transcript of the testimony of Timbul Silaen, KPP HAM, interview conducted 28 December 1999, p. 13

⁴² See the Transcript of the testimony of Adam Damiri, KPP HAM, 27 December 1999, p.6

A: I was demanded to be neutral, so there is no commitment from Mr. Wiranto or us as [his] subordinates [to support] the victory of any of the options. We along with the police apparatus were assigned to maintain the security of the Popular Consultation”

Wiranto’s testimony also described a policy of neutrality:⁴³

“so... as a policy we said we were neutral. We assisted the pro and the contra. In [terms of] policy we were neutral in the implementation of the maintenance of security for the Popular Consultation.”

Some officials, especially of the regional government, considered it acceptable if the sentiment of the government apparatus was to ensure the victory of Indonesia. The question is whether such officials endorsed, condoned, or even ordered violence as one of the means to attain this objective. The higher officials always insisted that they were emphasizing peaceful means. The KPP HAM report indeed listed their notable efforts to build peace amongst the parties of opposing political beliefs, such as the establishment of the P3TT Task Force to facilitate the relations with international institutions, or the mediation of the peace agreement on April 21, 1999 in Dili and June 18, 1999, followed by the process of disarmament and peace propaganda.⁴⁴ ***Unfortunately the stated policies and the special efforts to implement these measures to promote peace and neutrality often conflicted with the actual situation in the field.*** Thus, KPP HAM concluded that from the above mentioned evidence of continuous support and instigation of the criminal activities of the militias against pro-independence supporters, an underlying non-neutral policy was also apparent from the language of the reports and communications between the officials, and in particular the military.

Two examples from the KPP HAM documents examined in this research illustrate this point. The first one is actually comprised of two quick notes between the Commander of Regiment 164 WD and the Commander of Military District 1627:

⁴³ See the Transcript of the testimony of Wiranto, KPP HAM HAM, 28 Jan 2000, p. 6

⁴⁴ KPP HAM report, point 86

NOKIL

TGL 8_06-1999 PUKUL 0940 WITA

DARI : DAN REM 164 / WD
KEPADA : DAN DIM 1627 S/D 1639

ISI BERITA

SATU TTK TERSEBUT ALAMAT SUPAYA MENGIRIMKAN MASING MASING 2(DUA)
ORANG NAMA TOKOH CNRT / TOKOH TOKOH POKAL YANG SANGAT
BERPENGARUH DARI KLOMOK ANTI INTEGRASI YANG DIRASAKAN
AKAN DAPAT MENGHAMBAT JALANNYA PENG SOSIALISASIAN
OTONOMI DI DAERAH BAIK YANG MEMILIKI MASSA MAUPUN TOKOH TOKOH
KHARISMATIK UNTUK BERTEMU DENGAN MENLU EP. ALI ALATAS DALAM
RANGKA MENERIMA PENJELASAN TENTANG OTONOMI LUAS BAGI TIM TIM TTE

DUA TTK NAMA NAMA DI MAKSUD PADING LAMBAT TGL 8 MEI 1999 PUKUL 1400 WITA
SUDAH DITERIMA OLEH DAN REM 164 / WD UP KASJI INFEL KOREM 164 / WD
TTK

TIGA TTK DEMIKIAN ULE TTK

TWT PADA JAM 05 08 10 00 BY ISWAN / SGA PER RDO

The Quick Note (Nokil), dated June 1999 from Danrem/164 WD addressed to Dandim 1627

This quick note has the language that implies discrimination and plan of follow up action against CNRT figures:

“... each should send two (2) names of CNRT Figures/Figures of Local Groups who are very influential from the anti-integration group who are considered to be potential obstacles in socializing autonomy in the region (emphasis added) both those who posses mass [appeal] or charismatic figures to meet with the Minister of Foreign Affairs Mr. Ali Alatas to be briefed on the wide autonomy for East

Tanggal Tersebut: 07/06/99
No. File: 24

KODIM 1627/DILI
DILI, 08 JUNE 1999

1. R/ 000/ 1999
2. DANDIM 1627
3. DANDIM 164/WD

1. Mengirimkan nama tokoh
TERTY yang sangat berpengaruh

2. Menyarikan Nota Kritis dan tem 14/05 tanggal 3 Mei 1999 pukul 09.40 wita tentang Perintah penahanan 2 orang nama tokoh anti integrasi tokoh tokoh yang sangat berpengaruh dari kelompok anti integrasi yang dirasakan dapat menghambat jalannya pengaplikasian otonomi di Timor Timur.

3. Sedangkan hal tersebut diatas, diinstruksikan 2 nama tokoh CNRT antara lain:

a. David Dias Ximenes, alamat Vilerde, Dili Barat.
b. Fransisco De Carvalho, alamat Colmera Dili Barat.

3. Desakan untuk meniadakan perintah.

KODIM 1627/DILI
RETI INTELIJEN

Letter from Kodim 1627 to Korem 164 Wira Dharma 1.

Referring to the quick note of Dan Rem 164/WD dated May 9, 1999 at 09.40 Mid Indonesia Time on the delivery of 2 names of CNRT Figures/Figures of Local Group who are very influential from the anti-integration group who are considered to be potential obstacles in socializing autonomy (emphasis added) in East Timor

2. In accordance to the above, two names of CNRT figures are submitted namely:

- a. David Dias Ximenes, address Vilerde, Dili
- b. Fransisco De Carvalho, address Colmera Dili

Another example is the language used in the “The Report of the Situations and Conditions of East Timor Area prior to The Popular Consultation” by the Udayana Military Command. The language in this report did not show the neutrality that was stated as the stance of the Military after the May 5th Agreement. The report discusses the establishment of militias and the incidents in Liquica on April 5, 1999:

Berdirinya organisasi pro integrasi telah menggetarkan seluruh kelompok anti integrasi, selanjutnya kelompok anti integrasi mencoba merekayasa kasus pembunuhan dan penculikan guna menghancurkan kredibilitas kelompok pro integrasi, namun semakin ditekan pihak lawan kelompok pro integrasi semakin merapatkan barisan guna melawan pihak pro kemerdekaan.

Peristiwa perkelahian massal antara pemuda pro integrasi dengan pemuda anti integrasi pada tanggal 5 April 1999 di Liquisa, yang dilatar belakangi peristiwa penganiayaan terhadap pemuda pro integrasi telah menimbulkan korban jiwa di pihak pemuda anti integrasi, sejak peristiwa ini pemuda anti integrasi semakin tidak berdaya.

Peristiwa perkelahian antara kelompok pro integrasi dengan anti integrasi yang ditunggangi oleh kelompok GPK bersenjata pada tanggal 17 April 1999 di Dili merupakan akumulasi ketidakadilan perlakuan masyarakat pro integrasi yang dilakukan oleh kelompok anti integrasi. Setelah peristiwa ini situasi masyarakat di Timor Timur seluruhnya mencintai Merah Putih, masyarakat Timor Timur baru menyadari bahwa kelompok integrasi ternyata masih memiliki banyak pendukungnya.

The establishment of pro-integration organizations h anti-integration group, and the anti-integration group cases of murders and abduction to destroy the pro-in organizations' credibility...

The mass fight between the pro-integration with the youth on April 5, 1999 in Liquica... has resulted in c the anti-integration youth, and ever since that (incide integration youths became increasingly powerless.

The fight between pro integration and anti integratio armed GPK (security disruption movement) was the the unfair treatment against the pro-integration comp anti-anti integration. After this incident the situation East Timor entirely supported the Red and White, th Timor came to realize the integration group still attai followers (emphasis added)

As can be seen from the language, despite the stated change of policy to neutrality, the military retained a bias against the pro-independence group. The reference to the pro-independence figures merely a those “who are considered to be potential obstacles in socializing autonomy” clearly illustrates this. The same bias is even more striking in the description of the mass killings in Liquica, where the event was described in positive terms as something that enlightened the people about the supremacy of Pro-Integration rather than an act that should be condemned as any usage of illegal force. As these are official reports, an unavoidable question emerged: was the real policy the one announced to the public or was the peaceful stance merely a facade that permitted any measure to be employed as long as the victory of pro-integration could be attained?

KPP HAM's answer to this question was that such attitudes were not only limited to the biased language of official reports. As some testimonies showed, there was a different policy stated on the ground. Although more on the complicity between the militias, military and police as well as the civilian government will be elaborated in a specific section below. The following excerpts are quoted to show on what basis KPP HAM concluded that that there were direct orders to be partial to the pro-autonomy. They are

taken from witnesses from the same area in East Timor, namely Lautem, to show that the directives to promote the victory of autonomy existed at all levels:

Bonifacio dos Santos, Chief of Regional Office of Ministry of Social Affairs at Lautem:⁴⁵

At one event, on April 16th on the Birthday of Kopasus... Zacky Anwar, because he was a senior [member] from Kopasus ... said [if] the East Timor people's autonomy is rejected and therefore East Timor will be like empty. Those who were present there where the Kopasus Operation Assistant who at the time was still Sector Commander, and Commander of Military Regimen Tono [Suratman] was there.

His explanation was that there has been much development conducted in East Timor, therefore TNI will not let ... Therefore TNI will also support part of East Timor people who were still loyal to the republic... So ... the gentlemen who were here were asked to try so that autonomy could be accepted by the people. If not East Timor would be emptied.

Gabriel de Jesus, Serda TNI AD, Intelligence Staff of Kodim 1629/Lautem⁴⁶

Before the referendum we were informed... especially [for] members of Kodim to embrace the people especially one's own family to support autonomy . [in response to the question: based on whose instruction] From Mr. Commander of Kodim Colonel Inf. Sudrajat. [in response to the question: what is meant by "embracing the autonomy?"] To influence the people some with threats and with ways that were clandestine to enter in the middle of [small/poor] communities ... With threat here means to create fear amongst the community... After [the announcement] of the 2nd option we heard ourselves that there were already a special T-shirt [where] at the back there was a saying if autonomy looses blood shall flow, autonomy wins blood shall drip [The T-Shirt] was sent to Dili to be distributed in the Kodim and the T-shirt with the writing of "if autonomy looses blood shall flow" is especially for our leaders there.

Armando dos Santos, Second Sergeant of TNI Army, Babinsa [Village Level Military] of Pairara Village, Lautem Sub-District, Kodim 1629⁴⁷

[As Babinsa] in the village [I] was asked to guide the people... so they wouldn't reject autonomy, so autonomy could win.

⁴⁵ The transcript of KPP HAM interview, undated p. 1

⁴⁶ The transcript of KPP HAM interview, undated p. 1- 3

⁴⁷ The transcript of KPP HAM interview, undated p. 1-3

[in response to the question who gave the order to do so?] From The commander of Kodim in the Headquarters of Kodim [where] it was explained that as ABRI or TNI, they had to fight and direct the people in the village to vote for autonomy.

[in answering the question of whether or not there were fear inducing tactics employed]: there were, because at that time there were abductions

[in answering the question who had committed them:] the abductors were from these Alfa parties

[in answering to the question whether he meant the militias] Yes, there were Alfa and jati merah putih.

On the basis of such testimony the KPP HAM reached its conclusion about the de facto policy of the Indonesian military and civilian authorities in East Timor to use force to support the pro-autonomy movement.

III.b. Specifically targeted civilian population

Another pattern indicative of the fact that crimes were committed in East Timor, and they were not random, was the commonality of the testimony between the victims in each incident. The KPP HAM report delineates its classifications of “target population.” The report clustered the victims based on three classifications a) civilian population targeted due to their real or suspected political belief, namely pro-independence, b) Victims from amongst civilians who were not affiliated to a specific political group or belief, such as children, students, members of the press, etc.⁴⁸ and c) Victims who are victimized due to their gender and subjected to sexual violence.⁴⁹ The sample incidents cited to illustrate the different categories of victims according to KPP HAM are:

⁴⁸ It should be noted that the KPP HAM worked not long after the 1998 reform in Indonesia, in which the students and the press were considered as the neutral parties in a movement for change. Therefore the idea adopted in the report followed that belief, i.e. the students and press were neutral parties between the two political stances. However, the KPP HAM seemed to also realize that there were students who were politicized. Therefore they had students in two categories: the civilians (referring to students who weren't politicized) and the pro-independence supporters.

⁴⁹ KPP HAM report, point 151

a. Pro-Independence Supporters⁵⁰:

- *summary execution* of a student named Bernadino Guterres in front of tens of witnesses;
- murder committed by a number of Aitarak militia members against a number of students and college students in East Timor,⁵¹
- the attack against the CNRT office and the murder of CNRT activists, Ferisimo Raja in Lospalos;
- Attack, destruction, and murder at Manuel Carrascalao's residence;
- the actions in refugee camps committed against CNRT activists as well as East Timor students and journalists/press.;
- Attack against Liquica church, wherein a number of pro-independence supporters were taking shelter there and murdered such as the Head of Village, Jacinto da Costa Conceicao,⁵²
- the murder of six residents of Kailako, Bobonaro who were thought to be sympathisers of the independence movement.⁵³
- Summary execution against five civilians in Bobonaro who were suspected of assisting Falintil and were CNRT supporters.⁵⁴
- Summary execution and forced disappearance of pro-independence activists in the sweeping operations by Dadarus Merah Putih and Halilintar in the case of the arson of residences in Maliana area;⁵⁵

b. Victims from amongst civilians who were not affiliated to a specific political affiliation. Amongst them there were children, students and religious leaders as

⁵⁰ It should be noted that the KPP HAM worked not long after the 1998 reform in Indonesia, in which the students and the press were considered as the neutral parties in a movement for change. Therefore the idea adopted in the report followed that belief, i.e. the students and press were neutral parties between the two political stances. However, the KPP HAM seemed to also realize that there were students who were politicized. Therefore they had students in two categories: the civilians (referring to students who weren't politicized) and the pro-independence supporters.

⁵¹ It should be noted that while Manuel Carrascalao was a known pro-independence supporter, the refugees were without necessarily a stated political affiliation. Thus the KPP HAM's report emphasis is in the destruction of property of Manuel Carrascalao and the attack against his house, which also resulted in the murder of refugees there

⁵² KPP HAM's REPORT, p.26 number 100.

⁵³ KPP HAM's REPORT, p.27 number 105.

⁵⁴ KPP HAM's REPORT, p.28 number 107.

⁵⁵ KPP HAM's REPORT, p.30 number 120.

well as members of the press and humanitarian workers. The victims from this group based on KPP HAM report may be seen from the following incidents:

- The massacre of Suai Church against refugees causing at least 26 fatalities consisting of a number of adults, two children as well as three priests. Aside from that hundreds of thousands civilians, in order to avoid killings and violence, had to abandon their homes and become refugees living in camps under the supervision of militias;
- The massacre in Liquica Church against the population who took shelter in the church, causing at least 30 fatalities;⁵⁶
- A number of victims died in the Dili riot and one student died, allegedly executed by Brimob.⁵⁷ Other victims resulted from the attack against Dili Diocese;⁵⁸
- At least two civilian victims in the attack on Bishop Belo's residence;⁵⁹
- The murder and forced disappearance of the population and UNAMET local staff in the arson of the Maliana population's residences;⁶⁰
- The mass murder of refugees at Polres Maliana;⁶¹
- The murder of the Dutch reporter Sander Thoenes;⁶²
- The victims of mass murder in the case of a group of religious figures in Lospalos. There were nine victims, namely: Agus Mulyawan (Indonesian reporter); Celeste de Carvalho (Head Nun), Erminia Cazzaniga (Nun); Erminia Rudy Barreto; Fernando dos Santos [K:774]; Jacinto F. Xavier, teenager, 13 year of age, Titi Sandora Lopez, Valerioda Conceicao.⁶³

c. Sexual violence committed by the militias against a number of women. The victims from this group were described in the report of KPP HAM in regards to the following incidents:

⁵⁶ KPP HAM's REPORT, p.26 number 101.

⁵⁷ KPP HAM's REPORT, p.29 number 113.

⁵⁸ KPP HAM's REPORT, p.30 number 116.

⁵⁹ KPP HAM's REPORT, p.30 number 118.

⁶⁰ KPP HAM's REPORT, p.31 number 120.

⁶¹ KPP HAM's REPORT, p.32 number 132.

⁶² KPP HAM's REPORT, p.33 number 137.

⁶³ KPP HAM's REPORT p.35 number 141.

- The rape against women in the Kodim headquarters by a member of the militia with full knowledge of the local police and military apparatus. Throughout the period they were “pooled” before going to the refugee camps. The same report also explained the effort to impose forced marriage by one of the leaders of Laksaur Militia against one of the refugees.
- Sexual enslavement against the refugees including detention, rape and shooting against women who rejected servicing Laksaur militia;
- Detention and prostitution enforced by the militias;
- Arbitrary arrest against 30 women by BMP militias whereby the victims were subjected to sexual violence;

Yet it should be noted that many of the victims in categories b and c were actually related to attacks against category (a) or were targeted due to their alleged preferential treatment to members of that category). In Liquica case, for example, the attack against the church complex were against perceived pro independence supporters, allegedly specifically in order to abduct Jacinto (member of CNRT). Yet there were 19 casualties who were civilians taking shelter there at the time. Whereas in regards to the members of the press and UNAMET [local] staff, it was clear that the military and the pro-independence group doubted their impartiality. An example that may support their doubts is a situation and condition report on the area of East Timor that was issued in July 1999 by the Kodam IX Udayana where it was stated in regards to the press and UNAMET staff:

a. UNAMET

1) Masalah
Kehadiran UNAMET oleh pihak anti integrasi telah dimanfaatkan untuk melakukan aksi provokasi, teror, penculikan dan pembunuhan bersenjata terhadap masyarakat pro integrasi khususnya para pemuda yang tergabung dalam unsur perlawanan. Pihak CNRT dengan cepat, berhasil memasukan seluruh pemuda radikal sebagai tenaga lokal UNAMET.

The presence of UNAMET by the anti integration party has been utilized to commit provocation, terror, kidnapping and armed murders against the youth of pro integration, especially those youth who are united in the struggle element. The CNRT party has quickly succeeded in admitting **all the radical youth** as UNAMET local staff

b. Wartawan

1) Masalah
Para wartawan dan jurnalis dari luar negeri cenderung membuat berita yang kurang seimbang, yang berakibat membentuk opini masyarakat yang kurang menguntungkan bagi kepentingan Indonesia.

The foreign press and the journalists tend to provide imbalanced news, creating **disadvantageous popular opinion that are not in the interests of Indonesia**

III.c. The Military, Government, and The Police Force of Indonesia's Relationship with the Militias

This topic has been elaborated to some extent in explaining the common objective of the four parties. However, this point is crucial to consider in order to answer whether or not there was institutional responsibility for the violence in East Timor in 1999. The KPP HAM also considered this as a very important point, as demonstrated by the fact that they dedicated a long section on the relation between the civilian government and military with the armed civilian groups and placed it at the beginning of their report.

There are three types of perpetrators identified in the KPP HAM report namely (1) physical perpetrators operating on the ground, consisting of militias and some TNI and Polri; (2) those who are responsible for controlling the operations, both the civilian bureaucracy and local military leaders. The bureaucracy includes local government officials, such as Bupatis, and the Governor, while military leaders include those who by their position were deemed to be responsible for controlling and coordinating operations.⁶⁴ These were the military leaders and local police leaders. (3) Those who in accordance with their official positions are responsible for policy to control the situation, meaning high ranking military officers at the national level.

As already elaborated, KPP HAM concluded that the evidence showed that the military officers cooperated with the militia to create situations leading to violence,⁶⁵ and that militia groups have been set up under various different names, following the same pattern as the period before the New York Agreement. The closeness of the military and militia had actually already been remarked upon, even by the Police. The following document clearly reveals that the Indonesian Police were well aware of TNI support for the militias. In the Police Investigation Report on the Attack Against Liquica Church, dated April 15,

⁶⁴ There are 17 people in this group. Eight out of the 17 finally have been brought before the Ad Hoc Human Rights Court.

⁶⁵ KPP HAM report, p. 42, no 167

1999 No. R/355/IV/1999/Ditserse addressed to the Commander of Detective Corps of The National Police, it was stated that:

7. Hambatan / kendala yang dihadapi:

- a. Dengan adanya pertikaian antara pro integrasi dan pro kemerdekaan yang berkepanjangan diseluruh wilayah Timor Timur, maka Penyidik sangat sulit mendapatkan keterangan saksi-saksi karena mereka mendapat ancaman dari kelompok pro integrasi maupun pro kemerdekaan.
- b. Dukungan ABRI khususnya TNI – AD terhadap kelompok Pro Integrasi sangat mempengaruhi proses penyidikan.

“one of the obstacles in conducting the investigation was “b. The support of ABRI, especially TNI-AD to Pro-Integration group affected the investigation process”

Another example of support in the physical perpetration of the crimes was from Joao Ferera’s testimony, a victim-witness of the attack on the Liquisa Church Complex.⁶⁶

Q: *Emm....so whose positions were at the front [during the siege]BMP or Brimob or the Army....*

A: *the front was the Army*

Q: *So.....*

A: *The Army... at the front they were here ...immediately here... then BMP ran in first... the gate.. into the house*

Q: *BMP went in first...*

A: *Yes...BMP.....went in first then summoned the troops outside to shoot from outside to inside. Those who [also] came in were the Kodim soldiers.. [who] came in and shot*

The military and police force officers are also mentioned in testimonies as participating physically in the attack. One example is the testimony of Pastor Rafael in regards to the attack of Liquica Church on April 5-6, 1999. He stated:

“At twelve o’clock from this side (they) came in... to the church complex, (they) went in (from) there because there was no gate... Kodim military members and Besi Merah Putih (charged) but from the back and the people were afraid. [They] started to run.. at that point I heard the shot” “⁶⁷.”I saw at the back several soldiers who were in chaos and (were) shooting... Yacob, Raimundu, Tomey...”

⁶⁶ Transcription of Joao Fereira’s testimony, interview on 11 December 1999 by KPP HAM, page 5

⁶⁷ The transcript of recording of the interview with Pastor Rafael Dos Santos date of interview December 11, 1999 page 11-12

In this particular incident, the involvement of the military was in the physical perpetration of the attack. Yet the Police were allegedly also involved. In fact, prior to the incident, the Pastor was approached by two Brimob officers asking for a Head of Village who was pursued at the time by the BMP pro-integration group, namely Mr. Da Sinho who was seeking refuge in the church. They were asking for Da Sinho to be surrendered to the BMP. The Pastor rejected the request by saying :

“Gentlemen, I can’t, if I surrender Da Sinho to the police, it is logical but to the Besi Merah Putih it is not because if [Isurrendered] to Besi Merah Putih (he) will be killed because he has been pursued by the Besi Merah Putih”.

The Police involvement was not only limited to the complicity of some of their officers in the actual attacks. The evidence in the KPP HAM report showed that they were also involved as instigators, and as aiders and abettors, which showed their support by way of training, arming, or committing omission before, during and/or after the attacks. For example as stated by Fernando (Armando) dos Santos, Second Sergeant in the TNI Army, Babinsa [Village Level Military] of Pairara Village, Lautem Sub-District, Kodim 1629⁶⁸:

The militias worked themselves, we work ourselves, militia led by the head of district, [us] by Kodim. [in response to the question where militias got their facilities, uniforms, etc.] The SKS, Getmi, M16 [were] from Kopasus or Nanggala who were posted in every region considered as insecure on top of Narwala.

[in response to the question of his knowledge in regards to militia’s presence in Kodim] Initially at their respective posts, just before the referendum [they were] reassigned to Kodim led by the Commander of Kodim but commanded still by Nanggala.

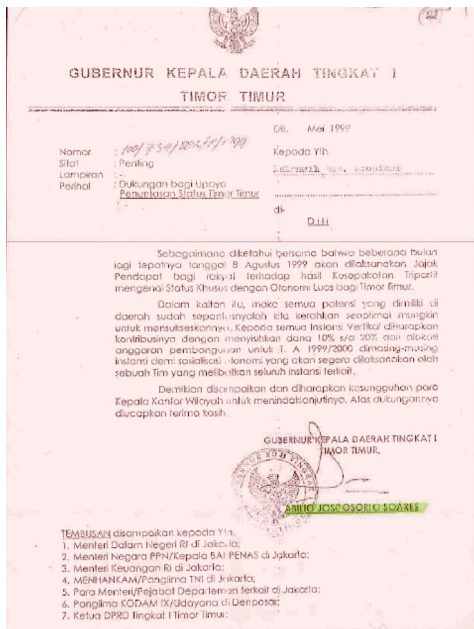
[In response to the question of financial support for the militias by the military] Sometimes they were given Rp. 500,000 per person through Kopasus

In regards to the involvement of the civilian government, the Report noted that Pro-integration militias called Pam Swakarsa were set up in each village, chaired by the head

⁶⁸ The transcript of recording of the interview with Fernando (Armando) Dos Santos, interview undated, 1999 page 2-3

of the village to increase support for autonomy. The official document that supported this policy is a Regency decree (SK Bupati TK II Dili) already quoted above. The decree assigned Eurico Gutterres, Aitarak Commander as the operational coordinator of Dili Pamswakarsa, which had around 2651 members. Around 1521 members are also members of Aitarak. There were 78 KAMRA members in Aitarak. Pamswakarsa Dili had 25 Babinsa, or village level military base members, and 25 Binpolda from the ABRI⁶⁹ side, whereas the Advisors are the Governor and Danrem 164/WD with the patronage of the Muspida Tk II (Regency/City Level Local Leaders) Dili headed by the Mayor of Dili and the Vice Commander of Kasdim 1627/Dili and the Vice Chief of Dili Police Force.

Another document, a letter from the Governor at the time, Abilio Soares, to his subordinates, describes a budgeting process which would also provide for official government support for pro-autonomy groups, including specific militia groups (ABLAI) and the political organization, BRTT. This document demonstrates how the government went about financially supporting civilian armed groups, which may have been worded in ways that included the Pam Swakarsa members described in the document discussed above. The text of his letter reads as follows:



This letter, with the number of 100/734/[unclear]/99, undated, stated that all lower level government has to dedicate 10-20% of their development budget for the socialization of autonomy.

BUNDA ANGGARAN BIAYA KEGIATAN SOSIALISASI
PAK 1 OTONOMI KEMERDEKAAN BAGI PROPINSI TIMOR LESTE
DI KABUPATEN

1. SATUAN SOSIALISASI (150 orang)			
- Kebutuhan Saluran	150 Set @ Rp	200.000 Rp	30.000.000
- Pengadaan Pakuan	1.500 Unit @ Rp	10.000 Rp	15.000.000
- Makanan	4.500 Unit @ Rp	2.000 Rp	9.000.000
- Kebutuhan Harian			
- Logistik (2 Camp)	200 unit @ Rp	15.000 Rp	3.000.000
- Alat Ukur	150 Set @ Rp	60.000 Rp	9.000.000
- Transportasi	4.500 Unit @ Rp	1.000 Rp	4.500.000
- Hiasan	150 Unit @ Rp	100.000 Rp	15.000.000
- Gaji (8 Bulan)	1.200 Unit @ Rp	200.000 Rp	240.000.000
			358.500.000
2. Biaya KODAM			
- Bahan	1 Unit @ Rp	100.000.000 Rp	100.000.000
- Kebutuhan DPPD	1 Unit @ Rp	50.000.000 Rp	50.000.000
- Biaya Sekeloa	1 Unit @ Rp	50.000.000 Rp	50.000.000
- Gaji DUK	1 Unit @ Rp	50.000.000 Rp	50.000.000
- Kapulres	1 Unit @ Rp	50.000.000 Rp	50.000.000
- Yon Lu	1 Unit @ Rp	25.000.000 Rp	25.000.000
- Unit Satgas 100 orang	1 Unit @ Rp	25.000.000 Rp	25.000.000
- Asuransi	1 Unit @ Rp	20.000.000 Rp	20.000.000
- Kebutuhan DUK	50 Unit @ Rp	40.000.000 Rp	2.000.000.000
			2.500.000.000
3. Bantuan Kepada Komando			
- KODAM	1 Unit @ Rp	25.000.000 Rp	25.000.000
- PUSK	1 Unit @ Rp	25.000.000 Rp	25.000.000
- CEMBA	1 Unit @ Rp	25.000.000 Rp	25.000.000
- KODAM	1 Unit @ Rp	50.000.000 Rp	50.000.000
			125.000.000
4. Kegiatan Adat			
- Kegiatan Adat	1 Unit @ Rp	145.000.000 Rp	145.000.000
- Kegiatan Adat			145.000.000

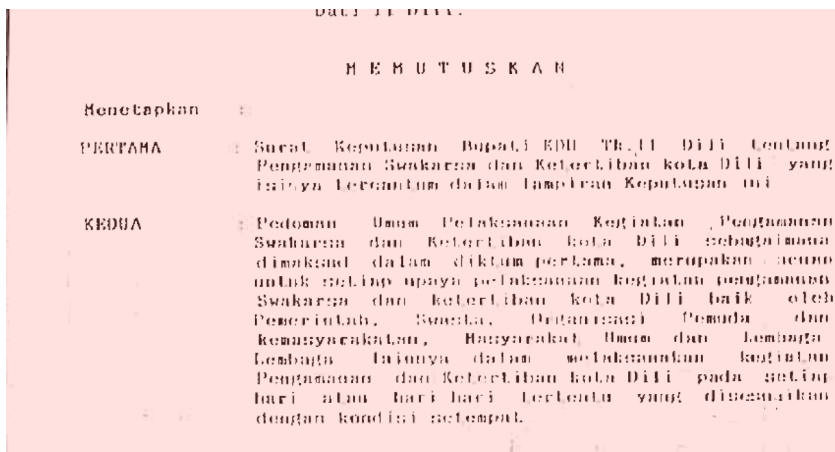
69 ABRI or Indonesian Armed Forces, used to include

In the sample budget allocation attached to the above document, there is budget allocation under the heading organizational assistance dedicated for militia organizations such as BRTT and Ablai

As already mentioned before, KPP HAM noted that in the decree establishing Pam Swakarsa in Dili, it was clear that it was meant to be an integrated approach to maintain security and order by involving not only government and the security apparatus, but also components of the community. This in itself was peculiar, as this entity is given the authority to take measures against disturbances of order, which is usually an authority reserved for officials policing civilian forces of the government, namely the Police. The ambiguous job specification, as well as the appointment of Eurico Gueterres as the Operational Commander, and the full inclusion of Aitarak members indicates the efforts to give the militia groups legitimization in order for them to conduct acts in the name of

maintaining order in the community. With this decree also, the provision of funding and facilities became official.

The Decree of The Head of Dili District (unnumbered), year 1999 on Community-Initiative Security (PAM SWAKARSA) and Order Maintenance of Dili City



The Decree stipulated that the daily Swakarsa Security and Maintenance of Order in Dili City was to be done by the Government, Private Parties, Youth and Community Organization, General public

1. Gerakan Pengamanan Swakarsa dan Ketertiban kota Dili dilaksanakan oleh masyarakat dan pemerintah, masyarakat adalah pelaksana pertama dan pemerintah berkewajiban mengarahkan, membimbing serta menciptakan suasana menunjang
2. Gerakan Upaya Peningkatan Keamanan dan Ketertiban mencerminkan nilai-nilai agama dan persaudaraan dalam suasana bahu-membahu antara seluruh lapisan masyarakat.
3. Kegiatan dimaksud tersebut diatas diarahkan untuk meningkatkan sikap mental dan pola hidup aman dan tertib baik secara pribadi, kelompok masyarakat dengan dukungan norma-norma agama, budaya dan sosial yang mengakar dalam masyarakat.
4. Pelaksanaan kegiatan diarahkan pada upaya pendidikan, penyuluhan dan operasional langsung yang di dukung oleh sarana-prasarana yang memadai.

One of the methods referred to maintain order in the community is to conduct “direct operations supported by sufficient facilities” which is not further defined

- b. Petugas baik formal maupun informal :
- Mempunyai peran yang sama dalam menciptakan keamanan dan ketertiban di kota Dili.
 - Memiliki satu komitmen untuk kepentingan bersama.
3. Pengamanan Sarana-Prasarana di Kota Dili.
4. Penertiban binatang piaraan yang berkeliaran untuk menciptakan suasana yang tertib.
5. Penertiban Judi, WTS, Minuman Keras guna menjamin rasa aman, moral dan mental spiritual, penomoran bangunan/rumah bersama Kades, RE sampai ke tingkat RT.

Koordinator Bidang Operasional PAM Swakarsa	: Eurico Guterres
Koordinator Bidang Diklat	: Victorino dos Santos
Sekretaris	: 1. Sekretaris Kotip Dili 2. Kasi Pembangunan Kotip Dili 3. Jose M.S. Soares, S.Sos
Bendahara	: Mario Soares Jaime dos Santos
Bidang-Bidang	: 1. Maspika Dili Timur 2. Maspika Dili Barat
1. Bidang Paldat	: Ketua-Tibum Kabupaten Dili Dan Pol PP Kabupaten Dili dan Kotip Dili
2. Bidang Kesra	: Kasubag. Hum Kotip Dili Kasubag. Hubun dan Kepeg. Kotip Dili Sekretaris Kepril Kotip Dili Kasudin PU Kotip Dili Kasudin Kebersihan dan Pertamanan Kotip Dili
3. Bidang Patroli Kota	
4. Bidang Daun	
5. Anggota	: 1. unsur Pemuda Tr. II Dili (2) unsur Kotip Dili 3. unsur Kecamatan 4. unsur Desa 5. unsur Kepolisian 6. unsur ABRI 7. unsur Masyarakat 8. unsur Pemuda 9. unsur Organisasi Kemasyarakatan dan Pemuda 10. Lembaga Swadaya Masyarakat
2. Pengorganisasian	: Berjaka selama 1 (satu) Tahun
Anggaran 1999/2000	

In regards to strategy and target, it is mentioned that both *formal* and *informal* officers have *the same role* in maintaining order and security in the city of Dili, including in maintaining the security of facilities, maintaining order to wandering pets, and taking action against gambling, prostitution, and alcohol consumption - which is usually the function a police force

This part of the report documented the components of the PAM SWAKARSA as mentioned previously, including Eurico Guterres as the PAM SWAKARSA Operational Coordinator

KPP HAM found that another form of involvement by the government, military and police was the obstruction of justice in terms of the destruction of evidence. Some incidents of this were recorded in the report such as the in the case of the attack of Liquica Church, where witnesses testified that many of the corpses were carried by a TNI truck and were buried in an unidentified site. Fransisco da Silva, a BMP militia member, admitted to having received an order on 6 April 1999 at 17.30 from a Rajawali troop member to drive the military truck to carry 16 corpses from the church complex and bring them to the Masin Lake near Maubara, approximately 15 km from Liquica⁷⁰

⁷⁰ There was a request to see the BAP of the witness. Unfortunately up to the writing of the paper the transcript note has not been found. Yet, the same testimony was repeated to the investigators from the Attorney General's Office.

One of the acts of elimination of evidence that was investigated was in the case of violence in Suai, which involved the excavation of the mass graves in Alas Village, Kobalima District, Belu District, East Nusa Tenggara. One day after the attack, Danramil Suai, Sugito⁷¹ brought 27 corpses with a panther, a kijang and a mini bus (mikrolet) to burry them at the aforementioned site. *These details were admitted by him to the KPP HAM without providing any justification or plausible explanation for doing so.*⁷²

III.d. The Pattern of Violence

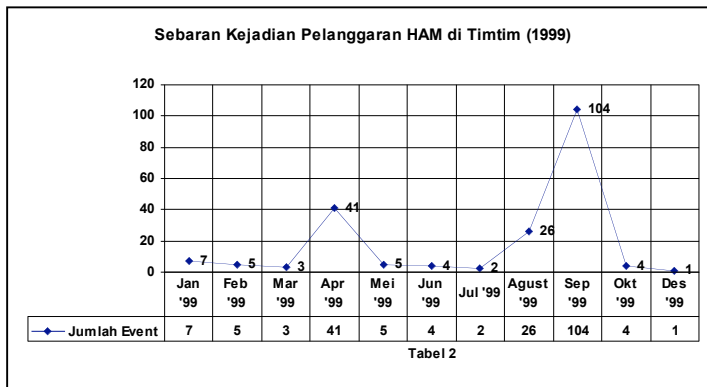
KPP HAM concluded that the widespread and systematic nature of the violence is obvious from the number of incidents that occurred during the period from January – December 1999.⁷³ From the statistical analysis of the number of incidents of violence, the KPP HAM report demonstrates that the increase in the number of incidents is closely related to the political and security policies issued, particularly those issued by the TNI.⁷⁴ For example, the violence increased in number until about April 1999, presumably to influence the result of the May 5th Agreement. Even though the number of incidences decreased for a few months after this agreement, it increased sharply and reached its peak after the results of the Popular Consultation were announced.⁷⁵

⁷¹ Transcript of Interview with Sugito by KPP HAM December 29, 1999. This interview detailed the process of this elimination of evidence

⁷² Ibid. On page 14 of the transcript, upon the question as to why he decided to transport the bodies of the victims to NTT whereas the bodies were evidences of a crime, he answered “the crimes were committed by their side Sir...” and when asked whether or not he, as a security apparatus should have reported the crime to the Police or Koramil (Military Rayon Commander) or his superior, no matter who the perpetrators were, he simply answered “well... the Koramil was I myself, Sir”.

⁷³ There are 58 violent incidents during the period of 27 January – 5 May 1999, 34 incidents from 6 May – 31 August and 106 incidents from 1 September – 9 October 1999, see KPP HAM report, p. 21.

⁷⁵ The sections below on the SCU and CAVR investigations also discuss statistical analysis of the patterns of violence.



This table is cited from the KPP HAM Report, illustrating the spread of Crimes Against Humanity in terms of number of incidences across different points of time within the period of inquiry.

IV. Conclusion

This research has concentrated on the evidence and analysis presented in the KPP HAM Report to answer the two key questions: 1) whether or not gross violations of human rights occurred in East Timor in 1999, and 2) if there were gross violations of human rights, which institutions should be held accountable. It should be pointed out that there was one part of the KPP HAM report not analysed in this research, namely the recommendations of people whose accountability should be pursued by the legal process. It is not within the scope of this research to analyse that particular section. It should only be noted here that the legal process conducted by the Attorney General and by the Ad Hoc Human Right Court was formulated on the basis of KPP HAM's recommendations. There were 22 individuals recommended by the KPP HAM Report for adjudication, 18 of whom were eventually put on trial.

As already mentioned, this research was conducted without being able to access the full amount of evidence available to KPP HAM. Yet, based on the evidence and the KPP HAM report itself, it appears that there were sufficient preliminary indicators that gross violations of human rights occurred in East Timor in the form of crimes against humanity. The widespread nature of the crimes is evident from the massive amount of

victims and the spread of incidences across the relevant period of time. Unfortunately, the report did not provide a more comprehensive analysis or data in regards to the gender-based violence.

The wide range of crimes was distinguished from “random” crimes by the KPP HAM Report through its presentation of the evidence and analysis of the pattern that unites the crimes as a collective action against a targeted civilian population. The pattern showed that the target civilian population was determined by the actual or assumed political affiliation of the victims, which is evident from the targeting of places where individuals of assumed political affiliation were taking shelter or conducting demonstrations and so forth.

In regards to the second question, namely the institutional responsibility, the KPP HAM report indicated that the crimes were committed by the order, facilitation, or omission of the authorities of the Republic of Indonesia. The most active institution amongst these authorities was the military. The physical perpetration of violations was done mainly by the pro-integration militias that were organized paramilitary organizations that operated with the support of security apparatus personnel.

The forms of support that could be identified in the report and evidence researched were firearms, facilities, and funding. However, the KPP HAM report should have clarified more fully the forms of support. For example, they did not trace which firearms were the official issue of TNI. They could have also examined daily reports to know to whom the firearms that were used by the militias and were military issue, were assigned. The details of funding and the relationship between the funding of Pam Swakarsa and the funding of militia activities in general could also have been examined in much greater detail. The lack of details such as these may be due to the fact that KPP HAM was only given four months to do this investigation, which made it difficult to write a report that was very detailed. As indicated by their extensive database, they did collect a large number of documents but may not have had the time to follow up and investigate further on the basis of them or to integrate them fully into their report.

One thing that the KPP HAM report did accomplish was to capture the context of the crimes. As will be seen below, this is what sets this report apart from the BAP and trial documents. An inquiry into crimes against humanity needs to focus on patterns to differentiate these crimes from random violence, and this was what KPP HAM did. One of the methods it employed was to explore the security policy of Indonesia in East Timor since 1975 to show how the events of 1999, and particularly the organization of the militias and their links to the military, grew out of pre-existing patterns of cooperation. Looking at the events of 1999 in this context, the KPP HAM report shows, is crucial to understanding why the violence took the forms that it did.

The Attorney General's Office accepted the KPP HAM report as providing sufficient evidence for concluding that gross human rights violations or crimes against humanity had occurred in East Timor. On this basis the Attorney General authorized the investigations that will be dealt with in the next chapter of this report.

V. Recommendations and Next Steps

From the research of this particular body of documents some recommendations can be made:

- 1) There should be a follow-up research to analyse the full range of evidence available in the KPP HAM archives, which is of a massive amount compared to the other bodies of documents researched in Indonesia. This report had not assessed all the documents archived in Komnas HAM or in the possession of the Attorney General's Office in regards to the inquiry process, especially the tertiary and secondary evidence collected, which also encompassed media coverage. Media coverage, and especially the real-time audio-video coverage, will be very essential in establishing the truth, for example in regards to the attacks and the involvement of military and police in the crimes as well as the military-issue weapons that the militia used.

- 2) There needs to be more research on the gender-based violence in 1999 in East Timor. There is sufficient evidence in the KPP HAM report (and elsewhere) to indicate that such violence was widespread. All too often the suffering of the victims of these crimes has failed to be acknowledged in any process. In order to reveal the conclusive truth, these crimes must be acknowledged as grave as any others that constitute crimes against humanity.

- 3) In the interest of the conclusive truth, there should also be an exploration about the possibility of crimes against humanity committed by other organized parties, such as pro-independence organizations.⁷⁶ The KPP HAM report itself mentioned some details of one such incident, yet without analysing it further, perhaps because of their mandated concentration on the accountability of parties who were under Indonesia's legal jurisdiction.

⁷⁶ KPP HAM Report, par 106: KPP-HAM received a report of other acts of violence that occurred on the same day, namely April 12, 1999. In the incident there was a blockade of the group of Manuel Soares Gama who were on a journey from Maliana to Kailako by an armed group that was suspected as consisting of Falintil members. In this blockade three people died including Manuel Soares Gama, and the other two fatalities were members of TNI. Whereas four others were injured. The victims of the act of violence were Angelino Bere Asa, Chief Soldier of TNI Army; Aristides; I Ketut Subrata; Luis Antonio, Firts Corporal TNI-Army; Manuel; Manuel Soares Gama; Miguel (23 years old).

CHAPTER 3

BAP – INVESTIGATION REPORT

I. Background

The investigation of the East Timor cases took place after the submission of the KPP HAM report, based on the Attorney General’s Decree KEP-070/JA/04/2000 regarding the establishment of an Investigation team for gross violations of human rights in East Timor. It began in April 2000 before it was finally brought before the Ad Hoc court in 2001. Overall, twelve case files were produced and filed before the Ad Hoc court that contained evidence collected **for cases that demonstrated “probable cause” of crimes against humanity.**

II Crimes Against Humanity

II.a. The Scope of *Tempus* and *Locus*

Overall, there are five major *loci* of crimes explored in the Attorney General’s investigation:

1. The attack against the Liquica Church complex and the residence of Fr. Rafael, 6 April 1999⁷⁷
2. The attack against Manuel Viegas Carrascalao’s residence, 17 April 1999⁷⁸
3. The attack against Ave Maria Church, Suai, 6 September 1999⁷⁹
4. The attack against Dili Diocese, 5 September 1999
5. The attack against Bishop Belo’s residence, 6 September 1999

There were a few other incidents explored, such as the killing of clergy in Los Palos⁸⁰ and the murder of Sander Robert Thoenes.⁸¹ However, the investigation did not consider

⁷⁷ See investigative dossier on Asep Kuswani et.al

⁷⁸ Tono Suratman, Endar Priyanto, Eurico Guterres dossier

⁷⁹ See in Tono Suratman, Adam Damiri, Noer Muis, Herman Sedyono, et.al,

⁸⁰ Although the preferred spelling in East Timor is Lospalos, this report will employ the spelling used in the original referent documents.

them as legal facts for issuing an indictment. Preliminary information on these incidents possibly comes from the report submitted by Komnas HAM.⁸²

The only exception with regard to the scope of *locus* is the Adam Damiri case file, in which the prosecutors argued that there are twelve major incidents that occurred before the Popular Consultation, one incident during the Popular Consultation and another five after the Popular Consultation. Scopes of the *loci* are also broader, so that they included incidents at Bazartete, Liquica, Covalima, Alieu, Ainaro and many others.⁸³

II.b. The Underlying Acts

The investigation covered several major acts that constituted crimes. They are as follows:

1. Murder
2. Assault
3. Destruction of property

All the dossiers (BAP) focusing on the five major incidents mentioned earlier conclude that murder has been committed following an attack. In addition, assault is also affirmed to have been committed along with the attack. A number of victims were questioned in the investigation, and testified that assault was committed through various means, particularly using traditional weapons, but only a few of these weapons were introduced into evidence at the Ad Hoc court. Victims who testified and validated the fact that the assaults were committed were among others, Victor dos Santos, Alfredo Sanches, Florindo de Jesus, and Niki for the case against Endar Priyanto, particularly on the attack against Manuel Carascalao's residence.⁸⁴

⁸¹ For example, information was collected about this incident during the questioning of Yayat Sudrajat, 18th September 2000 in the investigation of Tono Suratman case.

⁸² The KPP HAM report actually concentrates on five major incidents, but overall there are 14 incidents discussed in the report.

⁸³ See Adam Damiri investigative dossier, pp. 44-46

⁸⁴ See investigative dossier of Endar Priyanto on the attack against Manuel Carascalao house, as adopted in the legal fact pointed out in the summary of investigation, p. 53

The commission of destruction of property was affirmed in the evidence about the attack against Manuel Carascalao's house, Bishop Belo's residence, and the attack against Liquica church complex. This can be seen from Adam Damiri's BAP:⁸⁵

“that the attacks have resulted in fatalities and injuries as well as the destruction of property from the pro-independence group”

Aside from the aforementioned acts, the investigation also explored other crimes such as the rape case in Herman Sedyono et.al.,⁸⁶ and the summary execution of six civilians believed to be pro-independence supporters in Kailako. The information about these crimes are possibly based on the KPP HAM report. However, these investigations about these acts were not adopted as legal facts to be considered in the construction of the indictments.

II.c. The Chapeau Elements⁸⁷

The investigation of the twelve dossiers were mostly based on Article 42, Law No. 26/2000 regarding command responsibility. Therefore they place more emphasis on how to collect more evidence to support the theory of command responsibility rather than on demonstrating that the elements of crimes against humanity are supported by the evidence.⁸⁸ Additionally, few case dossiers also based their charges on Article 41, and Article 55 of the Indonesian Penal Code (KUHP), which provides legal ground of punishment for any forms of complicity in such crimes, may it be aiding, abetting, attempting or participating in the planning (conspiracy) and actively involved in the

⁸⁵ See conclusion of investigation on the case of Adam Damiri, p. 48.

⁸⁶ See investigative dossier of the Herman Sedyono et.al. case

⁸⁷ “Chapeau elements” refers to the elements which are general to all specific crimes against humanity and which must be proved in every case before considering specific enumerated offenses like murder, torture, rape, etc. These chapeau elements are sometimes called “contextual” elements because they deal with the larger context in which the specific crimes against humanity occurred. Proving the chapeau elements requires that the prosecution establish that there was a widespread or systematic attack against a civilian population and that the accused was aware of that larger attack and was aware that his crime (e.g., murder, torture, forcible transfer, etc.) was part of that general attack.

⁸⁸ Most suspects investigated are considered as indirect perpetrators. As a consequence of putting much emphasis in command responsibility, there is almost no attempt to clearly point out field perpetrators committed the crimes.

attack.⁸⁹ One of the biggest shortcomings of the investigation was that despite the attempt to concentrate on command responsibility, it fails to provide sound evidence to establish the chain of command, which links the defendants with the field perpetrators. Since the investigation considered the field perpetrators to be for the most part militia members, it was necessary to provide evidence to prove that these militia groups were under the effective control of the defendants. In failing to collect such evidence, the investigations also failed to provide, except in the case of Eurico Gutteres, a solid foundation for its preferred theory of liability: command responsibility.

With regard to the elements of crimes against humanity, the contextual, or chapeau, elements tend to be narrowly discussed. Even though all investigations share the same conclusion that crimes against humanity were committed, the arguments for such conclusions are not clearly discussed in the section on legal facts adopted. While most attention is paid to indicating the chain of command and the elements of command responsibility, there is almost no attempt to demonstrate the elements of crimes against humanity, particularly with regard to the elements of systematic or widespread.

II.c.1. Widespread or Systematic

There is not any clear indicator pointed out in the dossier with regard to the element of ‘widespread.’ Moreover, as Law No. 26/2000 stipulates, the element to be proven could be either widespread or systematic, but some dossiers prefer to provide evidence for widespread rather than systematic. Each case dossier varies in inferring the element of widespread. But, looking at the conclusion drawn from each investigation, this element is interpreted from two aspects, namely (1) the number of victims, and (2) the inter-linkage between one incident and another in the broader context of East Timor in 1999.

⁸⁹ The article provides that; *art 55(1)* “As a principals of a punishable act, shall be punished: 1st. Those who perpetrate, cause other to perpetrate, or take a direct part in the execution of the act; 2nd. Those who intentionally provoke the execution of the act by gifts, promises, abuse of power or of respect, force, threat or deception or by providing an opportunity, means or information. (2) In respect to the provoker, only those acts which have been deliberately provoked and their consequences shall be considered”, Directorate General Law and Legislation, Ministry of Justice, pp. 21-22.

As noted above, the number or massiveness of the victims is the most common indicator to demonstrate that the attack was widespread or systematic. Most dossiers use this approach in concluding that crimes against humanity were committed, such as was done in the dossier of Noer Muis.

In the case of the attack on Ave Maria Church in Suai, the investigator concluded that the crimes, involving the killing of those seeking protection inside the church, met the element of widespread, and should be looked at as part of a widespread attack in East Timor. In the report, the investigator concluded:

“the killing by means of attacking and shooting in the Ave Maria Church complex that was committed by members of the pro integration (Laksaur and Mahidi) ... against pro independence people, really was a part of widespread attack throughout East Timor, because at the same time, that of 6th September 1999 there also was the same attack against pro independence people who were at Dili Diocese, Archbishop Belo’s residence, and Liquica church⁹⁰, which also brought casualties, committed by the pro integration people”⁹¹.

Further the investigators also point out that the attack in Liquisa was preceded by the intimidation against targeted groups, that of the pro independence supporters, beginning on the 3rd September 1999. However, it does not elaborate further this fact to demonstrate the systematic nature of the crime.

The attempt to prove the widespread element in this manner may be considered narrow and simplistic. ***However, out of the 12 dossiers, it is only this report that clearly points out the link of the attack to a broader context of violence occurring in East Timor.***⁹² It is unusual and puzzling that in trying to prove a case of crimes against humanity all the other dossiers fail to connect the specific crimes charged to the broader context of violence in East Timor in 1999.

⁹⁰ This passage is quoted as appeared in the dossier. The attack against Liquica church is repeatedly mentioned, but there is no further explanation on this incident, including from testimonies of witnesses. Most testimonies addressed the attack against Ave Maria Church in Suai; therefore it is not clear whether the attack is referred to the incident occurred on the 6th of April 1999 or other attack occurred on 6 September 1999.

⁹¹ See, Conclusion of the investigation on Herman Sedyono et al, p. 53

⁹² There are several dossiers that are constructed based on the allegation of Crimes against humanity, but many of them tend to make a jumping conclusion by simply concluding from the fact that the killing was committed, or the attack was proven as can be found in the dossier of Ender Prianto, p. 53.

II.c.2. Attack Against Any Civilian Population

All dossiers in the twelve cases share the conclusion that there was a widespread or systematic attack against a civilian population in the five major incidents as mentioned earlier. They also share the conclusion that the attacks brought casualties and destruction of property.

For example, Adam Damiri's Dossier reads:⁹³

“that the attacks had resulted in fatalities and injuries as well as the destruction of the material possessions of the pro independence group.”

It should be noted here that this passage from the Adam Damiri BAP also concludes that the attacks were targeted against the pro-independence groups within the civilian population. This conclusion reinforces the notion that the attacks were systematic rather than random occurrences.

Although the twelve dossiers all find that there was an attack against the civilian population, they do not share any particular approach to defining or explaining this terminology. In addition, there is no attempt in any of the dossiers to document that the attacks were directed against individuals not engaged in hostilities, which is important to demonstrate their civilian character. While the terminology is used in all the dossiers, each dossier conveys it differently. Many investigative dossiers do not explain the terms, and use the Indonesian translation of civilian population instead.⁹⁴ Some other dossiers, without explaining the terms, utilize “civilian population” to refer to inhabitants living in the village or district surrounding the *locus* of the crime, such as in the case of the attack against Manuel Viegas Carascalao's residence, Dili Diocese and Archbishop Bello's residence, and the attack against Ave Maria Church in Suai. Here the implication is clear enough that the inhabitants of a village or district are civilian in character, but this is not spelled out:

⁹³ See conclusion of investigation on the case of Adam Damiri, p. 48.

⁹⁴ It is translated as ‘penduduk sipil’ in Indonesian language, and the investigator is likely to assume that the term is broadly understood, therefore there is no need to explain it separately.

For example, in the investigative dossier of Hulman Gultom the terminology is used as follows:⁹⁵

“The attack by shooting ... is an attack directed to the civilian groups originating from Maubara village, Liquica District and the villages surrounding the district and city of Dili because of fear and [attempted to] rescue themselves...”

The investigative dossier of Herman Sedyono, et.al. also reads:

“ the attack and shooting against ... is an attack directed to the civil population because of the people hiding and taking shelter in Ave Maria Church Complex in Suai were civilians from the villages in Covalima District who were driven out by fear...”

“... it is proven that from the victims who died due to the attack and shooting were all civilians, consisting of 3 pastors, 14 men and 10 women including a baby.”

This latter quotation from the Herman Sedyono Case is accurate in its assumption that such a group of individuals from the general population taking shelter in a church out of fear and including men, women, and children, as well as clergy is civilian in nature. Thus, they adduce an appropriate factual basis for their conclusion. It would have been clearer, however, to offer a definition of “civilian population” and then demonstrate how evidence met the definition.

Finally, some dossiers, especially those whose charges were based on a command responsibility theory, do not explain this element of “civilian population” in formulating its conclusion. The dossier uses several terms in addressing the victim, namely, refugee, people, civilian population, pro independence supporters⁹⁶, or civilian people.⁹⁷

II.d. Theory of Liability – Perpetration

There are two aspects that influenced the investigation in determining those responsible for the crimes. First, the way the investigation interprets the incidents and second, the

⁹⁵ See, investigative dossier of Endar Prianto, p 52.

⁹⁶ The term is used to refer to those seeking for protection inside the Ave Maria Church, Suai

⁹⁷ See, investigative dossier on Herman Sedyono, et al., in the case of attack against the Ave Maria Church, Suai, 6 September 1999

role and status of each person accused of being involved in the crimes. This also relates to the legal ground on which certain accusations or charges are made against those suspects.

Overall, information collected during the investigation affirmed the fact that crimes against humanity were committed, as had also been stated in the KPP HAM report. However, each investigative dossier manifests a different view with regard to the broader context in which the crimes were committed.

The investigation team of each case agrees that crimes were committed in the context of a clash between two groups having different political preferences, namely those advocating independence, and those supporting the option for autonomy. The dossiers admit the possibility that the crimes were instigated by an increase in political tension between those who were in favor of and those who were opposed to independence. The investigators adopted legal facts concluding that the pro-independence and pro-autonomy groups were formed to ensure the victory of each choice. Phrasing the conclusion in this way implies that the groups are established only after the announcement of two choices in April 99.⁹⁸ Given that violence was well underway from at least January 1999 on, this conclusion seems to ignore the broader context of violence in concentrating only upon the selected priority incidents. This, as we will see, implicitly affirms the scenario often repeated by TNI witnesses in the courtroom that the incidents occurred as “a horizontal clash’ among civilians instead of being systematically planned.”

In regard to theories of perpetration, nine out of twelve case files are based on the doctrine of command responsibility provided by Article 42 of Law No. 26/2000. Three case files combined charges of command responsibility with direct involvement, that of, aiding and abetting as provided by Article 55 of the penal code.⁹⁹ Therefore the focus of information extracted during the investigation puts less emphasis on proving direct involvement of those accused. Instead, the investigation emphasizes providing sound

⁹⁸ See investigative dossier on Asep Kuswani, et al, p. 37.

⁹⁹ See, investigative dossier of Yayat Sudrajat, Asep Kuswani et.al. and Herman Sedyono et.al.

evidence to prove inadequacy of both policy and action to prevent the crimes. Only in the three cases mentioned do the investigators attempt to uncover evidence of actual involvement in the crimes as a perpetrator, planner, co-perpetrator, or aider and abettor.

However, the dossiers differentiate two types of perpetrators:

II.d.1. Field Perpetrators

There are several terms used in the dossiers in referring to those who committed crimes against humanity. In general, field perpetrators are designated as the pro-integration group which comes with various different identifications, among others, are, militia, Pam Swakarsa, BRTT, Aitarak, etc. In several cases, physical perpetrators are pro-autonomy/pro-integration groups, which consist of members of the BMP (Besi Merah Putih), the Aitarak, and TNI personnel dressing like those members of the pro-integration group.¹⁰⁰ In the Tono Suratman investigative dossier, the term militia is used referring to the BMP and/or the pro-integration groups.¹⁰¹

Testimony of Victor dos Santos a.k.a Apin:¹⁰²

“ On April 17, 1999 I was in Mr, Manuel Carrascalao’s house on April 17, 1999. At around 12 noon militias on trucks stopped at the front of the house, they yelled “Kill Carrascalao”. Many militias that I know. They were militias from Aitarak and Besi Merah Putih, and we also saw some soldiers wearing militia clothes... then they attacked together. “

The term ‘militia’ is a controversial term in some circles. Those from the TNI and civilian officials questioned in the investigation mostly rejected this term.¹⁰³ According to their statements, what existed was WANRA which was established based on Law No. 20/1980. Local government officials also denied the existence of militia groups and

¹⁰⁰ This is in the attack against Manuel Carrascalao house, see Endar Priyanto Dossier, pp, 32-33, the term pro integration group also is used in the investigative dossier of Herman Sedyono et al, for the case of the attack against Ave Maria Church, Suai, 6 September 1999.

¹⁰¹ See Tono Suratman dossier, p. 125.

¹⁰² See Endar Priyanto Dossier, testimony of Apin, 21st July 2000, p. 2.

¹⁰³ Almost all witnesses from TNI and Police refused to use the word “militia.” They tend to explain more about the difference between Pam Swakarsa, Wanra, and Kamra which allegedly had different functions and legal bases for their establishment.

referred to the groups as Pam Swakarsa, which was established shortly after the announcement of the two options.¹⁰⁴

In addition to the designation of militia as field perpetrators, some dossiers identify TNI and police personnel as field perpetrators. There are three case files that charge the accused for direct involvement, namely the Herman Sedyono, et.al for the attack against Ave Maria Church, Suai, Asep Kuswani et.al for the attack against Liquica Church complex, and Yayat Sudrajat for the attack on the Liquica church complex. The first two cases based their investigation on Article 55 of the Indonesian Penal Code. The latter is based on Article 41 of Law No. 26/2000.

For example, the testimony of Emilio Baretto reads:¹⁰⁵

“at about 02.00 noon militia members, Brimob and soldiers came and attacked the Liquica Church Complex. They killed the community members who were taking shelter in Church Complex ...”

“They did not maintain security, but they were participating also in the attack by shooting at the direction of the people inside the Church complex.”

The testimony of Fres Da Costa also explains:¹⁰⁶

“I saw and heard Head of District Herman told Izidio Manek and said, “where’s Pastor Hilario and if you see (him) shoot him directly.” When Izidio Manek met with Hilario at the front of my room I saw Izidio Manek shoot Pastor Hilario.”

There is also relevant testimony from Tobias Dos Santos:¹⁰⁷

“the people involved in the 6 September 1999 incident were militias (Laksaur Merah Putih/Garuda Merah Putih, Mahidi/Mati Hidup Integrasi), TNI and Police.”

“ When I came to the church location at 17.00 on 6 September 1999, I saw them namely Colonel Herman Sedyono carrying a M-16....together with Captain Sugito also carrying a M-16...Olivio Mendosa Moruk a gun, Olivio Mau SKS, Gabriel Gatmi, Pedroteles (TNI veteran) Gatmi. They were approaching the Kodum office. When I walked to the office, these people together with Major Ahmad Syamsuddin

¹⁰⁴See Tono Suratman Dossier, testimony of Burhanuddin Siagian (Dandim Bobonaro), p. 29.

¹⁰⁵ See Yayat Sudrajat Dossier, testimony of Emilio Baretto, p. 2

¹⁰⁶ See Herman Sedyono et.al. dossier, testimony of Fres Da Costa, p. 2.

¹⁰⁷ See Herman Sedyono et.al. dossier, testimony of Tobias Dos Santo, p. 3.

*and Lieutenant Colonel Achmad Mas Agus (Dandim) they were nearby the militia post nearby the militia posts nearby the ..*¹⁰⁸

Some defendants were identified in the dossier as aiding and abetting the attack. The investigations conclusions about aiding and abetting were reflected in their analysis of Yayat Sudrajat's case, where they found he had aided and abetted the attack:¹⁰⁹

“the suspect Lieutenant Colonel. Inf. Yayat Sudrajat who was present at the location of the attack (the crime scene) at the house of pastor Rafael in the complex of liquica church complex with 3 (three) members of the Satgas Tribuana VIII who did not attempt to prevent or order his members to retreat, even the presence of the defendant with 3 (three) members of Tribuana VIII Task Force who were with him were there with the intention to together with the Polres and Brimob unit to back up and assist the Pro-Integration group (BMP) in committing the attack against the pro-independence group, resulting in the death of approximately 22 people from the pro-independence.”

Such direct involvement is also pointed out in several other case files, such as Noer Muis, Adam Damiri case, and Timbul Silaen case, etc. The following excerpts provide examples:

Testimony of Florindo de Jesus:¹¹⁰

“ because at that time I was in front of the gate of my house then I saw that the attackers were the militias and TNI in a number that according to my approximation was more than the refugees at the house “

“I knew that the one who attacked Manuel Carrascalao's residence was the militias and TNI because there were some of the attackers from militia as well as TNI whom I recognize... they were TNI from Maubara Koramil”

“...After entering the house the attackers by using automatic, generic firearms as well as samurai they immediately went into action and one of them were Jose Mateus a TNI member who shot my brother namely Albertus do Santos and he was assaulted by Dominggus Bondia a militia member until he died... one of them shot Sanches. After Sanches was shot and fell on the ground, I saw Jakeus, a militia member, and Antonio Besikau, a TNI member, shot dead Eduardo de Jesus..”

Testimony of Armando De Deus Granadeiro :¹¹¹

¹⁰⁸ See Noer Muis Dossier, testimony of Tobias dos Santos, p. 4.

¹⁰⁹ Resume of Yayat Sudrajat investigative dossier, p. 49.

¹¹⁰ See Hulman Gultom Dossier, investigative dossier of witness Florindo de Jesus on the 24th July 2000, responding the prosecutor's question no 10, p. 3.

“ at that time on Monday on 6 September 1999 around the afternoon, I and my fellow member of Kodim 1635 Covalina because all members were on the alert. Before the attack to the church, militia (laskaur) gathered at the residence of the Head of District Colonel Drs. Herman Sedyono [and together they] left from Suai on two and four-wheeled vehicles.”

As has been seen, several dossiers document their conclusion that members of Indonesian military, police, or governmental organization participated in the violence either directly or by aiding and abetting. However, the investigation fails to explore the question of whether this indicates institutional as opposed to individual involvement of local government, TNI or POLRI in the crimes. The dossier approaches such involvement by looking at direct evidence such as formal policy, either through documents or witnesses' statements. Documents range from a regular report mechanism from low ranking TNI officials to instructions given by high ranking officials in Jakarta.¹¹² Therefore, the dossier tends to focus on direct involvement of low ranking officials as individual offences.

The dossiers' evidence about direct involvement of TNI personnel mostly comes from victims' statements. Victims recognize them in two ways, namely by identifying their name as they knew each other before in their local community, and by indicating their uniform. Several witness/victims heard in the investigation provided names of those TNI personnel they recognized at the crime scene, such as, Tome Diego¹¹³, Antonio Besikau, Antonio Gomes, Teofelo, Jose Mateus, Baltizar, and Miguel.¹¹⁴ For example, one witness stated:

“..I saw Jakeus, a militia member and Antonio Besikau who is TNI personnel shoot Eduardo de Jesus to death, ... they shot me...”¹¹⁵

¹¹¹ See Noer Muis Dossier, testimony of Armendo D Granadeiro, on the 27th July 2000, p. 2.

¹¹² See, for example, in Adam Damiri case, the evidentiary documents submitted among others are, telegram of the Army Chief of staff (KASAD) No. STR-172/1999, 5 May 1999 on the instruction for the preparation of security planning (instruksi untuk menyiapkan rencana keamanan), STR no 253/1999 ; 5-11 April 1999; STR 279/1999, 12-18 April 1999; STR/550/1999, 23-29 August 1999, regarding progress report of the actual situation from the Chief of regional military command (Pangdam) IX Udayana to the Chief of the Army and Army Chief of Staff.

¹¹³ See Yayat Sudrajat Dossier, testimony of Emilio Baretto, p. 3.

¹¹⁴ See, Endar Priyanto investigative dossier

¹¹⁵ Statement made by Florindo de Jesus in the investigation of Endar Priyanto case file.

The testimony of Emilio Barreto on Tome Diego describes him as one of the members of the TNI who ordered the attack:

*“I knew them because they always wearing military uniform and police uniform in Liquica, and there were some of them whom I recognised named Tome Diego, if I was not mistaken he was Chief Sergeant”*¹¹⁶

This statement is supported by another witness named Alfredo Sanches, who is a victim in the attack against Manuel Carascalao house.¹¹⁷

“...We tried to jump over the fence to escape from the house but we could not get out as the house has already been surrounded by militia and the TNI. When I jumped over the fence, a militia named Armindo Karion pulled me back, and I saw Eduardo was shot to death by a soldier named Antonio Besikau...”

This passage notes the cooperation and coordination between militia and TNI. Most accounts from the victims or East Timorese people heard in the investigations clearly indicate such a relation. Links between both militia and the TNI can be inferred from a number of victims or their relatives questioned in the investigation. The information includes the fact that the militia groups hold organic weapons, such as M16s and M15s.¹¹⁸ Information from the witnesses heard in other case files also stated that the military and the militia often conducted joint operations.

Direct involvement of the TNI with militias is also recorded in a military report that was attached to the BAP of Adam Damiri.¹¹⁹ The Special Report, classified as secret, written by the Chief of Staff of Kodam IX Udayana addressed to the High Commander of the Armed Forces with the number RI/184/Lapsus/IV/1999 dated April 7, 1999 provides details on “the clash against the Pro-Integration with the Anti Integration in Liquica District.”¹²⁰ The Report first of all describes in detail about the crimes the pro-independence supporters had committed against the pro-integration prior to “the clash.”

¹¹⁶ See Yayat Sudrajat Dossier, testimony of Emilio Baretto, p. 3.

¹¹⁷ See Hulman Gultom Dossier, testimony of Alfredo Sanchez on 24th July 2000, p. 4.

¹¹⁸ See, Statement made by Antonio da Concenciao Santos in the investigative dossier of Tono Suratman, who stated that in the incident that occurred at the house of Pastor Rafael, members of BMP held M16s and M15s. See also the appendix on the confiscated weapons - namely those confiscated in West Timor after the Popular Consultation from the refugees- namely the pro-autonomy militias.

¹¹⁹ See, Adam Damiri dossier, list of evidence part II no 6

¹²⁰ It should be noted that the version of the incident in this report, while more or less the same with the testimonies of the military witnesses, was negated by the victims

This information seems to serve as a justification for the violence that ensued¹²¹. The report further recounted that when the local leaders were negotiating with Pastor Rafael for the surrender of the anti-integration leader accused of the acts against the pro-integration supporters, there was allegedly a shot that came from inside the church towards the pro-integration forces and the Police surrounding the church complex. The following is the translation of what happened next according to the report:

1. *[Because of the shot] simultaneously the Pro integration group attacked the Anti integration by using generic firearms and arrows, cornering the anti integration and causing the anti integration to fire at the pro-integration and the pro-integration was avoiding the shots from the anti-integration and retreated*
2. *The Resort Police members and Brimob units as well as members of Tribuana Task Force immediately backed up the Pro-integration to avoid victims and [firearms] had to be shot ...*

Aside from the fact this account was not corroborated by any of the many witnesses and victims from inside the church who testified, serious questions arise from this account. First, why did the Police, Brimob and Tribuana Task Force not react when the pro-integration attacked the anti-integration and did not try to hold them back from being provoked by the shot? Second, why did the military only react when the mass of armed pro-integration forces was already at the church, together with members of Brimob and members of the Tribuana task force?

Further, the use of the word “back up” to describe its reaction is striking, and why would the TNI “back up” the group that was attacking when the pro-integration was cornered, confined in the church together with many civilians, including women and children? Instead of “backing up” one group why did the Police and other security personnel not try to clear the area and halt the attack? It appears that the usage of this term signifies a

¹²¹ The report mentioned the chain of incidents from 3-5 April 1999, starting from the fight between a small group of pro-integration and pro-independence on the 3rd, followed by the next day, when a person named Jarminto who tried to explain the fight to the people of Dato Village, but offended the people instead. Jarminto sought refuge at the Koramil 1034-01/Lqs Headquarters while the people pursuing him surrounded the Koramil and destroyed a house nearby belonging to Antonio Lopsa Da Cruz, a government official. On April 5th it is stated that the anti-integration masses led by Jacinto Da Costa committed destruction of the house belonging to Mr. Victor, the house belonging to the First officer of Abilio Soares, 5 units of houses owned by Kamra, a house owned by [unclear in the text], and the throwing of objects at the official car of the Regency Government.

relationship between the groups as one where they would feel it appropriate to immediately “back up” an armed group rather than take steps to protect the civilians who were sheltering inside the church. Moreover, in the same report, in the ensuing analysis, there was no recommendation for legal action to be taken against the perpetrators - either from the pro- or anti-integration side. The incident itself was blamed entirely on the anti-integration group, and Pastor Rafael who was accused of lying when he said that no one taking shelter in the complex had any weapons. Strengthening the bias, the report stated:

“Judging from the current development, the pro-integration community has been pressurized by the Anti-Integration in the form of intimidation, terror, destruction, arson, abduction... But at times like this, the fear [induced] is transformed into courage due to the accumulation of pressure... thus the opportunity was used to take actions to defend the interest of the majority of the community from the pressures of the group who desired independence/pro referendum” (emphasis added)

Yet again, the military perceived the attack as something positive, namely to defend the community’s interest, instead of condemning **all** extrajudicial violence, committed by **any party**, due to **any motive**, may it be in provocation or in retaliation. As a security apparatus, the military’s persistent bias in defending the pro-autonomy and its justifications for participating in the attack to back up the pro-integration raises questions about to what extent it has supported the militias in committing violence. The language “the opportunity was used” indicates a pre-existing inclination or policy to support one group over another, using the excuse that the pro-integration group was the “majority of the community”, which, as events later showed, they were clearly not. Although this report was attached to the BAP it was not used in regard to the issue of perpetration.

II.d.2. Indirect Perpetration

While the evidence to show an institutional policy to support complicity is weak, statements taken in the investigation clearly show different ranges of involvement, from indirect involvement such as allowing direct perpetrators to commit the crimes to direct

involvement in supervising militia in various forms, such as providing weapons, bases, and transportation.

Some of the dossiers manifest a specific emphasis on the relation between the defendants and the establishment of the pro-integration/autonomy militias. Many statements by witnesses appear to show that the pro-integration groups with varying names (Pam Swakarsa, Militia, BRTT) were all formed together by the government (regional), ABRI and the Police.

The strongest evidence regarding the support for the militias (Pam Swakarsa) was the policy of the regional government to provide financial support to the Pam Swakarsa. This policy may be considered to be the case because in several witnesses' statements, Pam Swakarsa itself is said to be identical with the pro-integration militias such as Aitarak, Besi Merah Putih, Laksaur and Mahidi.¹²² Aside from that, guidance was also provided by the local government.

For example, Abilio Jose Osorio Soares stated in his testimony:¹²³

“The group did not announce itself as Pamswakarsa but was formally established by the Sub District Government based on The Governor’s Decree which stated the term Pamswakarsa.....The names of the [specific] Pamswakarsa were assigned by the respective Sub District Government such as: AITARAK, BMP, MAHIDI, ABLAI, MADOMI etc“

“The one who provided guidance is the Head of District and the financial support was obtained from the respective regional budget...“

Sinto da Silva also stated in his testimony:¹²⁴

“...I as an Aitarak member automatically became a member of Pam Swakarsa...“

¹²² This issue will also be dealt with extensively in the part of the report focusing on Dili.

¹²³ See Hulman Gultom Dossier, testimony of Abilio Jose Osorio Soares before the prosecutors, 19th July 2000, p. 4.

¹²⁴ See Hulman Gultom, testimony of Sinto da Silva on the 28th July 2000, p. 2.

There is also some indication in the BAPs that the formation of pro-integration groups involved the TNI, as stated by witnesses Fransisco Kalbudi and Maria Pereira Soares. Other evidence indicated that the TNI, through the local Kodims, also armed the militias. In their daily activities some militia members were carrying firearms as attested to by some witnesses:

Testimony of Fransisco Kalbuadi:

*" ... The one who established [the militia organisations] was amongst others Danrem 164 Wiradharna supported by several Generals such as Zacky Anwar Makarim, Glenn Khairupan, Adam Damiri and Syarfrie Sjamsoedin, because before the Popular Consultation they were often in Dili and I saw myself their presence in Dili."*¹²⁵

*" almost all militia members and their leaders had firearms. They attained the weapons from the TNI through Danrem 164 Wiradharna (Colonel. Tono Suratman). This I found out according to the information from the militia leaders to me, because all of them were my friends. Aside from that many of the militia members also had firearms"*¹²⁶

Testimony of Maria Pereira Soares:¹²⁷

" Yes I know, that the one who established the militias was the TNI in Dili. This I knew because my husband, who was also an ABRI member and the Head of Lecidere Village was invited several times to a meeting between the Mayor, the Head of District, and military officials to establish the militias. most militia members I have seen had firearms, may it be ABRI's standard issue and generic..."

Testimony of Laurentino Soares¹²⁸:

*"in the inauguration of PPI on 17 April, DANDIM 1639 Ambenu Lieutenant Colonel Bambang gave the firearms to the Sakunar task force. [namely] three firearms (2 SKSs and 1 SP) each complemented with 10 bullets. At the time I saw there were Aitarak members holding M16 fireams. Three days later the firearms were pulled back except 1 SKS which was still held by the Commander of The Operation Task Force Sakunar, Bela Menu Da Costa"*¹²⁹

¹²⁵ See Hulman Gultom dossier, testimony of Fransisco Kalbuadi on 20 July 2000 p 7. The same testimony is also employed for investigative dossier on Noer Muis.

¹²⁶ See Hulman Gultom Dossier, testimony of Fransisco Kalbuadi, p. 7.

¹²⁷ See Hulman Gultom Dossier, testimony of Maria Pereira Soares, on the 22nd July 2000, p. 5.

¹²⁸ See Yayat Sudrajat Dossier, testimony of Laurentino Soares on the 29th July 2000, p. 2.

¹²⁹ The correct spelling of the name is Bellarmino, but this quotation cited the spelling as appeared in the investigative dossier document, that of, *Bela Menu da Costa*.

“Around September, upon the request of The Head of District of Ambenu to Dandim 1639, the `Sakunar Task Force was armed with 5 pieces of M 16, 5 pieces of SKS 2 because the Task Force was ordered to escort the refugees... three days afterwards the weapons were returned to Kodim 1639 through Lieutenant Hendrik“

Testimony of Leandro Issac:¹³⁰

“The communication facility attained by Besi Merah Putih militia in the district of Liquica Sub District of Maubara in the beginning of July 1999, I once went past and saw with my own eyes the communication radio with all its attributes identical with what ABRI owned. During the attack of my house on 17 April 1999, the pistol used by the militias was caliber 9, the same with what TNI used “

Testimony of Tobias Dos Santos:¹³¹

“The militia lead by Olivio Mau and Olivio Moruk had weapons. On 6 September 1999 Olivio Mau carried a SKS weapon. Olivio Moruk carried a weapon, which according to his statement, it was bought from Java. The SKS weapon carried by Olivio Mau had been attained from Kodim 1635 Covalima. The commander was Lieutenant Colonel Achmad Mas Agus. Other militias also carried their own weapons taken from Kodim. This came from the information shared by the militias themselves... “

Testimony of Armando De Deus Granadeiro :¹³²

“ At that time on Monday on 6 September 1999 around the afternoon, I and my fellow membe.r of Kodim 1635 Covalina were at the Kodim station because all members were on the alert. Before the attack to the church, militias (laskaur) gathered at the residence of the Head of District Colonel Drs. Herman Sedyono [and together they] left from Suai for the church on two and four-wheeled vehicles. “

The dossiers also show that the involvement of the militias with the regional government, TNI and the Police can also be concluded from the process or pattern of operations leading to series of violent incident. A number of testimonies of the witnesses showed that violent incidents were preceded by mobilization of militias or rallies. The clearest

¹³⁰ See Hulman Gultom Dossier, testimony of Leandro Isaac.

¹³¹ See Noer Muis Dossier, testimony of Tobias Dos Santos on 25th July 2000, p. 3

¹³² See Noer Muis Dossier, testimony of Armando D. Granadeiro on the 27th July 2000, p. 2.

mobilization documented in the BAPs¹³³ was the inauguration of the establishment Pam Swakarsa in the mass rally on 17 April 1999 that resulted in the attack against the house of Manuel Viegas Carascalao.¹³⁴ A mobilization rally also occurred, according to the victim witnesses,¹³⁵ before the attack against the residence of Pastor Rafael and the Liquica Church Complex as well as against the Ave Maria Church in Suai.¹³⁶

Additionally, the elimination of evidence explored in the investigative dossier of Herman Sedyono et.al, provide the sound evidence indicating the complicity of a TNI unit with the perpetrators. Such a cover-up occurred in two cases: namely the attack against Liquisa Church and the attack against the Ave Maria Church in Suai. The attempt to eliminate evidence was deliberately committed by throwing corpses of the victims of the attack against Liquica Church into the Masin Lake and buried corpses of victims of the attack against Ave Maria Church, Suai in Weluli beach. Not only that this attempt was committed with the help of the militias, but also with the acquaintance of the chief of Police resort district Wemasa, Belu, Pelipus Kanakaja.¹³⁷

The BAP contains testimony from participants such as the statement of Fransisco da Silva:¹³⁸

“and then I together with 7 soldiers (TNI) including their commander went to the Pastor’s house, and once there the car was driven into the house complex with the back of the car going in first (reverse) and six soldiers went down to load the corpses into the truck, and then immediately I (drove) the car to Masin (Salt) lake in Maubara, located approximately 30 Km from Liquisa, and once there the corpses were thrown into the lake.”

¹³³ Documents in the SCU indicate that many such rallies occurred and were financially and sometimes logistically supported by Indonesian authorities at the local level.

¹³⁴ See Abilio Soares Dossier.

¹³⁵ See Asep Kuswani et.al. dossier.

¹³⁶ See Herman Sedyono et.al Dossier.

¹³⁷ Based on his testimony before the prosecutor, he had asked to move the funeral outside Belu district, but as he saw militias Laksaur armed with ‘home-made’ weapons were on the alert, he remained there witnessing the burial. See, testimony of Pelipus Kanakaja on 26th July 2000, pp. 3-4.

¹³⁸ See Tono Suratman Dossier, testimony of Fransisco da Silva, p. 2.

Similar account is also provided by Sonik Iskandar whose testimony was initially taken before the investigator of Detachment Military Police (DENPOM) IX/I Kupang. His statement was then adopted in the dossier:

*“...You (Sonik Iskandar) explained that for the burial of the 27 corpses, you depart from the Catholic Church Suai around 6.30 WITA on the yellow truck which was driven by someone, and you drove an open cup red van, and a public red van (microlet) rode by Lieut. infantry Sugito, while those went for the burial were you, Lieut. Sugito and fifteen Laksaur members equipped with spades and toes. The one showed the place in Metamauk Village along the beach was Lieut. Inf. Sugito himself ... ”*¹³⁹

III. Conclusion

Having analyzed the investigative dossiers of all of the cases, it is obvious that they can be used to support a finding of institutional responsibility since they seek to establish the responsibility of senior commanders and officials through the theory of command responsibility. The evidence in the BAPs is highly relevant to Institutional Responsibility because those who hold high positions represent the involvement of the institutions concerned, and their involvement could also indicate the existence of an implicit, unofficial policy. Evidence of and an awareness of a ‘policy’ element is present in some of the questions the investigators posed to the high ranking officials both from the military and the Police.

However, while the investigation in general questioned high-ranking officials, it failed to substantiate the involvement of such institutions *as institutions*. Instead, it portrayed the involvement of government, military and police personnel as individual involvement. This is to some extent natural, because the focus of the investigations and prosecutions was on individual responsibility. However, as has already been described, there was evidence in the BAPs that suggested institutional responsibility, at least at the local/regional level.

¹³⁹ See, Dossier on Herman Sedyono et.al, testimony of Sonik Iskandar on 1st of August 2000, pp. 5 - 6.

The major flaws in the approach of the investigative dossiers lie in the lack of capability to thoroughly understand the provisions of command responsibility and the failure to comprehend the full context of the crimes. These flaws resulted in the failure to collect adequate evidence to support the charge used to further develop the indictments, and also, in the failure to fully use the evidence that had been collected. One clear example of this is the failure to utilize evidence in regard to the element of policy. While in the examination of both witnesses and the accused, the element of policy as ‘implicit policy’ is indicative in various questions raised by the prosecutors, these failed to be elaborated further in the indictments. On the contrary, the understanding of the element of policy in many indictments as well as in judgements show that policy is understood particularly *only* as a formal policy, meaning a policy that is written and officially and publicly issued by the respective institutions.¹⁴⁰ As a consequence of this failure, there was no attempt to explore forms of complicity except in the three cases noted above. Rather, nine of the twelve dossiers ignored all other forms of responsibility other than omission, and, not surprisingly, this is the material on which most of the indictments were finally based. This focus on omission occurred despite the fact that, as shown above, the investigations with regard to the field perpetrators and the link between the field perpetrators and military and civilian officials provided evidence for other forms of potential liability, especially aiding and abetting.

In addition, the lack of capability and understanding on the part of the investigators can also be seen from an inconsistency found in many of the dossiers. This inconsistency also pre-determined that there would be no conclusions about institutional responsibility in the BAPs. While all twelve investigations concluded that crimes against humanity had been committed, most of the investigations failed to clearly explain how those held to be responsible had any substantive link with the crime alleged. This was a flaw that also had serious consequences when these cases went to trial.

¹⁴⁰ The policy refers here is the formal policy issued by the Habibie administrative on the 27th January 1999 which was belief to create division between two oppositional political preference groups, see, among others, Timbul Silaen Judgement, Herman Sedyono et. al.

The failure to comprehend the full context in which the crimes were committed also critically affects the accounts of the incidents. Two obvious deficiencies are: (1) the case-based approach, looking at the incident as an isolated incident that does not have any relation to other incidents investigated in the other case files. This perspective also led to the failure to prove effective operation of the chain of command, which would allow for the charge on command responsibility to be successfully prosecuted; and (2) the attempt to posit accountability without fully weighing and analyzing the testimony from the victims and others witnessing the incidents. Instead, most of the investigations tended to rely heavily on ‘indirect evidence’ such as documents and statements from those high-ranking officials questioned in the investigation. This failure to position the crimes charged in their larger context and to explore linkages between them also had serious consequences for the ensuing trials.

In short, while the dossiers all agree on the existence of crimes against humanity *and* that these crimes against humanity involve a targeting of pro-independence groups, they reach no substantive conclusions about individual responsibility. There was, however, a substantial amount of evidence that could have been the object of serious inquiry as to institutional responsibility. This evidence indicates that at least at the local level there was a great deal of institutional support for the militias who were the primary perpetrators of the crimes against humanity. In addition, there was a substantial amount of evidence that indicates TNI and possibly Police direct involvement in the actual perpetration of the crimes in the form of co-perpetration with the militias. The dossiers, except in the three cases noted above, systematically fail to explore this dimension of responsibility.

IV. Recommendations

- 1) The loss of context in the content of the investigations needs to be addressed with further research, since the case-based approach decreased significantly the analysis on the interrelation between the individual incidents of violence. The lack of an attempt to establish a pattern of violence in the investigation is one of the reasons why it is hard to capture the special

nature of the crimes investigated, namely not as ordinary crimes, but as gross violations of human rights.

- 2) There should be more exploration of the victims' accounts of the incidents from which a general description can be derived as to what happened in East Timor in 1999, both in terms of individual incidents and the general context. A deeper inquiry into these victims' accounts may provide a sounder foundation to reconstruct the conclusive truth.
- 3) **The documents from the lists of documents that were attached to the BAP, but were not included within the BAP, should be obtained and fully analyzed.**

CHAPTER 4

TRIAL JUDGMENTS OF THE JAKARTA AD HOC HUMAN RIGHTS COURT

“Considering, that even if for Indonesia it was never proven that there had been a state’s policy to commit attack or murder or scorched earth policy against the civilian population of East Timor, but because there in fact have been losses [in form of] lives, bodily [harm], assets and dignity of the civilians in East Timor, which occurred repeatedly with the same pattern, massively, thus this cannot be blamed upon solely to the Pro Intergration Group, in this case the militias united in the PPI, and it cannot be stated that the initiative [to cause such loses] is the PPI’s, but rather it can be stated that the initiative is the system’s initiative, that according to Dr, Daniel Sparingga can sufficiently be proven by the existence of victims from clashes that occurred with the same pattern and repeatedly, in accordance to what have become the norms in International customary Law.”

(Judgment ADAM DAMIRI, page 154)

I. Background

I.a. The Ad Hoc Human Rights Court for the Gross Violations of Human Rights in East Timor

The legal basis for an Ad Hoc Human Rights Court is Law No. 26/2000 on the Human Rights Court, that stipulated that for gross violations of human rights cases occurring prior to the enactment of this law, they may be heard and ruled on by an Ad Hoc Human Rights Court, which could only be established on the recommendation of the House of Representatives of the Republic of Indonesia and formalized by the issuance of a presidential decree.¹⁴¹

The Ad Hoc Human Rights Court for the gross violations of human rights in East Timor in 1999 (hereafter referred to alternately as The Court or the Ad Hoc Human Right Court) was established by Presidential Decree No. 96/2001, which mandated the establishment

¹⁴¹ Law No. 26 /2000, Article 43.

of an Ad Hoc Human Rights Court for two cases, namely East Timor in 1999 and the Tanjung Priok incident.

The incidents dealt with by the court for East Timor are the following:

1. Attack against Liquica Church Complex and Father Rafael's Residence, April 6, 1999
2. Attack against Manuel Carrascalao's House, April 17 1999
3. Attack against Dili Diocese, September 5, 1999
4. Attack against Bishop Belo's Residence, September 6, 1999
5. Attack against Ave Maria Church, Suai, September 6, 1999

Pursuant to Article 27 of Law No. 26/2000, each case of gross violations of human rights was heard and ruled upon by a Human Rights Court judges' panel of five persons, comprising 2 two career judges and three non-career judges, namely judges who had not served as judges in any court previously, but were appointed because of their proficiency and expertise in human rights and criminal law. The involvement of these ad hoc judges influenced the judgments, as will be apparent in the next sections of this sub-chapter, especially in regards to the inclusion of international criminal law practices in the deliberation of elements of the crimes tried.

The Court was given the duty and authority to hear and rule upon cases of gross violations of human rights within the scope of *tempus* and *locus* determined by the Presidential Decree. However, the gross violations of human rights under the jurisdiction of the court are limited to only two types¹⁴²:

- a. crime of genocide
- b. crimes against humanity

¹⁴² Article 7, Law No. 26 /2000

However, based on the indictments put forth to the Court by the Attorney General, the Court only processed cases in relation to crimes against humanity. Crimes against humanity is defined as the following based on Law No. 26/2000:

Article 9

Crimes against humanity as referred to in Article 7 section b includes any action perpetrated as a part of a widespread or systematic attack directly directed¹⁴³ to a civilian population, in the form of:

- a. killing;*
- b. extermination;*
- c. enslavement;*
- d. Deportation or forcible transfer of population;*
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- f. torture;*
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- h. assault against¹⁴⁴ 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;*
- i. enforced disappearance of a person; or*
- j. the crime of apartheid.*

The types of individual accountability that could be pursued in the Court are also determined in Law No. 26/2000, namely:

- Direct Perpetration of the crimes under the jurisdiction of the court¹⁴⁵
- Attempting, plotting, or assisting the perpetration of the crimes under the jurisdiction of the court¹⁴⁶

¹⁴³ Not only “directed” as in the Rome Statute, but directly directed.

¹⁴⁴ This section should be referring to the crime internationally termed “persecution,” whilst in the Indonesian statute persecution is translated into “penganiayaan” which refers to what in English legal term is “assault”.

¹⁴⁵ Article 36-40, Law No. 26/2000

¹⁴⁶ Article 41, Law No. 26 /2000. It should be noted that in defining the parameters of attempting, plotting, or assisting the perpetration of the crimes under the jurisdiction of the court, the prosecutors often relate Article 41 of Law No. 26 with the crimes listed in Chapter V of the Republic of Indonesia’s Criminal Code on “*Penyertaan*” which bears a similar concept to Joint Criminal Enterprise. Article 55 and Article 56 of the Criminal Code, which are part of the Chapter V stipulated as follows:

Article 55 is used for co-perpetration or the perpetrators together committing the crime, whereas article 41 is used to refer to the involvement of the defendant in the forms of attempt, conspiracy and aiding.

Article 55

1. Convicted as the perpetrator of the crime;
2. Those who committed, ordered and participated a crime;

- Command and Superior Responsibility, the mode of liability used in all indictments put forth in the Court. The definition in the Law is as follows:

Article 42

1. A military commander or person acting as military commander shall be held responsible for any criminal action within the territorial jurisdiction 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 authorized official for inquiry, investigation, and prosecution.

Although by Law No. 26 the judicial system is able to process direct, field perpetrators, the Court, based on the indictments put forth by the Prosecutor, tried only defendants charged with the 2nd and 3rd modes of liability, namely attempting, plotting, or assisting the perpetration of the crimes under the jurisdiction of the court and Command or Superior Responsibility.

3. Those who provide or promise something that misuses power or dignity, by way of violence, threat, or misinformation, or by providing opportunity, facility or recommendation, deliberately instigating the crime.

4. For the instigator only acts deliberately instigated shall be deliberated along with the consequences
Article 56

Prosecuted as an aider of a crime:

1. they who deliberately give aid during the crimes at the time the crime is perpetrated;
2. they who intentionally give the opportunity, facility or recommendation to commit a crime.

. The following is the list of the defendants and the charges against them:

No	CASE DOSSIER	INDICTMENT
1	Abilio Jose Osorio Soares (The Governor of East Timor)	1. Article 42 point 2 letter a, b jis Article 9 a jis Article 37 2. Article 42 point 2 letter a, b and jis Article 9 h jis Article 40
2	Timbul Silaen (Kapolda-Chief of Regional Police of East Timor)	1. Article 42 point 2 letter a,b jis article 9 a jis article 37 2. Article 42 point 2 letter a, b and jis Article 9 h jis Article 40
3	Herman Sedyono (The Head of Kovalima District) Liliek Koeshadiyanto (Dandim-The Commander of Military District, Kovalima) Gatot Subyaktoro (Kapolres- The Chief of Kovalima Police Resort) Achmad Syamsudin (Kasdim-The Chief of Staff of Kovalima Military District) Sugito (Danramil-The Commander of Suai Military Rayon)	Primary Count : Article 7 b jis article 9 a, article 37, article 42 (1) a, b, jo article 55 (1) KUHP (CRIMINAL CODE) Subsidiary Count : Article 41 jis article 7 b, article 9 a, article 37. More Subsidiary Count : Herman Sedyono : article 42 (1) jis article 9 a, article 37 Liliek Koeshadiyanto : article 7 b, jis article 9 a, article 42 (1) a, b. Gatot Subyaktoro : article 7 b, jis article 9 a, article 42 (2) a, b. Achmad Syamsuddin : article 7 b, jis article 9 a, article 42 (1) a, b. Sugito : article 7 b, jis article 9 a, article 42 (1) a,b.
4	Endar Prianto (Dandim-The Commander of Military District, Dilli)	1. Article 42 point 1 letter a, b jis 9 a jis article 37 2. Article 42 point 1 letter a, b jis article 9h article 40
5	Soejarwo (Dandim The Commander of Military District, Dilli)	Primary Count : Article 7 b, jis 9 a, Article 42 point 1 letter a, b jis article 37 Subsidiary Count : Article 7 b, 9 h, 42 point 1 letter a, b, article 40.

6	Hulman Gultom (Kapolres-The Chief of Dilli Resort Police)	1. Article 42 point 2 letter a,b jis article 9 a jis article 37 2. Article 42 point 2 letter a, b and jis Article 9 h jis Article 40
7	Asep Kuswani (Dandim-The Commander of Military District, Liquica) Adios Salova (Kapolres-The Chief of Liquica Police Resort) Leonito Martens (Head of Liquica District)	First : Primary Count : Article 42 jis article 7 b, article 9 a, article 37 jo article 55 KUHP (CRIMINAL CODE) Subsidiary Count : Asep Kuswani : Article 42 (1) a, b jis article 7 b, article 9 a, article 37 Adios Salova : article 42 (2) a, b jis article 7 b, article 9 a, article 37 Leonito Martens : article 42 (2) a,b jis article 7 b, article 9a, article 37. Second : Primary Count : Article 42 jis article 7 b, article 9 h, article 40 jo article 55 (1) ke 2 KUHP (CRIMINAL CODE) Subsidiary Count : Asep Kuswani : Article 42 (1) jis article 7 b, article 9 h, article 40 Adios Salova : article 42 (2) jis article 7 b, article 9 h, article 40 Leonito Martens : article 42 (2) a,b jis article 7 b, article 9 h, article 40
8	Yayat Sudrajat (Dansatgas-Commander of Tribuana Task Force)	Primary Count ; 1. Article 42 point 1 letter a, b jis article 7 letter b, jis article 9 a, jis article 37 2. Article 42 point 1 letter a, b jis article 9 h article 40 Subsidiary Count: 1. article 7 b, jis article 9 a, pasal 37, article 41 2. article 7 b, jis article 9 h, article 40, article 41
9	Adam Damiri (Pangdam- The High Commander of IX Udayana Military Region)	1. Article 42 point 1 letter a, b jis 9 a jis article 37 2. Article 42 point 1 letter a, b jis article 9h article 40
10	Tono Suratman (Danrem-The Commander of 164 Military Regiment)	1. Article 42 point 1 letter a, b jis 9 a jis article 37 2. Article 42 point 1 letter a, b jis article 9 h, article 40
11	Nur Moeis (Danrem-The Commander of 164 Military Regiment)	1 Article 42 point 1 letter a, b jis 9 a jis article 37 2 Article 42 point 1 letter a, b jis article 9h article 40

12	Eurico Guterres (The Vice Commander of PPI/Commander of Aitarak	1. Article 7 b, jis article 9 a, article 42 (2), article 37 2. Article 7 b, jis article 9 a, 42 (2), Article 40
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Thus, in all the Court processed eighteen defendants who were indicted in twelve case dossiers or indictments. From the 18 defendants in the first instance, the court ruled that six were guilty and the rest were acquitted. From the six defendants judged guilty, three were from the military, one from the police and two civilians.

Defendant, Position, and Judgment at First Instance

No	CASE	POSITION	VERDICT
1	Abilio Jose Osorio Soares	Former Governor of East Timor	Guilty, 3 years imprisonment
2	Timbul Silaen (Brigadier General)	Former Chief of Regional Police Force (Kapolda) East Timor	Acquitted
3	Herman Sedyono (Lieutenant Colonel)	Former Head of District (Bupati) Kovalima	Acquitted
4	Liliek Koeshadiyanto (Lieutenant Colonel)	Former Commander of Suai District Military Command	Acquitted
5	Gatot Subyaktoro (Captain)	Former Chief of Resort Police (Kapolres) Kovalima	Acquitted
6	Achmad Syamsudin (Captain)	Former Chief of Staff of Suai District Military Command	Acquitted
7	Sugito (Lieutenant)	Former Commander Suai Military	Acquitted

		Sector Command	
8	Endar Prianto (Lieutenant Colonel)	Former Commander of Dili District Military Command (untill 8 August 1999)	Acquitted
9	Soejarwo (Lieutenant Colonel)	Former Commander of Dili District Military Command (Since 9 August 1999)	Guilty, 5 years imprisonment
10	Hulman Gultom	Former Chief of Resort Police (Kapolres) Dilli	Guilty, 3 years imprisonment
11	Asep Kuswani (Lieutenant Colonel)	Former Commander of Liquisa District Military Command	Acquitted
12	Adios Salova	Former Chief of Resort Police (Kapolres) Liquica	Acquitted
13	Leoneto Martens	Former Head of District Liquica	Acquitted
14	Yayat Sudrajat (Colonel)	Former Tribuana Military Unit Chief	Acquitted
15	Adam Damiri (Major General)	Former Chief of the Udayana Regional Military Command	Guilty, 3 years imprisonment
16	Tono Suratman (Brigadier General)	Former East Timor Military Commander (until 12 August 1999)	Acquitted
17	Nur Moeis (Brigadier General)	Former East Timor Military	Guilty, 5 years imprisonment

		Commander (Since 13 August 1999)	
18	Eurico Guterres	Former Vice Commander of PPI and former of Commander of Aitarak	Guilty, 10 years imprisonment

I.b. Analytical Tools

A Judgment document in the Indonesian context comprises three parts, and the analysis in this section is based upon them.¹⁴⁷

a) testimony and evidence received by the court

The testimonies and evidence received by the court simply refer to the facts expressed in the testimonies and evidence presented during the trials. Not all of them will necessarily be adopted as legal facts by the panel of judges in their deliberation. The panel of judges shall determine later which facts they choose to believe as representing the truth about the crime and the defendant tried for the crime.

b) court legal facts

as already clear from the above, legal facts are facts believed to be valid and representative of the truth by the panel of judges. The legal facts in turn will be deliberated by the panel of judges to reach their ruling and final judgment.

c) court deliberation and ruling

court deliberation and ruling are the conclusions and rulings the panel of judges determined based on the legal facts in regards to the indictments. In a nutshell, this part contains the panel's decision whether or not a crime has occurred as indicted and, if so the defendant is accountable for it.

¹⁴⁷ It should be explained at this point that the structure of all verdict document consists of several sections, namely the elaboration of the explanations given by parties whose testimonies have been given in front of the court such as witnesses, victim witnesses and the defendant. Following that, a judgment shall contain the legal facts derived from the explanation from the parties that are adopted by the panel of judges. The last part shall be the legal analysis of the panel, namely the phase to test the legal facts against the articles indicted. See Article 197 Law No. 8 year 1981 on the Criminal Procedural Law (KUHAP).

It is not within the scope of this report to answer the question whether or not the defendants tried were in fact guilty or not for the charges against them. Instead, this paper shall concentrate in answering the two questions mentioned in the introduction based on the judgments, namely:

- 1) Did gross violations of human rights occur in 1999 East Timor?
- 2) If the gross violations of human rights occurred in 1999 East Timor, was there institutional responsibility for them?

This is different to the method employed by the court. Since a criminal judicial process is pursued to seek individual accountability- to determine whether or not a defendant is guilty or not- three panels of judges in the Court tried to answer the following questions to establish the guilt or innocence of the defendants tried¹⁴⁸:

- A. Were there gross human right violations in East Timor in 1999?
- B. If so, who were the perpetrators?
- C. Is the particular defendant criminally responsible for the human rights violations?

Point A and B are relevant to the mandate of this research, whereas the answer to C shall be referred to in this section only to analyse the court's conclusions in regards to the two questions this research attempts to answer.

I.c. The Factors Influencing the Performance of the Court

Several factors influencing the court process, including the judgments of the panels of the Court, are: (1) the mistaken implementations of the articles; (2) the failure to present witnesses in the court - especially the victim witnesses; (3) the withdrawal of earlier testimonies witnesses had made under oath during the investigation stage when they were testifying in court which had a significant impact to the legal facts drawn by the panels; (4) differences in the interpretation of elements of the crimes between one panel and the other.

¹⁴⁸ See the judgment for defendants Herman Sedyono et.al., Asep Kuswani et.al., and Yayat Sudrajat.

1. In regards to the articles the defendants were charged with, there was a mistake in implementing the article during the formulation of the counts. The inappropriate implementation had implications on the possibilities for substantiation in court. One of the examples of such “errors” is what happened in the case of Herman Sedyono et.al.¹⁴⁹

2. There were few victim witnesses in the court in comparison with the victims testifying in the investigation phase as recorded in the investigation dossier (BAP). Throughout the trial process, the Prosecution, *for all cases tried by the court*, could only present seven witnesses to the court,¹⁵⁰ all of whom gave essentially the same testimonies in several trials. The judges in some of the trials repeatedly requested the prosecution to produce more witnesses with relevant testimony, and especially victim witnesses. These requests were consistently ignored by the prosecution.

The minimal amount of victim witnesses greatly influenced the facts that could be revealed in court. Typically, the witnesses who, based on their sworn statements in the BAP, had the most relevant testimony to offer, were not produced by the prosecution. In several cases, the victim witnesses’ accounts were adopted by the panels, such as in Adam Damiri’s and Noer Muis’ case. But in the majority of cases, the direct testimonies of the seven, or the written accounts of others that were read in front of the court were not adopted as legal fact because they were considered as not in line with the testimonies of other witnesses.¹⁵¹ This was extremely problematic for purposes of proof and credibility,

¹⁴⁹ There was an error in implementing the article in this case. The Prosecutor applied Article 42 verse 1, Law No. 26 /2000 as the primary count indiscriminately to the five defendants, whereas this article was only applicable for a military commander, whereas defendant I (Herman Sedyono) during the attack in Suai Church complex was a Head of District and therefore was a civilian official. The same with Defendant III (Gatot Subiyaktoro) who was the Chief of Police. Herman Sedyono should have been charged using Article 42 verse 2 Law No. 26 year 2000. This mistake was not made during the trial of Timbul Silaen, who was charged with Article 42 verse (2).

¹⁵⁰ The victim witnesses are Joao Ferreira, Emilio Baretto, Domingus Dos Santos Mauzinho, Florindo de Jesus, Alfredo Sanchez and other witnesses examined through teleconference - Nonato Soares and Nelio Masquita Rego.

¹⁵¹ As an example, the panel of judges rejected the victim witnesses’ sworn testimony that was read in front of the court, because it was negated by the defendant during the trial. The witnesses were Tobias Dos Santos, Fres da Costa and Armindo Granadeiro, who in their statement made under oath which was read in front of the court testified to the involvement of the defendants in the incident in Suai Church. Because a written statement was considered by the panel as having less weight of substantiation, this was considered as insufficient to implicate the defendants. See the judgment on Herman Sedyono et.al, p. 131.

because these witnesses who were put on the stand by the Prosecution were also defendants in other trials in the Ad Hoc Humans Right Court or they were related by profession to the defendant, whether it be as superior or subordinate.¹⁵² Their testimony was often irrelevant and of questionable credibility.

Many of the witnesses presented by the Prosecutor might more appropriately be considered as *a de charge* witnesses, or in other words defense witnesses, rather than as *a charge* witnesses, namely the prosecutorial ones who support the charges in the indictment. This was because they consistently testified on behalf of the defendant and contradicted the essential elements of the Prosecution case as reflected in the indictment and BAP. One can only wonder why the Prosecution called such witnesses since they destroyed rather than supported the Prosecution’s case. Examples are the witness testimonies stating that no members of TNI or Police had been involved in the “riot,” or witnesses who stated that the defendants had taken preventive measures or attempted investigation. These testimonies lent support to the line of argument that focuses on the localization of the “riot.” These testimonies also negated the elements which the Prosecution was supposedly trying to prove in calling the witnesses. The defense on the other hand, also presented *a decharge* witnesses for the defendant.

Witness Composition Table

Dossiers	Prosecution Witnesses	Defense Witnesses	Prosecution Expert Witnesses	Defense Expert Witnesses	Written Testimonies Read in front of the court
Herman Sedyono et.al.	15 people	8 people	-	2 people	4 people
Abilio Soares	17 people	8 people	-	1 person	-
Hulman Gultom	15 people	2 people	1 person	1 person	2 people
Soedjarwo	8 people	7 people	1 person		6 people

¹⁵² For example, the Head of District Herman Sedyono and Head of District Leoneto Martins who were also defendants in the Court testifying in the trial of Abilio Soares. See the judgment on Abilio Soares. Also Soejarwo (former Dandim Dili) who testified in the trial of Noer Muis (former Danrem 164/Wira Dharma), other witness for defendant Noer Muis is Yayat Sudrajat (Tribuana Taskforce), and Liliek Koeshadiyanto (Dandim Suai). See the judgment on Noer Muis.

Asep Kuswani et.al.	10 people	7 people	1 person		10 people
Tono Suratman	18 people	5 people	1 person	2 people	3 people
Endar Priyanto	12 people	8 people	1 person		10 people
Yayat Soedrajat	17 people	3 people		1 person	9 people
Eurico Gutteres	11 person	1 person			7 people
Timbul Silaen	16 people	9 people		3 people	4 people
Adam Damiri	16 people	8 people	1 person	5 people	4 people
Tono Suratman	18 people	5 people		3 people	3 people

3. Aside from the minimum amount of victim witnesses, throughout the court procedure many of the testimonies of the witnesses or defendants were withdrawn.¹⁵³ Most of the witnesses changed their testimony in regards to their reference to incidents as “attacks” in the previous testimonies, and during the trial called them “clashes” instead. This was done so consistently by so many witnesses that one might question its spontaneity. This withdrawal of sworn testimony influenced the legal facts adopted by the panel. There were, however, different reactions from the panels with regards to the withdrawal. The reactions can be classified into three: first, adopting the revised testimonies because they were in accordance to other testimonies given in front of the court; second, not acknowledging the withdrawal and following the testimonies in the investigative dossier;¹⁵⁴ and third, finding that the testimonies from the witnesses that had relations with the defendants as not trustworthy.¹⁵⁵

4. The last factor influencing the conclusion of the panel of judges is the difference in interpreting the elements of crimes indicted. The difference of the interpretation influenced the criminal accountability of each defendant. An example of the difference is

¹⁵³ As an example is the testimony withdrawn by the Chief of Suai Resort Police, Gatot Subyaktoro, in the trial. The defendant claimed that he was directed by the investigators. However this withdrawal was not accepted by the judges because as a Chief of Resort Police he should have known what would have happened if he had given a statement only based on someone’s direction instead of the truth. Therefore the panel maintained to refer to the earlier statement given in the investigation. See the judgment on Herman Sedyono, et.al.

¹⁵⁴ See the Judgment on Herman Sedyono et.al.

¹⁵⁵ The panel of judges stated that the quality of the witnesses who were the superiors, colleague, or subordinate of the defendant has been compromised by the possibility that the testimonies were constructed to cover the guilt of the defendant or giving testimonies that lighten the complicity of the defendant. See the judgment on Adam Damiri, p. 150.

in the deliberation in regards to Article 42 Law No. 26/2000. Some of the parties understood this article as stipulating whether or not the defendant was directly involved in the crime in order to fulfill the element of command responsibility. On the other hand, this article was also interpreted to encompass the defendant's negligence or failure to act to prevent the crime or to punish the perpetrators after the commission of a crime, especially for the defendant's subordinates involved in aiding, abetting or omission.

Indeed the difficulty in capturing the conclusive truth in a criminal proceeding is the nature of the process itself, namely that it is aimed at revealing whether or not an individual is liable for the crime charged against her or him. Therefore, the exploration of the facts by the court tend to be limited to what is thought as relevant to the determination of culpability of a defendant as charged by the prosecutors, which is also somewhat restricted, as already mentioned above, by some factors including the interpretation of the prosecutor and the judges on the elements charged. Therefore, the analyses from this section onwards shall also refer to facts brought before the court as evidence, namely testimonies and documents, some of which were not adopted as legal facts or analyzed in-depth by the panel due to the above considerations.

II. The Occurrence of Gross Violations of Human Rights

By employing various approaches, *all panels found in their deliberations that there indeed had been crimes against humanity in the determined tempus and locus.* All panels of judges of the Ad Hoc Human Right Court ruled that gross violations of human rights in the form of crimes against humanity had occurred in 1999 in East Timor within the scope of *tempus* and *locus* determined by the Presidential decree and the case related to the particular defendant. The underlying acts considered by all the panels as already satisfactorily substantiated are murder and assault in accordance with article 9 letter (a) and (b) Law No. 26/2000.¹⁵⁶ It should be noted, however, that the panels have no

¹⁵⁶ This refers to the jurisdiction determined for the Ad Hoc Human Right Court. It should be noted however, that the particular *tempus* and *locus* for each case dossier is different, depending on the position of the defendant(s) at the time. Those of higher hierarchy are sought to be accountable for many incidents

standardized approach to determine the fulfillment of chapeau elements of the crimes against humanity- namely widespread or systematic attack and the civilian population targeted.

II.a. Underlying Act : Murder and Assault

In the twelve case dossiers, the Court stated that, in accordance with the indictment by the Public Prosecutor, the following crimes have been committed in the aforementioned five focus cases:

- a. murder
- b. assault

For murder, the definition is used is based on article 340 of the Criminal Code.¹⁵⁷ This article stipulates for the fulfillment of three elements of murder, namely intent, the death of the victim, and premeditation. Whereas the injured victims were considered sufficient to prove that “*penganiayaan*” have occurred. “*Penganiayaan*” in the Indonesian Criminal Code is actually closer to the legal definition of “assault” which is adopted by some panels to refer to the underlying crimes that were ruled to have occurred- namely the definition in Article 351 of the Criminal Code.¹⁵⁸ Yet some judgments also adopted the interpretation of “*Penganiayaan*” as “persecution” in the Rome Statutes for the International Criminal Court, which is considered as the source of Law No. 26 year 2000.¹⁵⁹ Of course, persecution as a crime against humanity under the Rome Statute is an utterly different offense than “*Penganiayaan*.”

The conclusion in the majority of judgments that murder and assault in fact occurred was derived by the court from the legal facts adopted that there had been a number of

that have a case dossier that encompasses a longer *tempus* and more extensive *locus* compared to those of lower rank.

¹⁵⁷ Article 340 of the KUHP states: “whomever with intent and premeditation takes someone’s life shall be convicted for premeditated murder punishable with capital punishment or 20 years imprisonment

¹⁵⁸ “*Penganiayaan*” in article 351 KUHP- Criminal Code is an act with intent that resulted in discomfort, pain, or injury.

¹⁵⁹ In Hulman Gultom’s judgment, the mistake in the translation of *persecution* into assault or “*penganiayaan*” was addressed by the panel who clearly stated in the judgment that *penganiayaan or “persecution” in the Rome Statutes is the taking away with intent and cruelty the basic rights that conflicts with international law.*” See the judgment on Hulman Gultom, p. 90.

fatalities and people injured in the incidents related to the indictments.¹⁶⁰ In regards to murder- the panels do not overtly address the three elements of murder as stipulated in article 340. While this might be considered a weakness, this is not actually a requirement in a crimes against humanity legal process. As pointed out in Timbul Silaen’s judgment, quoting the practices in the Nuremberg Tribunal and ICTR, with regards to murder and assault as a gross violations of human rights, proving the death and the identity of the victims as well as the location of corpses is not obligatory, rather the facts described from legal evidence that the attack occurred is sufficient to prove that there was an attack against a civilian population.¹⁶¹

Number of Victims in Each Dossier

Defendants	Number of Victims in the Judgment
ABILIO SOARES	<ol style="list-style-type: none"> 1. Attack against Liquica Church Complex and Father Rafael’s Residence: 9 fatalities and 6 wounded 2. Attack against Manuel Carascalao’s House: 17 fatalities and 1 wounded 3. Attack against Ave Maria Church, Suai: 27 fatalities
TIMBUL SILAEN	<ol style="list-style-type: none"> 1. Attack against Liquica Church Complex and Father Rafael’s Residence: 9 fatalities and several wounded 2. Attack against Manuel Carascalao’s House: 12 fatalities and 25 wounded 3. Attack against Dili Diocese and Bishop Bello : 2 fatalities and several wounded 4. Attack against Ave Maria Church, Suai : 27 fatalities and several wounded
HERMAN SEDYONO et.al.	Attack against Ave Maria Church, Suai : 26 fatalities
EURICO GUTERRES	Attack against Manuel Carascalao’s House : 11 fatalities and 3 wounded
ENDAR PRIYANTO	Attack against Manuel Carrascalao’s House: fatalities and wounded but no determined quantity
ASEP KUSWANI et.al.	Attack against Liquica Church Complex and Father Rafael’s Residence : 5 fatalities and 20 wounded
SOEDJARWO	<ol style="list-style-type: none"> 1. Attack against Dili Diocese, September 5, 1999 2. Attack against Bishop Belo’s Residence, September 6, 1999 fatalities and wounded but no determined quantity

¹⁶⁰ To prove the crimes in the form of murder and assault in Article 9, letter a and h, Law Number 26/2000 based on the reference to article 340 KUHP and article 351 KUHAP.

¹⁶¹ See the Judgment on Timbul Silaen, pp.125-126.

YAYAT SUDRAJAT	Attack against Liquica Church Complex and Father Rafael's Residence: 5 fatalities and 20 wounded
HULMAN GULTOM	<ol style="list-style-type: none"> 1. Attack against Manuel Carascalao's House: 12 fatalities and wounded. 2. Dili Diocese: wounded. 3. Residence of Bishop Belo : 1 fatality, one child wounded
ADAM DAMIRI	<ol style="list-style-type: none"> 1. Attack against Liquica Church Complex and Father Rafael's Residence: 20 fatalities 2. Attack against Manuel Carascalao's House: 17 fatalities 3. Attack against Dili Diocese and Bishop Belo : 1 fatalities 4. Attack against Ave Maria Church, Suai : 27 fatalities
NOER MUIS	<ol style="list-style-type: none"> 1. Attack against Dili Diocese and Bishop Belo : 3 fatalities and 4 wounded 2. Attack against Residence of Belo : 1 fatalities 3. Attack against Ave Maria Church, Suai: 26 fatalities
TONO SURATMAN	<ol style="list-style-type: none"> 1. Attack against Liquica Church Complex and Father Rafael's : 5 fatalities and several wounded 2. Attack against Manuel Carascalao's House : 12 fatalities and several wounded <p>as well as material and immaterial losses for civilians who were seeking refuge</p>

The murder and assault (or persecution) that were acknowledged in all Judgments of the Court are supported by evidence in the form of the testimony of witnesses, victims and experts, documents, and physical evidence related to the crimes such as weapons, clothing of victims, etc. These are enumerated in Appendix 3.

Only two judgments considered all five incidents, because in those cases the defendants were of higher rank and were indicted for their involvement in all five cases within the jurisdiction of the Court. These two Judgments are that of Adam Damiri and Timbul Silaen. The number of victims of killing and assault in the five cases can be found in the judgment on the case against Timbul Silaen.

The Judgment on Timbul Silaen reads as follows:

“The victims of the various attacks of several sites namely the Liquica church complex on 6 April 1999, were 9 (nine) fatalities and several wounded. Whereas in the incident on 17 April 1999 at the residence of Manuel Carascalao, 12 (twelve) fatalities and 25 (twenty five) wounded. In the incident that took place on

*5 September 1999 at the residence of Bishop Bello, 2 (two) people died and several were wounded. And during the incident on 6 September at Ave Maria Church, 27 (twenty seven) died and several were wounded.*¹⁶²

Out of the five focus cases in which murder was one of the underlying crimes included in the indictment, one that has ample evidence of murder is the attack against Ave Maria Church in Suai, because there are various types of evidence that substantiated the crime.¹⁶³ Whereas, in several other cases the number of victims and the cause of death and injured have been determined only through witness testimony. As a result there are different numbers of victims quoted for the same incident in different judgments. For example, in the case of the attack on Father Rafael's house and the Liquica Church Complex, in Abilio Soares' Judgment, the number of fatalities acknowledged in the incident was 9, while in Asep Kuswani et.al.'s Judgment the number was 5. In the case of Attack against Manuel Carascalao's residence the list of fatalities consists of 17 names, and a number of people were injured.

Aside from the underlying crimes in accordance to the charges brought forth by the Public Prosecutor, some judgments establish as a legal fact that there were other forms of violence occurred in East Timor during the determined time period, namely the arson of residences (scorched earth) resulting in material and immaterial losses.¹⁶⁴

II.b. Incidents: Widespread or Systematic Attacks

There are at least two interpretations of how to meet the elements of systematic or widespread as elaborated in some Judgments as discussed above.¹⁶⁵ Others, however, do not discuss these elements at all due to the word "or" in the stipulation of the chapeau element (widespread *or* systematic). Thus if the "widespread" is considered proven, the

¹⁶² See Timbul Silaen's Judgment, p. 124.

¹⁶³ The evidences in this case, aside from the testimonies of the witnesses, were also complemented with the autopsy report for each victim of the attack. In the autopsy report, it was clear that the cause of their death was high velocity metal bullet which indicate the use of firearms. See Judgment on Herman Sedono et.al.

¹⁶⁴ See Abilio Soares Judgment, p. 91.

¹⁶⁵ This difference is due to the reference used by each panel of judge, some refer to international law while others do not elaborate on the systematic and widespread.

“systematic” is not further discussed,¹⁶⁶ or its interpretation was a combination of “widespread” or “systematic”. In interpreting the element of systematic or widespread, some of the panels also explored whether or not an attack is a part or a continuance of an organization or the state’s policy that had been planned previously (preconceived policy or plan).¹⁶⁷ The element of policy shall be further elaborated in the section on institutional responsibility.

There are several interpretations of the element of “widespread” in the judgments on the Ad Hoc Human Right Court. In general, there are four common indicators used by the panels to define “widespread”:

- a) the multiplicity or massiveness of victims
- b) the incidents are widespread
- c) repetitiousness of an incident/act
- d) the incidents are part of a collective action

As with the underlying crimes, the panel of each case’s approach in deliberating the widespread element was diverse. For panels that presided over cases that were limited to one incident (due to the lower position of the defendant(s) in the hierarchy of armed forces, militia, and/or government which limit their possible complicity to one incident amongst the five), they tended to assess the element of widespread based on the multiplicity of the victims. Aside from that, the fatalities and victims who were injured varied, namely including civilian men, women and children.

The twelve Judgments showed that the widespread element has been proven either from the multiplicity of the victims, over an extensive area (widespread), repeating acts, which also signifies a certain pattern, as well as being committed by multiple actors/parties (collective). ***For now, it is sufficient to state that all panels in the court believed that***

¹⁶⁶ See Soejarwo’s judgment, p. 39.

¹⁶⁷ See Tono Suratman Judgment, pp. 63-64.

judging from the massiveness of the acts - in terms of victims and destruction - it was impossible for them to be committed by one person or spontaneously¹⁶⁸.

Related to the amount of victims as an indicator to determine the fulfillment of the element of “widespread”, in the case against Yayat Sudrajat for the Attack on the Liquica Church and the residence of Father Rafael, for example, the panel found the proof of widespread to be the destruction of a house and massive suffering in terms of significant material loss as well as injuries and loss of lives for the population. An act or type of act that is done in such a way and collectively can be referred to as a brutal and horrific act. The facts before the court showed that there have been five fatalities and 20 injured¹⁶⁹.

The judgment on Yayat Sudrajat:

“... that the attack resulting in the destruction of Pastor Rafael’s residence resulting in massive suffering in form of material losses of significant amount as well as injured victims and fatalities within the community, according to the opinion of the court can be categorized as the result of an act or type of act that was committed collectively and can be referred to as brutal and horrendous act as meant in the definition of widespread attack.”¹⁷⁰

The widespread element can also be seen from the attacks in various sites. Based just upon the facts revealed in court, it was shown that across all 13 districts of East Timor, there have been violence, murders, assault against the population, and scorched earth with similar pattern and repeatedly. This can be seen in the Judgment of the Court in the Abilio Soares case. An excerpt from the judgment on Abilio Soares explains:

“....Bearing in mind that this case based on the facts revealed during the trials there had been in almost the entire region of East Timor, consisting of 13 districts, violence murders, abuse of assault, acts of scorched earth with similar pattern”.¹⁷¹

On the other hand, “systematic” is interpreted as the presence of premeditation towards the execution of a certain plan. The incidents should be of a similar pattern, continuous,

¹⁶⁸ For example, See Judgment on Herman Sedyono, et.al.

¹⁶⁹ See The Judgment on Yayat Sudrajat and Asep Kuswani et.al.

¹⁷⁰ See the judgment on Yayat Sudrajat, p. 66.

¹⁷¹ See the judgment on Abilio Soares, p. 91.

with clear relations between one and another, significant use of public or private facilities, and involvement of authorities (government and or armed forces). Another interpretation of systematic is the existence of these four elements:

- the presence of a political objectives, a plan to attack, an ideology, in general terms, to destroy or weaken a community
- to commit a crime in massive scale against a civilian group, or repetitious or continuous inhumane acts which are correlated with one another
- significant preparation and utilization of public or private facilities
- high level politics or military authority in interpreting or realizing a methodological plan.¹⁷²

In *all the judgments*, the following pattern of the incidents of violence can be found: First, they always started with a mass gathering consisting of pro-integration organizations. Second, there was the objective to ensure or promote the victory of the pro-integration groups. Third, attacks were always against pro-independence civilian population who were seeking refuge in refugee centres that were outside the government's pre-determined refugee centres. The *locus* was extensive and the acts were committed repeatedly.

For example, the Court found that the perpetration of the attack on the Liquica church complex as well as Pastor Rafael's residence was precipitated with a plan of attack which was committed by the pro-integration militia (Besi Merah Putih) against pro independence supporters. The pro integration group previously had gathered in front of the Liquica church bearing traditional weapons in form of hatchets, spears, arrows, and other tools for beating made of wood. Whereas inside of Pastor Rafael's house there were many indigenous people who were seeking a refuge, they were pro-independence group people consisting of elderly, men, women and children.¹⁷³ They also found that prior to the attack, the pro-integration group had yelled that they would commit an attack. This is

¹⁷² This interpretation of "systematic" is not consistent with the jurisprudence of the ICTY and ICTR on this issue, which is well settled. The question of definition has subsequently been resolved by the Supreme court of Indonesia.

¹⁷³ Asep Kuswani et.al.Judgment, p. 81.

clear from the legal facts¹⁷⁴ adopted by the panel of judges in the case related to Asep Kuswani et.al.:

“ that it is true that Besi Merah Putih threatened with yelling that if jacinto was not surrendered at 12.00 Wita that day they would attack.”

“... approximately at 12.00 Wita [a] shot of firearms was heard from amidst the gathering of the mass and the Besi Merah Putih group... entered and attacked the church complex where Pastor Rafael’s residence was situated. ...”¹⁷⁵

The attack on the residence of Manuel Viegas Carascalao on 17 April 1999, started from the mass rally on the yard of the Governor’s office attended by pro-integration groups, amongst others Aitarak, BMP, Halilintar et cetera. In the mass rally there was a speech made by a pro-integration leader (Eurico Guterres) that fueled the emotion of the masses to commit murder, which was the reflection of vengefulness against the anti-integration civilian residents. Afterwards the pro integration consisting of Aitarak and Besi Merah Putih deliberately committed the attack against civilian population at the residence of Manuel Viegas Carascalao, after the mass rally ceremony had ended, resulting in the death of eleven civilians and three wounded.¹⁷⁶

The court found that the attacks against Dili Diocese and the residence of Bishop Belo’s residence were interrelated chain of attacks. The attack was initiated by the tension between the pro-integration and pro-independence supporters after the announcement of the popular consultation’s result, and there were indications of dissatisfaction on the part of the pro- integration. The attack against Dili Diocese was committed on September 5 by the pro integration group against the pro independence who were taking refuge in Dili Diocese, resulting in the death of three civilians. A day afterwards, the attack on Bishop Belo’s house against the pro-independence refugees was committed by the method of shooting at Bishop Belo’s house.¹⁷⁷

¹⁷⁴ Legal facts adopted from the testimony of Damianus Dapa, a police officer from Liquica Police Resort and Yayat Sudrajat, the Tribuana Task Force

¹⁷⁵ Asep Kuswani et.al. Judgment, p. 82.

¹⁷⁶ Eurico Guterres, Judgment, p. 111.

¹⁷⁷ Noer Muis, Judgment, pp. 72-72.

The attack against Ave Maria Church in Suai on 6 September 1999, was initiated in the evening of 5 September 1999 when the pro-integration group threatened and surrounded the Ave Maria Church Complex in Suai until the morning and noon of 6 September 1999. These facts were concluded by the panel of judges in Herman Sedyono's case as showing the presence of a fixed plan or strategizing for the Laksaur and Mahidi groups to attack the church complex- namely the time span which is sufficient to do so, from morning until noon when the first shot was heard approximately at 13.00 WITA (Middle Indonesian Time). The panel explained that from the length of time of the process there is corroborative evidence that the Laksaur and Mahidi militias were structured and organized in the act of attacking the population inside the Ave Maria Church Complex. As the result of the attack approximately 26 victims died.¹⁷⁸

In regards to the systematic element, some judgments stated that the attacks, which occurred in several areas and were directed against a certain group were interrelated to one and another. The conclusion could only be reached in cases that seek individual liability for the entire incidents within the jurisdiction of the court, for example in the case of Adam Damiri and Timbul Silaen. Therefore in these cases the elements of widespread and systematic were blended.

For example in the judgment on Timbul Silaen the Court states:

“The incidents occurred in several areas of East Timor, directed to a certain group which was gathered in large amount and concentrated within a site, namely the pro independence group and civilian population wherein between the time and situation in which each incident occurred was interrelated and closely connected between one another.”¹⁷⁹

The substantiation that the act was committed systematically was also interpreted from the fact that the attacking group was organized and had a clear chain of command. This will be further elaborated in the discussion on institutional responsibility, but one example of a judgment that pointed to this fact is from the case against Timbul Silaen:

¹⁷⁸ See Herman Sedyono et.al, Judgment, pp. 102-105

¹⁷⁹ See Timbul Silaen's judgment, p. 124.

“That the incidents were committed systematically was apparent from the organized attacker groups (that belonged) to the pro integration/autonomy group who used standard and organic firearms, as well as sharp weapon, who committed the murder and assault deliberately, which resulted in the intended death and injuries of the victims, (and from) the sufficient time for the group to mobilize until reaching hundreds or even thousands of people.”¹⁸⁰

“that the group was organized is proven from the existence of the leader of the group and even leaders of the sub groups (Aitarak, Besi Merah Putih (BMP), and Pam Swakarsa) which were united in the pro integration/autonomy group and there was also the de facto relation from the one who ordered or inspired through organized terror.”¹⁸¹

Based on the above facts, the conclusion of the fulfillment of systematic and widespread elements can be derived from only one incident indicted against the defendants or as the conclusion of the entirety of the incidents within the jurisdiction of the court.

II.c. Victims: Civilian Population

The requirement of an “attack against a civilian population” was interpreted in the judgments as attacks that are not necessarily aimed to annihilate the whole population; it may be only part of a civilian population of a certain political belief.¹⁸² The attack is directed to a specific group that is the target of the attack. The attack does not have to be committed by a military force with military force’s facilities- it may also be committed by non-military force.¹⁸³ An attack also includes actions by two parties where one is offensive and the other defensive.¹⁸⁴

“Civilian population” is interpreted as non-combatants or a population of non-military status. This definition is based on Law No. 1/1988 on the Amendment to Law No.

¹⁸⁰ See Timbul Silaen’s judgment, pp. 124-125.

¹⁸¹ See the judgment on Timbul Silaen, pp. 124-125.

¹⁸² See the judgment on Tono Suratman, p. 69.

¹⁸³ See the judgment on Adam Damiri, p. 166.

¹⁸⁴ See the judgment on Asep Kuswani et.al., p. 92.

20/1982 on main defence and security forces of The Republic of Indonesia, where in Article 2 the definition of combatant and military is described.¹⁸⁵

The court concludes that the attack was targeted against the civilian population, although in several judgments it is also stated that the attacked party was the pro-independence group. Another issue that was raised during the trials was whether what had happened was an attack or a clash. However, the court found there to be undisputable facts that the victims were not only pro-independence activists but also children, women and religious figures.

The explanation of the former Chief of Regional Police (Kapolda) of East Timor Timbul Silaen stated that:

“the victims due to the conflict were mainly from the pro-independence group and it is true that in the residence of Bishop Belo thousands of people took shelter due to the conflict.”¹⁸⁶

The explanation of Makaraw, former member of Dili resort police (Polres):

“that due to the incident in the residence of Bishop Belo, one child died.” “that the victims heard from the [inside] the residence of Bishop Belo screams, cries for help from women, children, even men, *they were civilians*.”¹⁸⁷
(emphasis added)

The attack against Manuel Viegas Carascalao’s residence also shows the target was the civilian population who were suspected to be pro-independence:

“that Manelito Carascalao, the son of the witness was murdered, he was hacked and shot and his neck was cut, almost severed from the body by the militias, and during the militia’s attack the residence of the witness, aside from the son of the witness, within the residence of the witness there were children, women, and youths from Turiscai, Alas, Ainaro, Liquisa, 136 people in total, 60 survived the attack while the rest disappeared, there was/were (some) body(ies) in the well after the murder by the Aitarak group, but the witness did not see any grave for the victims.”

¹⁸⁵ See Hulman Gultom’s requisitoir, p 69.

¹⁸⁶ See the Judgment for Abilio Soares, p. 31.

¹⁸⁷ See the Judgment for Adam Damiri, p. 57

Another fact was the attacks were against the population seeking protection in the targeted areas in the attack. The population felt more secure in seeking protection in a church complex or residence of priests, because of the high level of security disruptions at the time. The five cases of attacks showed, except for the attack against Manuel Carascalao's residence, that the target was civilians with the status of refugees in churches or residence of religious figures (Liquisa Church and residence of Father Rafael, Dili Diocese and residence of Bishop Belo, and Ave Maria church in Suai, Kovalima).

The fact that the civilian population had been seeking protection and became the victims of the attacks was elaborated by the former Dili Head of Resort Police (Kapolres) Hulman Gultom:

“On the incident of September 5, 1999 at Dili Diocese, by September 4, 1999 the situation in East Timor was chaotic and out of control, there were attacks committed by the pro-integration/autonomy against the pro-independence group who took shelter in the residence of Bishop Bello [and] on 5 September 1999 there was also an incident at Dili Diocese, resulting in two fatalities and one wounded. The incident on 6 September at the residence of Bishop Bello resulted in 10 (ten) fatalities and several wounded consisting of pro-independence party and civilian population who took shelter in the residence of Bishop Bello.”¹⁸⁸

In the judgment for the case against Tono Suratman the panel stated that:

“... the violence in form of attack, assault, ... resulting in a number of fatalities, injuries, material and immaterial losses for the civilian population (pro independence group) taking refuge in pastor Rafael dos Santos' residence in Liquica, consisting of approximately 500 people, and at the residence of Manuel Viegas Carascalao in Dili approximately 300 people.”¹⁸⁹

The attack against Ave Maria Church, Suai was targeted against the civilian population as mentioned by Liliek Koeshadiyanto, the former Commander of Military District (Dandim) Suai Kovalima:

“... the refugees within the church were from both pro and anti integration, the refugees were protected by the priest. ... The victims of the clash were 27 people.”¹⁹⁰

¹⁸⁸ See the judgment on Timbul Silaen, pp. 43-44.

¹⁸⁹ See The judgment on Tono Suratman, p. 67

¹⁹⁰ See the judgment on Adam Damiri, pp. 26-27.

The judgment on Noer Muis:

“..the attack against Bishop Belo’s residence resulted in 1 fatality, namely of a person named Nunu, and Lili who was 10 years old bore the gunshot wound on her/his left eye, as well as the destruction and burning of Bishop Belo’s residence.”¹⁹¹

Aside from the testimonies, the attack against civilian population is evident from other evidence from the attack of Ave Maria Church in Suai which showed that the victims were civilians, especially because of the evidence pointing at the women and children who have fallen victims, such as children’s shirts, women’s blouses, and pieces of purple skirts.

The evidence from the excavation of the mass graves in of the attack of Ave Maria Church, Suai, Kovalima

No	Evidence	Amount
1.	Plastic mat	7 (seven) piece(s)
2.	Green ribbon	1 (one) piece(s)
3.	Pink curtain	1 (one) piece(s)
4.	Skirt black and white	1 (one) piece(s)
5.	Brown and white skirt	1 (one) piece(s)
6.	White shirt	1 (one) piece(s)
7.	White children’s shirt	1 (one) piece(s)
8.	Batik sheet, white with green flowers	1 (one) piece(s)
9.	Flour sack	1 (one) piece(s)
10.	Blue-squared sarong	1 (one) piece(s)
11.	Brown slippers	1 (one) pair
12.	Purple skirt	1 (one) piece(s)

Based on the facts of some legal facts evidence to the court, found that

the facts testimonies victims, the and submitted the court the

evidence showed that the attack was directed against a civilian population, may it be

¹⁹¹ See the Judgment on Noer Muis, p. 81.

those who were pro-independence or civilians with no identified political affiliation such as women and children who were seeking refuge in the attacked location. *The panels for all twelve cases before the Court considered that the element of “civilian population” had been fulfilled.*

III. The Individual Responsibility for The Violations of Human Rights

III.a. Physical Perpetration

As already elaborated previously, all judgments determined that the gross violation of human rights - namely crimes against humanity - had occurred in the forms of assault and murder. In terms of the physical perpetration of the crimes also, *all judgments ruled that the field perpetrators of the attacks were the pro-integration fighters who organized themselves in militia groups.* The difference between the judgments depends on whether or not there had been involvement of the Police or TNI members who participated in the attacks. As has been discussed previously, in the court there were twelve cases submitted and tried separately and therefore it is not an anomaly to have different conclusions drawn by each case. This is especially so in terms of direct perpetration because of the different evidence and scope of case processed by each panel as well as the legal facts drawn by each panel.

The direct perpetrators were identified in the judgment by referring to the pro-integration militias by name, such as Besi Merah Putih for the attack of Liquica Church¹⁹² and the residence of Pastor Rafael, pro integration group for the attack against Manuel Viegas Carascalao¹⁹³, Laksaur and Mahidi for the attack of Ave Maria Church in Suai.¹⁹⁴

Whereas for the attack of Dili Diocese and Bishop Bello’s residence some judgments mentioned Aitarak as the perpetrators¹⁹⁵

¹⁹² See judgment on Asep Kuswani et.al, p. 61.

¹⁹³ See judgment on Hulman Gultom read at the court on 20th January 2003, ELSAM human rights court monitoring report, p. 9 and Judgement on Tono Suratman, p. 71.

¹⁹⁴ See the judgment on Herman Sedyono et.al. pp.102-103.

¹⁹⁵ While in the judgment addressing this incidents mention Aitarak, the judgment on Soedjarwo mentioned only “pro-integration”

The reasoning behind several judgments which ruled that the perpetrators were pro-integration without any involvement of the police or the military can be represented by the opinion of the panel for the case of Herman Sedyono et.al. In regards to the attack of Ave Maria Church Suai, Kovalima the Judgment states that:

“The Court is of the opinion that what occurred *was not a clash but instead an attack* by Laksaur and Mahidi group that were united in the pro-integration group... with full awareness and attacked and consumed with disgruntlement due to the defeat in the popular consultation Laksaur and Mahidi group, led by Olivio Moruk and [sic] Olivio Muo, never tried to abort (the implementation) of their intent, resulting in more or less 27 fatalities. ... *the perpetrators were Laksaur and Mahidi groups united in a pro-integration group.*”¹⁹⁶ (emphasis added)

With regards to attack of Liquisa Church and the residence of Pastor Rafael, the Judgment for the case against Endar Prianto and Asep Kuswani et.al. stated that the perpetrator of the attack was the pro-integration group (Besi Merah Putih) with no involvement of personnel from TNI and the Police.

The judgment on Asep Kuswani et.al:

“ ... the attack committed by Besi Merah Putih was a collective action or *extension of a policy constructed by the organization without the involvement of other parties.*”¹⁹⁷ (emphasis added)

In regards to the attack against Manuel Viegas Carascalao’s residence, the Judgment on the presiding panel stated that there had been crimes against humanity as expressed in the judgment for the case of Endar Priyanto in relation to the attack of Manuel Viegas Carascalao’s residence:

“based on the legal facts revealed in the trials, it is clear and proven that the perpetrators of the attack who were united in the pro-integration group (Besi Merah Putih) by using generic firearms, blades and arrows have intentionally committed the assault in the residence of Manuel Viegas Carascalao on 17 April 1999.”

¹⁹⁶ See the judgment on Herman Sedyono et.al, p. 101

¹⁹⁷ See the judgment on Asep Kuswani et.al., p. 94. This version is adopted from the testimony of Yayat Sudrajat which was actually conflicting with the testimony of victim witness Lucas Soares who testified that he saw people “with military attire” committing the attack. His testimony was read in front of the court. The panel later ruled that Soares’ account was not adopted because his version was denied by the defendant.

A more general conclusion from the panel of judges on the perpetrators of the attack in regards to the five incidents which pointed at the pro-integration militia can be seen from the judgment from the defendant Timbul Silaen.

The judgment from the defendant Timbul Silaen reads:

“That the incidents were committed systematically was apparent from the organized attacker groups (that belonged) to the pro integration/autonomy group who used standard and organic firearms, as well as sharp weapon, who committed the murder and assault deliberately, which resulted in the intended death and injuries of the victims, (and from) the sufficient time for the group to mobilize until reaching hundreds or even thousands of people.”¹⁹⁸

There remained different conclusions between the panels of judges with regards to direct perpetrators, especially concerning the involvement of the Armed Forces (TNI and the Police). The presiding panel of judges in Adam Damiri’s case stated that there was active and passive involvement of TNI members under the command and effective control of the defendant. Whereas referring to the examination of the other defendants who were the subordinates of Adam Damiri, the conclusion reached by the panel in those cases was there had been no active involvement of TNI members in all of the incidents.¹⁹⁹ The Adam Damiri Judgment most clearly stated that there were TNI members actively participating in the perpetration of crimes against humanity.

An excerpt from the Judgment on Adam Damiri explains:

“Bearing in mind that it has been proven in the trials that the perpetrator of crimes against humanity in the aforementioned incidents were the Pro-Integration group, *but it has also been proven in the trial that there were involvements of TNI members*: (Emphasis added)

In the attack of Liquisa Church on 5 and 6 April 1999, resulting in 20 fatalities and many wounded, it is proven that: There were members of TNI in alert position together with Polri members at the crime scene without taking any action; that witness Rafael Dos Santos saw and *recognized the TNI members participating in the attack, they are members of Liquisa Kodim, namely Chief Sergeant TNI Raymundo Dos Santos and member of Maubara Koramil, as well as other TNI*

¹⁹⁸ See Judgment on Timbul Silaen, p. 124.

¹⁹⁹ The subordinates of Adam Damiri were Tono Suratman and Noer Muis (Former Danrem of Dili), Yayat Sudrajat, Endar Prianto, Asep Kuswani and Liliek Koshadiyanto. All the names mentioned were charged and their cases were submitted to the court.

members such as Tome Diego, Jacob, and the Police Force member Second Sergeant Florindo. According to the testimony of Rafael Dos Santos, they committed the attack together with Besi Merah Putih Militia; That the attacking group started from the front yard of the Liquisa Kodim; tear gas canisters launched by the apparatus were directed into the residence of where refugees were gathered.²⁰⁰ (emphasis added)

In the attack of Manuel Viegas Carrascalao's residence on 17 April 1999, The Commander of Military Regiment (Danrem) 164 Wira Dharma Col. Tono Suratman was aware of the attack because it had been directly reported to him by the witness, but he took no action.²⁰¹

In the attack of Dili Diocese on 5 September 1999 it is proven that the security apparatus, specifically TNI, did not succeed in the conducting preventive and corrective measures as in the case of the attack against Ave Maria Church Suai and the attack against the residence of Bishop Belo on 6 September 1999.”²⁰²

The involvement of the TNI apparatus was also mentioned in the case of Endar Prianto in regards to the incident of the attack against Manuel Viegas Carascalao's residence.

According to this Judgment, there were TNI members involved in the attack against the residence of Manuel Viegas Carascalao. The judgment on the case against Endar Prianto states:

“... based on legal fact revealed in the court from the testimonies of witnesses who were present in the court (Florindo De Jesus and Alfredo de Sanches), there had been member of TNI from Koramil Maubara involved in the attack against Manuel Viegas Carascalao's residence, which was not under the jurisdiction of Dandim 1667 Dili, but this information was negated by other witnesses.”²⁰³

There were also Judgments that did not state clearly the involvement of TNI and the Police in the attack of Liquisa Church. The panel that heard the case on Silaen ruled that there was no involvement of members of the Police and TNI in the attack, that although there were testimonies from victim witnesses stating that there were members of the Police involved amongst the pro-integration/autonomy group, there was insufficient

²⁰⁰ See the judgment on Adam Damiri, p. 168.

²⁰¹ See the judgment on Adam Damiri, p. 169.

²⁰² See the judgment on Adam Damiri, p. 169.

²⁰³ See the Judgment of Endar Prianto, p. 47.

evidence that they were involved due to the order of the defendant this the act was of personal liability of the officers mentioned.²⁰⁴

III.b. Non Physical Perpetration

Aside from direct perpetrators who committed the attack against the civilian population, the judgments also considered the indirect perpetrators involved in the attack against the civilian population. Indeed, this part of the court's deliberation is the meat of the judgment, because most of the defendants were indicted for their indirect involvement in the attacks, except for Yayat Sudrajat and Herman Sedyono et.al. who were indicted for co-perpetration of the crimes. Indirect perpetrators here refers to parties allegedly involved in aiding and abetting, either in the form of providing facilities to further the crime or other acts that can be interpreted as making the commission of the crime easier or providing the opportunity for the crime, in this case the attack, to occur.

There are four modes of individual liability apparent in the judgments of the cases wherein the defendants were judged guilty for their complicity in crimes against humanity:

1. The subordinate of the defendant has committed omission(s) caused the commission of crimes against humanity.
2. The defendants' "negligence" caused gross violations of human rights/crimes against humanity.
3. The subordinate of the defendant is proven to have committed gross violations of human rights/crimes against humanity and so is the defendant as the commander of the (physical) perpetrators.
4. The defendant provided assistance in the crimes committed by the perpetrators.

As can be seen from the table in the previous section, all the defendants were indicted with article 42 Law No. 26/2000, or in other words the accountability of the defendants

²⁰⁴ See the judgment on Timbul Silaen, p.128. It should be noted that the panel did not rule out the presence of police officers during the attack based on the testimony of Nelio Mesquita and Maria Pereira, who saw police officers from Liquica, namely Alfonso and Chiko, participating in the attack. The panel however ruled that there was insufficient evidence to show that the two were acting on the command of the defendant, and therefore concluded that they were acting on their own volition.

for the actions of the defendants' subordinates who were involved in the attack. Aside from that some indictments also refer to the complicity of the defendant in various forms including their participation in the commission of the crime (article 55 point 1, Indonesian Criminal Code) and the involvement of the defendants in the attempt to, conspiracy for, or aiding and abetting the commission of the crime as regulated in article 41 Law number 26/2000.

As mentioned previously, what remained indisputable in all the judgments was that the direct perpetrators of the crimes were pro-integration groups. The difference between the judgments was whether or not military and TNI personnel were involved. Another difference that shall be addressed in this section is on the involvement of the defendants as well as other TNI and Police officers in the non-physical perpetration of the crimes in accordance with the above legal stipulations. Non-physical perpetrators here refer to those who were not involved directly in the commission of the attack, but retained a role in furtherance of the crime.

Some judgments stated that the defendants were found guilty and accountable for the crimes against humanity because it is proven that his/their subordinates committed the crime of omission that caused gross violations of human rights. In such cases, as against the conduct of the subordinates who committed the crime, the defendants did not take measures to prevent or initiate legal processes to punish the perpetrators.

An interpretation of accountability based on the word "commit" should not be limited to active acts, but should also include failing to take any action (passive commission). "Commission" may include omission(s) that lead to gross human right violations. This interpretation has been developed also in the practices of the international criminal courts which is qualified as "failure to act."

The Judgment on Soejarwo discusses the Court's interpretation of this issue:

“Considering that based on the fact analysis elaborated above, the panel has arrived to the conclusion that the defendant had failed to prevent or stop the acts of violence at residence of Bishop Belo”²⁰⁵.

“Considering that even though the troops under the defendant’s control were not the active perpetrators of the violence at Diocese Dilli and at the residence of Bishop Belo, but as stated above, the troops of the Defendant were included as passive perpetrators (from) preventing, stopping, controlling troops to effectively and appropriately act whereas the authority to do so is his.”²⁰⁶

The Judgment on Hulman Gultom also states:

“Considering that the defendant was the Dili Chief of Police Resort (Kapolres) since June 1998 until September 1999, [he] had the duty and responsibility in regards to the society’s security and order through activities of law enforcement, protection of community, societal guidance and service especially with The Hanoi Lorosae I and II Operations. [...] Considering that the defendant as the Kapolres of Dili did not succeed in preventing the violence on 17 April 1999 despite the information, personnel and organizational structure attained by Polres Dili under his effective control were sufficient... Considering that although the law enforcement process had been conducted in the form of investigation and arrest against the perpetrators of crimes at the residence of Carrascalao. But in the incident at Dili Diocese, the Defendant did not conduct inquiry, investigation or other law enforcement processes against the omission committed by his subordinate.”²⁰⁷

The Judgment on Abilio Soares explained:

“That to prosecute a Defendant in a gross human rights violation there needs to be evidence that the Defendant attained the knowledge and sympathized with the policy (behind) the perpetration of crime, this is the basic differentiating element from an ordinary criminal, and thus in this sense the Defendant may be punished for the acts committed by others.”

The Judgment on the case against Noer Muis also stated:

“... before the attack against the refugees at the residence of Bishop Belo in Dili, there was already a concentration of pro-integration masses of a significant amount and during the attack the security apparatus consisting of TNI, POLRI and other security elements were already in the location but did not take any action, did not take preventive steps or real action to prevent the attack. Whereas

²⁰⁵ See the judgment on Soejarwo, p. 51.

²⁰⁶ See the judgment on Soejarwo, p. 52.

²⁰⁷ See the judgment on Hulman Gultom read at the court on 20th January 2003, ELSAM human rights court monitoring report pp. 13-14.

it is known that the attack [was conducted] by using organic weapon, generic firearms, and sharp weapon,...”²⁰⁸

“... from the various incidents of attack by the pro-integration group assisted by TNI troops against the pro-independence in the territory of East Timor the defendant did not take appropriate and required actions needed within his authority to prevent or stop or surrender the perpetrators to officials authorized to conduct inquiry, investigation and prosecution.”²⁰⁹

“... that defendant Noer Muis as Danrem and as the person responsible for the security in the territorial area of East Timor is proven legally and convincingly to have committed real participation and support to the crime against humanity in the form of murder and assault *which was committed by pro-integration masses together with TNI troops under his command and effective control.*”²¹⁰ (emphasis added)

The involvement and accountability of the defendant is concluded in this passage due to his failure to take appropriate or sufficient measures to prevent the attack.

The judgment of Noer Muis further states:

“... in the territorial area of Korem 164/Wira Dharma there were 6000 TNI Organic personnel and 4900 TNI non-organic personnel and if the defendant had the intent, willingness to order the troops/members of TNI it can be ascertained that the attack against the pro-integration group would not have occurred and therefore the fall of victims could have been prevented.”²¹¹

There are several judgments stating that there were hierarchical relations between the defendant’s subordinates committing gross violations of human rights namely, in the cases of Adam Damiri, Abilio Soares, Noer Muis, and Eurico Guterres. The Judgment on Adam Damiri is extraordinary due to the liberties the panel took to arrive at the guilty verdict, which was contrary to the Prosecutor’s motion to dismiss the case. The panel of judges also firmly ruled as proven that there were TNI members involved in the crimes against humanity.

²⁰⁸ See the judgment on Noer Muis, p. 88.

²⁰⁹ See the judgment on Noer Muis, p. 89.

²¹⁰ See the judgment on Noer Muis, p. 83.

²¹¹ See the judgment on Noer Muis, p. 89.

An excerpt from Adam Damiri's Judgment reads as follows:

“Considering, that according to the presiding Panel of Judges the Defendant as Pangdam IX Udayana, was the person who should have taken firm measures against the perpetrators of the attack against Liquisa Church, Manuel Viegas Carascalao's residence, Suai Church, Dili Diocese and the incident occurring at the residence of Archbishops Belo, which attack pattern was repetitively systematic.”

“Considering, that from the aforementioned facts it is proven that there were TNI members involved (may it be passively or actively) who were under his effective command and control, the Panel is of the opinion that the Defendant has to be accountable for crimes against humanity as indicted in this case.”

“Considering, that from the facts of the trials it has not been proven that the Defendant had exercised one of the functions he attained as the High Commander of Operation Coordination (Pangkoops) namely as the Officer of Case Submitter (Perwira Penyerah Perkara) within his operational area and as the Highest Superior with the Highest Authority to Penalize (Atasan Yang Berhak Menghukum Tertinggi) in his operational area, because none of his subordinates who should have been accountable in the incidents indicted in this case had been examined, investigated, and prosecuted. Therefore the Defendant has failed to take corrective measures against the violations committed or involving the troops under his effective command and control.”²¹²

The Judgment on Eurico Gutteres also raises this issue:

“Considering, that due to the fault of the defendant namely (when) members of Aitarak and BMP groups attacked Manuel Carrascalao's residence it was due to the failure of the defendant to exercise control against his subordinates correctly and appropriately, whereas the defendant as the vice high commander and commander of Aitarak attained the capacity to prevent the acts committed by his subordinates, and therefore the crimes of his subordinates are subject to which the defendant is accountable as the superior or leader of PPI.”.....”Considering that based on the abovementioned facts, there has been omission on the part of the defendant to his subordinates in the attack against Manuel Carrascalao. This omission was not only committed by the defendant but also the military apparatus, Danrem Tono Suratman, authorized civil officials including the governor and the mayor of Dili, together with other security apparatus that should have been also accountable.”²¹³

Yet in the attack, it was not only the crime of omission that was found to be committed in the attack, but also aiding and facilitating the attack committed by the militia group. In the Judgment for the case against Noer Muis, the legal fact adopted was that the

²¹² See Adam Damiri's judgment, pp. 169-170.

²¹³ See Judgment on Eurico Guttres, p. 150.

subordinate of the defendants, namely the Dandim of Suai and the Dandim of Dili were involved in aiding the attack by providing firearms.

The judgment on the case against Noer Muis finds:

“... it can be concluded that the Dandim Suai as well as the Dandim of Dili and other security apparatus have deliberately committed omission and providing opportunity and even facility in form of firearms, which enabled the attack of pro-integration masses against the pro-independence masses who at the time was were seeking refuge in Suai Church and were weak due to fear and hunger [and] lack of food.”²¹⁴

Similarly, the defendant Abilio Soares who was ruled to have been involved in participation the attacks in Dili, Suai, and Liquica was also judged as having direct involvement in the crimes.

In the judgment on Abilio Soares it was stated that:

“That based on the aforementioned considerations, it is ruled from the consistency and relation between one another as well as related to the theories developing currently (as well as) the principles, norms (treaty and customary international norms), and practices of international courts with regards to cases of crimes against humanity, the panel ruled that the indicted crime (*actus reus*) in the first count has been proven legally and satisfactorily, namely the defendant has participated factually, which supported the acts that resulted in the consequences as stated in the indictment of the Ad Hoc General Prosecutor.”²¹⁵

IV. Institutional Responsibility

Institutional responsibility itself is not a legal term from international law. Nor does a court procedure seek it specifically. Yet one can explore institutional responsibility in the Ad Hoc Court process by concentrating on the evidence, facts and deliberation of the Court on the element “as part of a state or organization policy” as stipulated in the Elucidation section for Article 9, Law No. 26/2000 which is a part that has to be deliberated in judging whether or not the widespread or systematic nature of crimes against humanity has been proven. The existence of policy is very important to be

²¹⁴ See the judgment on Noer Muis, p. 83.

²¹⁵ See the Judgment on Abilio Soares p. 93

discussed if one intends to explore institutional responsibility, to separate the random involvement of an individual in a random crime from acts of individuals with the same underlying policy.

The presence of policy itself does not have to be substantiated by the existence of a master document stating the policy. Indeed, in a legal procedure, the presence of such blatant evidence, while will make prosecution an easier task, rarely exists. Therefore the existence of the policy that underlies crimes against humanity does not have to be formal policy, for example one that is indicated by the existence of a master document, but rather can refer to a certain arrangement or planning or pattern of activity over time. A policy does not have to be issued by the highest institution in a state's structure or formalized; nor does it have to be clearly announced, but rather it can be seen when the act occurs, where the systematic and widespread nature of the act already indicates the pre-existence of a policy or arrangement.²¹⁶

While some panel of judges interpret the existing policy in such reading as previously explained, some others share the view that such policy refers to 'the formal state policy' that of, the decision issued under the Habibie Administrative on the 27 January 1999 providing option II for the Timorese people to be independence.²¹⁷ This policy has created the division into two oppositional groups of political preferences leading to violent incidents. As the judgement on Timbul Silaen further elaborates:

²¹⁶ See Adam Damiri's Judgment, p. 167. Also see Akayesu, para 580; Rutaganda, para 67; Musema para 204. Also see the Indonesian Supreme Court Guidelines for Human Rights Court on the section explaining widespread and systematic, wherein the elements are defined as crimes being organized in depth and following a certain pattern which is repeated continuously based on a policy and involving substantial public or private resources although the policy itself is not the formal State policy- namely the policy does not have to be blatantly expressed or stated in written form. The presence of policy can be seen from other corroborative indications, such as:

- The political and historical background of the crime.
- The organizational and institutional background, such as relevant structure of civilian armed groups and military
- Media propaganda
- Armed group mobilization
- Repetitive military/armed attacks that are well coordinated may it be based on the region or within a certain tempus.
- Interrelation of political leaders with military hierarchy
- Change of the composition of a certain ethnicity
- Discriminative rules, administrative or otherwise
- The scale of violence, especially murder and other forms of physical violence such as rape, arbitrary arrest, deportation and eviction and desecration of non military facilities as shown in the case of Blaskic in ICTY.

²¹⁷ See, Judgement on Timbul Silaen, p63-65

“... Both groups, namely the pro integration and pro independent groups continuously take actions through various patterns of measures and organized means such as instigation, terror, provocation, mobilisation of mass in the form of demonstration, or demonstration of speech so as to achieve their political interest whether to remain as an integral part of Indonesia, or to be independence/detached from the NKRI”²¹⁸

In this regard, the existence of policy in ensuring the victory of the pro integration-- following the issuance of option II-- is seen as a main policy triggering toward the crimes committed. However, not all judgments shared the same view. In the case of the attack against Liquica church, the panel of judges decided that the policy undertaken by the BMP, a pro- integration group only referred to the policy of their group and not any broader context.

The judgment on Asep Kuswani et.al. reads:

“ ...The BMP group headed by Manuel Sousa, since morning until about noon around 12 pm on 6th April 1999 had gathered and intimidated civilians who were inside [Fr.] Rafael’s house”

“Between six to around noon on 6th April, when the first gun shot was initially heard, actually was adequately enough for Manuel Sousa and the members of BMP could actually consolidate and made conspiracy preparing the attack.

“...Around 12 pm, the BMP group which was the member the pro integration group, headed by Manuel Sousa surged forward, and from various direction, they, together attacked Fr. Rafael’s residence, inside the church complex, where there were lots of civilian population seeking from protection in that house, who were believed to be the pro-independence supporters.

“...the attack committed by the BMP members was a collaboration and was part of the policy of that organisation without any interference from others. .”²¹⁹

²¹⁸ See judgement on Timbul Silaen p. 66.

²¹⁹ See the judgment on Asep Kuswani et.al., p. 94.

While the role of an individual in co-perpetrating, encouraging, or otherwise supporting attacks against a civilian populations may appear to be an act of his or her own volition without institutional knowledge or approval, if there were multiple individuals acting in such a role, and such acts take place over a period of time and in numerous instances, and they committed the acts with impunity, without disciplinary measures from the institutions, and moreover he or she is of the higher rank in the institution, all these may imply tacit knowledge and approval of the institutions.

In other words, institutional responsibility can be explored from the acts of a member or official of a certain institution in relation to his or her authority in that institution prior to, during or after the crime is committed. Therefore in the discussion about institutional responsibility in this section, references will be made to the previous sections on perpetration, either direct or indirect. The involvements of individuals recorded in the court process shall be used to test whether or not institutional responsibility exists for the violence in East Timor.

The discussion on institutional responsibility in regards to the court process shall be conducted in accordance to the institutions where the defendants processed by the court belong to, namely the pro-integration armed group (Eurico Guterres), civilian government (e.g. Abilio Soares, Herman Sedyono), Police, (Timbul Silaen, Hulman Gultom), and military (Adam Damiri, Tono Suratman).

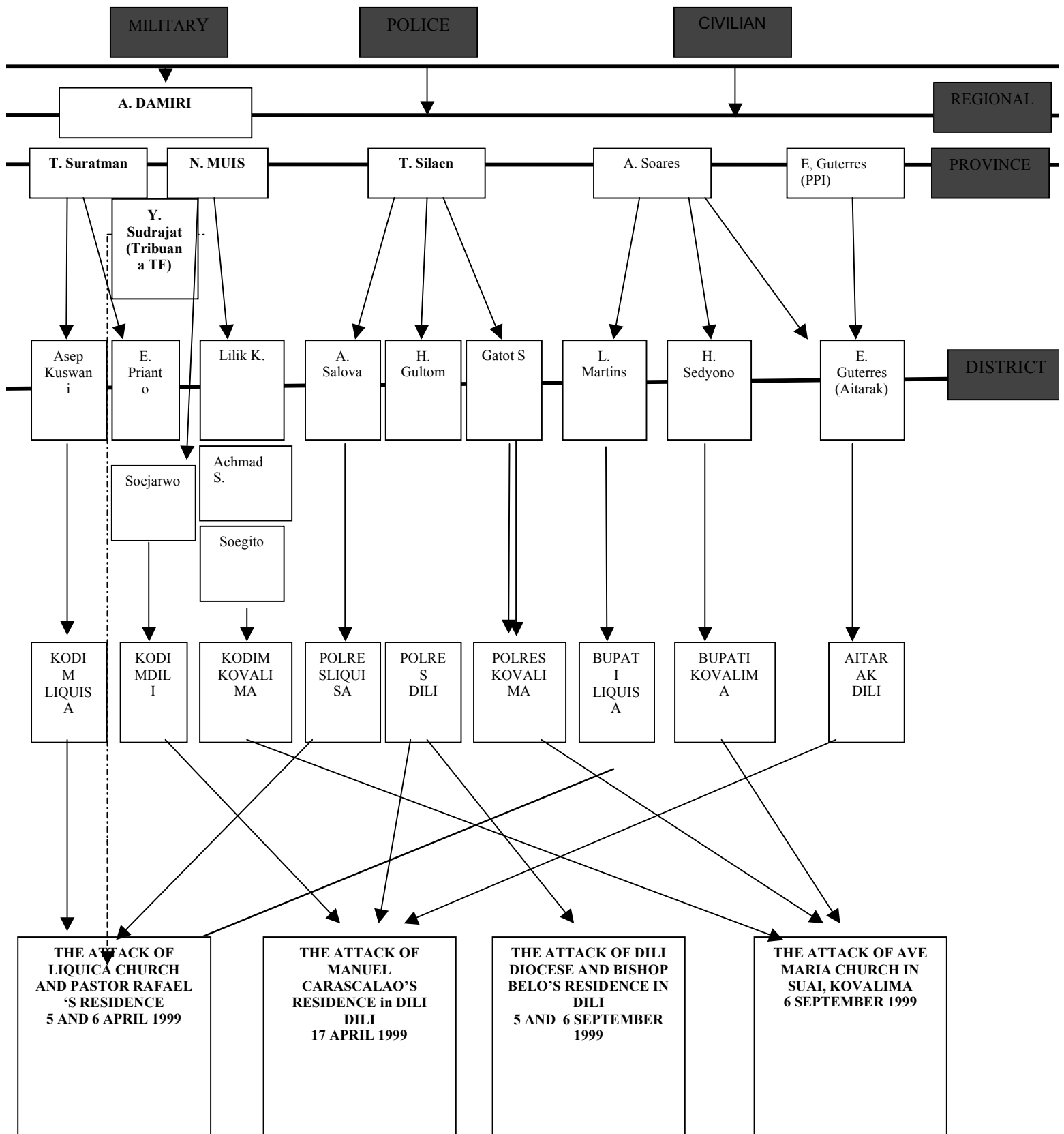
It has to be underlined at this point that while the analysis on each institution shall be elaborated separately, they were institutions whose existence and authority were found by several of the judgments to be interrelated within the system at work in East Timor during the period discussed, as pointed out in the deliberation of the panel of judges for the case of Adam Damiri:

“ That for Indonesia [as a nation] it will never be proven that there was a [formal] state policy to commit attacks or murders or arson or violence against the population of [its] former province of East Timor, yet due to the fatalities, injuries, material loss, and the loss of dignity of the civil population of East Timor which occurred repeatedly with the same pattern, in massive [scale], the

aforementioned occurrence cannot be blamed solely on the pro-integration group, in this context the militias united in PPI, nor can it be regarded as the sole initiative of the PPI group, rather it can be considered as a system's initiative, which existence, according to Dr. Daniel Sparingga²²⁰, may be sufficiently proven by the clashes that occurred with similar pattern and repeatedly, as already become the norm in the international customary law.”

The relations between the defendants and their position in the system existing in East Timor will be depicted as follows:

²²⁰ The expert witness presented in the court



While the presence of pattern is already elaborated in the section on widespread and systematic above, the following sections concentrate on the analysis of the involvement of each institution, especially in regards to the presence of policy on behalf of the institution in regards to the perpetration of the crimes in East Timor in 1999. This analysis is based upon the findings of the court and the evidence before the judges,

IV.a. Pro Integration Armed Groups

As already mentioned in the previous section, all twelve judgments found as sufficiently proven that the pro-integration armed groups were the field perpetrators of the chain of attacks which constituted crimes against humanity. Based on the court decisions, there are at least twelve pro-integration armed groups which were identified as field perpetrators of the series of attacks committed in five different places as established in the indictments, among them are Aitarak, Besi Merah Putih, Laksaur and Mahidi.

Pro Integration groups were defined referring to the establishment of FPDK (The Unity of democracy and justice forum) and BRTT (Barisan Rakyat Timor-Timur) established by the local government after the announcement of the two options, as to whether people remained to be integrated to Indonesia by granting special autonomy or to be an independent state. Both organizations were set up in order to support the pro-integration choice. These groups then set up armed wings, that of the Integrated Pro - Integration Patriots (PPI) allegedly aimed at countering Falintil, the CNRT's armed wing.²²¹

As an armed wing, PPI's organisational structure resembled a military structure that recognises hierarchial organization, such as chief commander in chief, vice commander in chief, troop commanders who are responsible for each region, etc. In each activity they are organised by the FDPK and BRTT.²²² At the regency level, FDPK and BRTT are chaired by each regent, at the subdistrict they are headed by the subdistrict head, and at the village level the head of the village chaired the group. PPI consists of, among

²²¹ See testimony of Eurico Guterres, the judgment on Eurico Guterres, p. 74.

²²² See testimony of Eurico Guterres, the judgement on Eurico Guterres, p. 74

others, Aitarak, Mahidi, BMP, Tim Saka, Tim Sera, Ablai, Mahadomi, Laksaur, BRTT dan FPDK (BRTT and FPDK are political groups).²²³ PPI members also joined Pamswakarsa.

Aitarak, one of the pro-integration groups, was possessed various types of organic weapons such as SKS, Mouser, AK47, M16, generic weapons (either the short rifle or the long rifle), spears, daggers, bows and arrows, and machetes. Similarly, other pro-integration militias such as BMP and Halilintar also hold these type of weapons, while Laksaur and Mahidi hold the generic weapons and traditional weaponries.²²⁴

It was only Eurico Guterres among the members of the pro-integration groups who was brought before the Ad Hoc court and was then found guilty and sentenced to serve ten years in prison.²²⁵ He was held responsible in his capacity as the Aitarak Commander, particularly with regard to his speech leading to the attack against Manuel Carrascalao's house on 17th April 1999. None of the other militia groups' leaders have been brought before the court to date.²²⁶

Based on the panel judges' conclusions in the twelve case files brought before the court, field perpetrators of the five different attacks were not only Aitarak members, but also included other pro-integration groups. For example, BMP (Besi Merah Putih) was found to be sufficiently proven as field perpetrators of the attack against Pastor Rafael and the attack against Liquica church complex on 6th April 1999.²²⁷ Laksaur and Mahidi were found to be field perpetrators of the attack against Ave Maria church in Suai, 6th September 1999²²⁸ and pro-integration groups were found as the field perpetrators of the attack against Diocese Dili.²²⁹

²²³ See the judgment on Eurico Guterres, p. 82.

²²⁴ See the judgment on Eurico Guterres, p. 84.

²²⁵ See the judgment on Eurico Guterres. The sentence was affirmed by the High Court and the Supreme Court.

²²⁶ Militia leaders were tried before the SPSC. See the analysis of the Los Palos and Lolotoe Cases below.

²²⁷ See the judgment on Asep Kuswani et.al, p. 92

²²⁸ See the judgment on Herman Sedyono et.al, p.98

²²⁹ See, the judgement on Noer Muis, p80, however, this decision does not mention names of the groups, it refers the group attacking the Diocese as pro integration group

The judgment on Hulman Gultom explains:

“... The pro integration group had attacked Dili Diocese with arms as well as other weapons, resulting in a number of victims who mostly were [part of the] civilian population that of the refugee.”²³⁰

Evidence produced before the court also demonstrated that there was a similar pattern of attack among the five attacks against the civilian population, be they members of the pro-independence group or in a more general sense, members of the civilian population. This can also be seen from the locations attacked, which mostly were places where people seek for protection. The attacks brought about many fatalities, and casualties. Many people were injured, particularly those who were the pro-independence sympathisers, which include women and children.

In its decisions, the trial affirmed that the aforementioned series of attacks displayed particular motives and objectives, among others, to ensure the victory of the pro-integration option.

For example, the judgement on Eurico Guterres states:

“... there had been omission that was committed by the defendant over his subordinates in the attack against Manual Carassalao, [...] that was aimed at ensuring and sustaining that East Timor be part of Indonesia. Another pattern of omission which consistently appeared in a number of incidents in East Timor has sufficiently proven to demonstrate the element of systematic planning to ensure the victory of the pro-integration group.”²³¹

Based on the aforementioned facts, the Court found that a series of attacks in five different incidents occurred in East Timor. They demonstrated a similar pattern,

²³⁰ See the judgment on Hulman Gultom, p. 66.

²³¹ See the judgment on Eurico Guterres, p. 150.

repeatedly occurred (from 6th April 1999 to 6th September 1999), and were directed against a civilian population, particularly against the pro-independence group and their supporters. These attacks resulted in fatalities and casualties. These elements, the panels found, were adequate to demonstrate the institutional responsibility of the various militias for the crimes committed. The attacks were in line with the objectives pointed out in the establishment of pro integration groups to overcome pro independence supporters and groups.

IV.b. Civilian Government

On January 27, 1999 the President of the Republic of Indonesia issued two options for the people of East Timor, option I being East Timor remaining to be a part of Indonesia's territory, whereas option II meant East Timor would secede from the Republic. The issuance of the two options was followed by the agreement between the governments of Indonesia and Portugal under the UN, which was signed on 5 May 1999 (often referred to as the Tripartite Agreement).²³²

After the agreement was signed, the Governor of East Timor invited the heads of the thirteen districts of East Timor to prepare the implementation of the Popular Consultation.²³³ In the Judgment on Abilio Soares, the panel adopted the defendant's explanation that after the announcement of the two options there emerged pressures, intimidation and assault against members of the community who were pro-integration,²³⁴ and occurrences of violence escalated to the extent that the Governor asked all heads of the districts to reactivate Pam Swakarsa and give some amount of money to compensate them and support their welfare in accordance to the ability of each district government.²³⁵ PamSwakarsa then came under the auspices of the government. Some Pam Swakarsa organizations included the militia groups of Aitarak, Besi Merah Putih and Laksaur.²³⁶

²³² See the judgment on Abilio Soares, p. 63.

²³³ See the judgment on Abilio Soares, p. 67

²³⁴ See the judgment on Abilio Soares, p. 65.

²³⁵ This in accordance to the testimony given by Herman Sedyono. See the judgment of Abilio Soares, p. 21.

²³⁶ See the judgment on Abilio Soares, p. 67.

Aside from the formation of Pam Swakarsa, prior to the Popular Consultation there were FPDK and BRTT groups that fought for pro-integration with the military wing Pejuang Pro integrasi (PPI). The establishment of FPDK and BRTT was admitted as being in existence by the Governor of Dili as the medium to accommodate groups and the people who chose for East Timor to remain integrated with Indonesia, or pro-autonomy.²³⁷ The leader of FPDK and BRTT at the level of district is the head of district and at the sub-district level it is the head of sub-district. At the village level, the head of the village served as the leader of these organizations. Members of PPI overlapped with the members of Pam Swakarsa.²³⁸ These pro-integration groups amongst others were Aitarak, Mahidi, BMP, Tim Saka, Tim Sera, Ablai, Mahadomi, Laksaur, BRTT and FPDK (see the section discussing institutional responsibility of pro-integration groups).²³⁹

The leaders of BRTT and FPDK and pro-integration figures once met with President BJ Habibie, namely the Governor, the head of districts, the mayor of Dili and other pro-integration figures. Eurico Guterres, as the Vice High Commander of PPI as well as the commander of Aitarak, was also invited to meet the President. In the meeting with the President, the President allegedly stated that East Timor was a part of Indonesia and part of the dignity of Indonesia, therefore not even the devil could separate East Timor from Indonesia.²⁴⁰

Pam Swakarsa, then, was established and made effective by the regional government, supported financially from the regional budget of each district. This was affirmed by the Governor of East Timor in his testimony before the court:

“that Pam Swakarsa was officially established by the district administration based on Gubernatorial decree and the names of Pam Swakarsa were given by the district administration such as Aitarak, BMP, Mahidi, ABLAI, Mahadomi.”

²³⁷ See the testimony of Abilio Soares, the judgment of Eurico Guterres, p. 29.

²³⁸ This refers to the explanation by the witnesses, including Eurico Guterres, that there were organizations established to defend the pro-integration victory and later on, like Aitarak, was integrated into the Pam Swakarsa structure.

²³⁹ See the judgment on Eurico Guterres, p. 82.

²⁴⁰ See testimony of Eurico Guterres, the judgment on Eurico Guterres, p. 75.

“that these organizations were fostered by local regents and the funds came from their local annual budget.”²⁴¹

The financial support from the regional government was affirmed by the head of districts in some regions, such as the head of Viqueque district, the head of Bobonaro district, the head of Liquisa district and the head of Kovalima district.

Martinho Fernandez (Viqueque Regent) testified:²⁴²

“that Pam Swakarsa were in the villages to maintain the security of community they were not given salary but they got incentive that came from district budget. The number of Pam Swakarsa members was not reported to the witness.”

Guillermo Dos Santos (Bobonaro Regent) told the Court:²⁴³

“that PAM SWAKARSA was directly led by leader of local government and not Kodim or Police but they were trained by police and witness was PAM SWAKARSA leader. Incentive for PAM SWAKARSA came from off-budget funds of local annual budget and this was approved by local parliament since this was district administration’s policy. The witness did not ask for governor/ the accused approval.”

The testimony of Leoneto Martins (Regent of Liquica) included this statement:²⁴⁴

“that PAM SWAKARSA personnel in Liquisa were given Rp. 50,000 per person and this amount was only being given once between June and July 1999, the fund was taken from regional annual budget reserve. The number of PAM SWAKARSA personnel in Liquica was about 100 people.”

Furthermore, Herman Sedyono (Regent of Kovalima) testified:²⁴⁵

“that on a meeting with governor (the accused) and all mayors on May 1999, governor emphasized to mayors that due to the escalating violation thus PAM SWAKARSA should be re-activated. During the briefing governor (the defendant) requested that the members of PAM SWAKARSA should be given compensation to increase their welfare, the amount depends on the ability of each regional government. Covalima district administration gave Rp. 150.000, - / person. This amount was given as compensation since they could no longer work in the fields, in accordance with governor’s instruction to witness this amount

²⁴¹ See Adam Damiri’s judgment, p. 78.

²⁴² See Abilio Soares’ judgment, p.47.

²⁴³ See Abilio Soares’ judgment, p.45.

²⁴⁴ See Abilo Soares’ judgment, p.39.

²⁴⁵ Abilio Soares’ judgment, p. 21.

should be paid from April to September 1999. The establishment of PAM SWAKARSA was in accordance with the governor's instruction.”

The funding support was also confirmed by Eurico Guterres as the Commander of Aitarak, who also stated that many PPI members, including Aitarak, became members of Pam Swakarsa, which received direct government funds.

The judgment on Eurico Guterres included this excerpt:

“ ... when there was the government's program forming pam swakarsa, with the salary of Rp. 150.000 and rice 10 kg per month from the regional government, many members of PPI including Aitarak troops became members of pam swakarsa. [Eurico Guterres] proposed the 150 members of aitarak troops to become pam swakarsa members and they became pam swakarsa members [and] they were given by the regional government the salary of ... Rp. 150.000 and 10 kg of rice.²⁴⁶

The existence of financial support for the Pam Swakarsa group was adopted by the panel as a legal fact, that in each region they received financial aid from the regional government's budget after being approved by the II Level Region Parliament (DPRD Level II) of each region. Aside from that, in several judgments it was acknowledged as a legal fact that there was a relation between Pam Swakarsa and pro-integration militias such as Aitarak, Laksaur, BMP and others with regards to their membership.²⁴⁷

However, there are different versions in the Judgments of the membership of Pam Swakarsa and pro-integration groups, for example in the judgment on the case of Herman Sedyono et.al and Asep Kuswani et.al. In those two judgments, the panels determined that there was no evidence of the relation between the head of districts who were standing trial (Herman Sedyono and Leoneto Martins), because, in contrast to the other judgments, the panels adopted the opinion that the pro-integration members were a spontaneously formed mass group. Those judgments also did not derive legal facts from the testimonies pointing at the financial support from the regional government to the pro-integration. Therefore in those judgments it is as if there was no relation at all between pro-integration groups and the local apparatus.

²⁴⁶ See testimony of Eurico Guterres, the judgment on Eurico Guterres, p. 65.

²⁴⁷ This fact was derived from the testimonies in the judgment on Abilio Soares and the judgment on Eurico Guterres.

For example, the judgment on Asep Kuswani et.al. reads:

“... according to the facts revealed in court, ..., the Besi Merah Putih group consisted of East Timor indigenous people who spontaneously emerged and joined together in form of organizations to support the security in their respective areas. And the groups were united in pro-integration groups that were independent community groups outside the structure of the government’s structure.”²⁴⁸

The judgment on Herman Sedyono et.al also stated:

“That it is true that after the announcement of the popular consultation there emerged 2 groups consisting of pro-independence and pro-integration.”

“That it is true that in Kovalima district it is known that there are the Pam Swakarsa and Kamra security system that emerged from the initiative of local community in order to secure their regions and conducted other activities namely to assist in the field of security and order.”

“That it is true that in the District of Kovalima there emerged Laksaur and Mahidi groups who belong in the pro-integration group.”²⁴⁹

Aside from the financial support, the civilian government also played the role in supporting the pro-integration group activity in the form of the use of public facilities, such as the use of the front yard of the governor office for mass rally after which the attack against Manuel Carascalao’s residence occurred. The mass rally was even attended by the governor, initiated by the mayor of Dili and was given permission to be conducted by the government. Therefore the local government had knowledge about the mass rally on April 17, 1999.

The testimony of Drs. Raja Karina Brahmana (Ex- East Timor Regional Area Secretary-Sekwilda) explained:

“that indeed on the great briefing April 17, there were some people carrying sharp weapons and self-assembled weapon. That for the purpose of great briefing they have asked permission from local government to use the location. The event was conducted from 9 am until 11 am.”²⁵⁰

²⁴⁸ See the judgment on Asep Kuswani et.al., p. 93.

²⁴⁹ See the judgment on Herman Sedyono et.al. p. 89

²⁵⁰ See the judgment on Abilio Soares, p. 53.

The testimony of Abilio Soares confirmed:

“that indeed on April 17, 1999, a great briefing took place in the yard of East Timor governor office, the event was attended by thousands of people the original purpose of the event was PAM SWAKARSA briefing, the event was organized by the mayor of Dili administrative city.”²⁵¹

Related to the crimes against humanity, the civilian apparatus (the government) namely Governor Abilio Soares, Head of Liquisa District Leoneto Martins and Head of Kovalima District were considered by the panel of judges presiding over the case against Abilio Soares to be connected to the attack of the residence of Pastor Rafael and the Liquisa church on April 6, 1999, the attack of Manuel Carascalao’s house in Dili on 17 April 1999, and the attack against the Ave Maria Church, Suai, Kovalima.

Abilio Soares was charged with intentionally ignoring the clear information that his subordinates, namely the head of Liquica district, the head of Covalima district, the vice commander of Pro Integration Troops (Eurico Guterres) and other organizations, including Pam Swakarsa, were committing or had just committed gross violations of human rights. In the indictment, the Governor was charged with failing to take the appropriate and necessary measures within his authority to prevent or stop the acts, wherein the defendant did not attempt prevention or measures such as ordering the security apparatus to prevent the clash between the pro integration and pro independence or to surrender the perpetrators to the authorized officials to conduct inquiry, investigation and prosecution.²⁵²

Based on the above charges, Abilio Soares was judged guilty by the panel because of his failure to utilize his effective command in controlling the political and other mass organizations through the Office of Political and Social Affairs, and because he also did not exercise his effective control as a governor to his subordinates, namely the head of Liquica district and head of Kovalima district in regard to the occurrence of violence,

²⁵¹ Eurico Guterres’ judgment, p. 31.

²⁵² See the judgment on Abilio Soares, p. 16.

killings, persecution, destruction, arson of houses and churches in Liquisa and Covalima.²⁵³

The Court found that the real action of Governor Abilio Soares in supporting pro-integration groups was substantiated by his attendance at the mass rally and his failure to take preventive action in accordance to his authority to dismiss the mass rally when he knew that the participants of the rally were carrying weapons and had the potential to attack pro-independence group. Aside from that, the panel considered as proven that PPI, while formally not subordinate to the defendant, received direct or indirect aid from the governor, may it be from the regional budget or other sources.²⁵⁴

The panel considered the Governor as liable for the violence because of the conclusion that the subordinates had committed omission to the attack in several areas namely Dili, Liquisa and Suai. The Governor was also considered to have ignored the information on the attack, therefore perpetuating the violence.

The judgment on Abilio Soares found:

“ ... the defendant as a governor did not take the appropriate and correct measures against the Head of District of Dili, Dominggus Soares, as the party inviting the PPI mass rally on 17 april 1999, whereas it was already known that the rally will involve the gathering of people of massive number, ... the participants were carrying generic firearms, firearms, and sharp weapons, ... which can trigger a major clash...”

“... the panel concluded that the head of district of Covalima Herman Sedyono together with the Dandim, Kapolres and security apparatus had let and gave the opportunity for the attack to occur by pro-integration groups against pro-independence...”

One of the important points stated by the panel of judges is the existence of regional government policy which was the same as the pro-integration cause, namely the existence of the same political ideology to win the popular consultation.

Their Judgment on Abilio Soares explained:

²⁵³ See the judgment on Abilio Soares, p. 87.

²⁵⁴ See the judgment on Abilio Soares, p. 85.

“ ... violence, murder, assault committed by pro-integration community is part of a planned strategy to win the pro-integration group in the popular consultation, ***wherein this was the policy of the regional government***, in this matter the governor, as the bearer of the highest authority [in the region] who attained the same political ideology with the pro-integration group.”²⁵⁵ (emphasis added)

The conclusion of the panel of judges with regards to the governor’s accountability as the head of region is different from the conclusion of the panels of judges who presided over the trials of his subordinates, namely Herman Sedyono and Leoneto Martins. In those two judgments both were acquitted because it was deemed to be unproven that they were involved in the attack in Liquisa and Suai, whether through direct involvement in the attack, aiding or abetting or omissions in regard to the attack.

For instance, the judgment on Herman Sedyono et.al. reads:

“... the defendant I (Herman Sedyono) , II, III, IV and V had no direct hierarchical chain of command or effective control with the Laksaur and Mahidi group united in the pro-integration group, and in reverse the Laksaur and Mahidi group were not troops under the command or effective control [of the defendants].”

“Considering, that by answering the relation between the defendants and the Laksaur and Mahidi group... defendant I (Herman Sedyono), II, III, IV and V cannot be held liable to the gross violations of human rights.”²⁵⁶

The judgment on Asep Kuswani et.al. also finds:

“ throughout the examination of the trial there is no tool of evidence may it be a letter or a witness that shows the relation of superior-subordinate or effective control between manuel sousa and his group besi merah putih on one hand and defendant III Leoneto Martins on the other.”

“... although defendant III (Leoneto Martins) had staff and subordinates namely experts staff and assistants, there has been no tool of evidence that can show that the subordinate or staff of defendant III have committed gross violations of human rights or were involved in the attack or clash.”²⁵⁷

²⁵⁵ See the judgment on Abilio Soares, p. 91.

²⁵⁶ See the judgment on Herman Sedyono et.al. p. 111

²⁵⁷ See the judgment on Asep Kuswani et.al., p. 117.

Although it is acknowledged that there were relations between the head of district Herman Sedyono and Leoneto Martins with the perpetrators of the attack yet it was considered by the panel as insufficient evidence to show the liability of the head of district to the attack that occurred. In regards to the aforementioned relations, in the judgment for the case against the defendant Herman Sedyono et.al. the panel ruled that just because a community group committed violence does not necessarily mean that the government (in this case the head of district) should be held accountable for it.

The judgment on Herman Sedyono et.al. illustrates their point:

“That in accordance to the system of state administration law, good relations and acquaintanceship between the defendants and the laksaur and mahidi is not a relation [that depicts] command or effective control between superior and subordinate or in reverse ... on the contrary it was an ideal relation between the government as security apparatus or law enforcer on one hand and the community members whom in their daily activities obey the rules and sometimes violate the law. That a relation such as this between the government and the people cannot automatically be considered or referred to as a command or effective control relation between the government and the people, in other words if at one moment the members of the community with their diverse character committed a violation of the law, then it could not be said that the government had to bear responsibility as the party who attained effective control.

“ That the action that the government should take in the event of riot and there is disorder in the area is to return the situation into order by stopping or securing and resolving the existing issues in coordination and cooperation with the related apparatus and officers..”²⁵⁸

The judgment on Asep Kuswani et.al also held that:

“ although defendant III (Leonito Martins) has heard of and knew well Manuel Sousa as the leader of Besi Merah Putih group, defendant III did not have superior-subordinate relation under his effective authority and control.”

Based on the individual accountability from various judgments quoted above, there were two views adopted in regards to the liability of civilian government officials who were tried in the Court. On one hand it is stated clearly that there was a relation between the governor and the group committing the attack in form of financial and facility supporting the attack committed by the pro integration and pro-independence. On the other hand, other defendants who were tried by other panels were considered not having liability in

²⁵⁸ See the judgment on Herman Sedyono et.al. pp. 110-111

the attack because it was considered by the panels on those cases that the organizational relation, and aiding and abetting in the attack were not sufficiently proven. *What is, however, considered as the truth by all the panels presiding over cases processing civilian government officials was the existence of the financial assistance for Pam Swakarsa*.²⁵⁹

The definitions of pro-integration groups in these cases were also different. On one hand in Abilio Soares' case it was acknowledged that pro-integration groups, including Pam Swakarsa in turn included organizations such as Aitarak, Besi Merah Putih, Laksaur and others. Yet in other cases the inter-relation between pro-integration groups as the attackers and the head of districts was not acknowledged, despite the fact the pro-integration groups were integrated into the structure of Pam Swakarsa.²⁶⁰ Another issue that was delved into in one case, but not addressed in the other two, was the existence of shared political beliefs and interests between the civilian government and the attackers, namely to ensure the victory of Pro-Integration in the Popular Consultation. This may be because of the different understandings about the elements of the crimes tried between the panels which influenced the choice of items adopted from the evidence as legal facts and analyzed in determining the verdict.

The factual findings of the panels, and the evidence available to them supported the findings of the Abilio Soares Judgment as to the complicity of the government of East Timor for the formation, or at the very least the support, of pro-integration groups (PPI, BRTT and FPDK, whose leaders were the apparatus of civil government). The evidence also appears to support the emergence of the PPI military wing and the formation of Pam Swakarsa and the pro-integration militias that were located under it. The proximity of pro-integration groups and the civilian government was also established, implying the complicity of civilian officials in East Timor in the gross violations of human rights.²⁶¹

²⁵⁹ This is a fact apparent in the judgment of Abilio Soares. Aside from that the head of district including of Kovalima, Herman Sedyono and of Liquisa stated that pam swakarsa received aid in form of fund from the regional budget of second level region(APBD Level II).

²⁶⁰ See testimony of Herman Sedyono, Domingus MD Soares, in the case of Abilio Soares

²⁶¹ Based on the judgment on Abilio Soares, the panel ruled that the attack of the residence of Manuel Carascalao was committed by PPI masses which was the military wing of FPDK chaired by Domingus

This implication is strengthened by the evidence on financial, logistical and moral support (this referring to the attendance of the regional civil government leaders, including the governor, in the mass rally)²⁶² which gave weight to the assumption of the shared ideology between the civilian government and the pro-integration group as well as their involvement in the attacks against the pro-independence civilian population.

The judgment on the case against Eurico Gutterres states:

“... the defendant has committed omission in regards to the attack against Manuel Viegas Carascalao’s residence. This omission committed not only by the defendant but also by the military apparatus, such as Danrem Tono Suratman, the authorized civilian officials including the governor and the mayor of Dili, as well as other security apparatus who are supposedly responsible. The collective omission by the above elements *demonstrates the common aspiration namely to retain East Timor as part of the territory of the Unitarian state of the Republic of Indonesia. The consistent pattern of omission in several other incidents in East Timor is considered to be sufficient to prove the existence of a systematic plan to ensure the victory of the pro integration group, which resulted in attack against the civilian population.*²⁶³ (emphasis added)

As noted above, two panels arrived at different conclusions as to the institutional responsibility of the civilian officials. Those panels, however, appear to have operated with a different and more limited understanding of the elements of the crimes, as taking into account a more limited evidentiary base on which to ground their decision. These factors, among others, may account for the discrepancy. Nonetheless, as stated above, it is reasonable to conclude that the findings on these issues of the panels that judged Eurico Gutterres, Abilio Soares, and Timbul Silaen were supported by the evidence they had before them. As stated above, this in no way involves a judgment on the findings on individual responsibility of any of these panels. Such a judgment is outside the scope of the mandate of this research, and the conclusions as to the findings of the panels apply solely to institutional responsibility.

IV.c. TNI

MD Soares. The panel adopted the opinion that the Governor should have surrendered the inspector of the rally as well as the head of Dili district to the authorities for prosecution. The same also for people who gave speeches in the rally that resulted in the provocation of the masses participating in the mass rally to launch the attack to Manuel Carascalao’s residence. See the judgment on Abilio Soares, p. 90.

²⁶² On the mass rally as the inauguration of PAM SWAKARSA was not agreed upon. Several witnesses stated that it was inauguration of PPI whereas other stated that it was initiated by PPI. See judgment Abilio Soares, p. 57.

²⁶³ See Judgment on Eurico Guterres, p. 150.

It is important to see the historical context- or pre-1999 East Timor - if one would like to analyze the pattern of security and defense policy in what was then a province of the Republic of Indonesia to test whether or not this policy was furthered even after the May 5th Agreement. While it is not within the mandate of this research to determine what occurred beyond the time period addressed in the three bodies of documents, this is a subject that should be a topic of separate research, and to do so is very crucial to capture the entire truth of what happened in East Timor. The KPP HAM report addressed this historical context and concluded there was a consistent pattern of security policy in regard to the problem of East Timor since 1975 until 1999. In the investigation and court process this issue was not discussed in depth, yet it should be pointed out that one Judgment addressed this issue, namely in regards to the case of Adam Damiri:

“Considering that it is an undisputable fact (*faite notoire, prima facie*) that the role and presence of TNI since 1975 has been very substantial and even determinant in determining the policy direction of East Timor integration into the Republic of Indonesia as it’s 27th province;

“Considering that it is undisputable the fact that the role of ABRI at the time especially TNI AD (Army) has been significant in building the mental and physical state of East Timor including by recruiting East Timor sons to become loyal soldiers ... including by the formation and training of WANRA which members in 1999 joined PPI.”²⁶⁴

“Considering that it is very understandable that the sacrifices of ABRI especially TNI AD for 23 years became insubstantial when the Government announced the independence option for the people of East Timor.”

“ ... That ABRI, especially TNI AD (Army) in the policy in regards to East Timor had been the main element of the system, may it be the system of operational control, guidance or security, which can be shown by the history and in the reality, and therefore it is undisputable that TNI AD is part of the system, therefore it cannot be said that their accountability cannot be pursued.”²⁶⁵

²⁶⁴ See the judgment on Adam Damiri, p. 156.

²⁶⁵ See the judgment on Adam Damiri, p. 154.

As shown by the testimony of Adam Damiri in his trial, the role of TNI in the implementation of Option I and II²⁶⁶ was to create a conducive situation so that the Popular Consultation could run smoothly, safely and in order. This role took the form of instruction from TNI General to Pangdam IX/Udayana.²⁶⁷ The structure of the TNI at the time can be seen from the testimonies given in the Noer Moeis and Tono Suratman trials: Pangdam IX/Udayana has a sub-ordinate, namely Danrem (Korem commander), in this case it is Korem 164/Wiradharma, Tono Suratman (on duty until August 12, 1998), who was then replaced by Noer Muis (effective on August 13, 1999). Danrem 164/Wiradharma has a duty and authority to conduct a territorial guidance that includes geographic, demographic and social condition guidance and he is also responsible for the command and control of the defense and security operation implementation in East Timor.²⁶⁸ For the implementation of the Popular Consultation, it is the Danrem's duty to make this event successful.²⁶⁹

The Danrem is the head of 13 Kodim commanders, namely Dandim Dili Endar Prianto (effective until August 8, 1998) and Soejarwo (replacing Endar Prianto), Dandim Liquisa Asep Kuswani and Dandim Suai Liliek Koeshadiyanto. The Danrem also has a task force (Satgas), namely Satgas Tribuana led by Yayat Sudrajat. Dandim's main task, especially Soejarwo and Liliek Koeshadiyanto is to maintain the conditions within the geographic area and amongst the people for the society to function properly²⁷⁰ as well as to implement the Cabut II Operation Target, where its task is to secure UN personnel and Unamet personnel as well to install state owned vital properties, to secure the evacuation of civilians as well as foreigners, and to provide aid to the police when it is necessary.²⁷¹

On the basis of the KPP HAM report and the subsequent investigations as reflected in the BAPs, several military commanders were suspected to be involved in the crimes against

²⁶⁶ Option I grants the autonomy right to the people of East Timor by the end of 1998, Option II was established on January 27, 1999, where if the people of east Timor did not opt for the first option, then they will be released. See testimony of Adam Damiri, the judgment on Adam Damiri, p. 96.

²⁶⁷ See testimony of Adam Damiri, see the judgment on Adam Damiri, p. 96.

²⁶⁸ See the judgment on Tono Suratman, p. 57.

²⁶⁹ See the judgment on Noer Muis, p. 78

²⁷⁰ See Herman Sedyono et.al.dossier, testimony of Liliek Koeshadiyanto, 12 September 2000, pp. 4-16.

²⁷¹ See testimony of Soejarwo, the judgment on Soejarwo, p. 22.

humanity that occurred before, during and after the Popular Consultation. The result of the trials at the first instance showed that three suspects from the military (Adam Damiri, Noer Muis and Soejarwo) were guilty, whereas others were found not guilty (Tono Suratman, Yayat Sudrajat, Endar Prianto, Asep Kuswani and Liliek Koeshadiyanto). This is in many ways a puzzling result because the findings of liability based upon command responsibility of the higher level commanders is significantly predicated upon the activities of their subordinates. On the other hand, it may also be the case that the prosecution or defense is simply more or less effective in one trial than in another, producing different results that in substance appear to contradict one another.

As noted above, several panels found direct involvement of the TNI in various attacks. This took the form of direct participation of TNI personnel in attacks, the presence of TNI personnel or officers at the scene of the attacks and their failure to intercede, or the provision of support in various forms for operations that resulted in attacks (aiding and abetting). For example, the TNI's involvement during the attack on Liquisa church and the residence of Father Rafael was found to be a legal fact. The panel of judges for Adam Damiri's case concluded that the presence of TNI members who did not do anything to prevent or halt the incident at the location at the time where the attack took place has been proven, as was the participation of a TNI member from Liquisa Kodim who committed the attack together with Besi Merah Putih militia and other TNI members neglected to take action to prevent the attack that took place at that time although they had sufficient information.

For example, the judgment on Adam Damiri states:

“... There were TNI members who stood-by within the location and did not do anything.”

“... Rafael Dos Santos, the witness, saw and recognized TNI members who committed the assault, which is the member of Liquisa Kodim ... and the member of Maubara Kodim ... and other TNI members ... , they attacked the two locations together with Besi Merah Putih militia.”

“... The attackers took off from Liquisa Kodim.”

“... tear gas was shot by the official and directed to the house where the refugees stay.”²⁷²

²⁷² See the judgment on Adam Damiri, p. 164.

Contrary to the judgment on Adam Damiri, the trial on Asep Kuswani et.al. could not find any evidence that showed that there was a presence of TNI members who attacked the residence of Father Rafael. In the Judgment of Tono Suratman, the panel also could not regard as proven the presence of TNI unit in attacking the residence of Father Rafael.

The judgment on Asep Kuswani et.al. reads:

“ ... even though the accused I (Asep Kuswani – Liquisa Dandim) has members of troops under the effective command, namely Kasdim, Koramil and TNI members that are BKO-ed, but there was not even one evidence that can shows the involvement of the troop’s members or the sub-ordinate of the accused I in the clash that occurred in the residence of Father Rafael that resulted in casualties.”²⁷³

The judgment on Tono Suratman also states:

“ ... the allegation of TNI member’s involvement in doing or aiding the attack on father Rafael Dos Santos’ residence did not have sufficient evidence, according to the Assembly, what happened was TNI troops indeed gave a hand to the police to secure the refugees and separated two groups that were in conflict, including to save Father Rafael dos Santos and the sisters.”²⁷⁴

The attack on Manuel Viegas Carascalao’s residence also was interpreted with two different perspectives in the Judgments. One perspective found the involvement of TNI members, both passively and actively (e.g. the Judgments on Adam Damiri and Eurico Gueterres) and the other found that TNI members were not involved in the attack (e.g. the Judgment on Tono Suratman and Endar Prianto).

The Court held in the Judgment on Eurico Guterres:

“ ... based on the above facts, then the accused and his sub-ordinates ignored the attack on Manuel Carascalao’s residence, in which it was not only committed by the accused, but also by military members, namely, Danrem Tono Suratman, authorized civil official, including the governor of Dili, together with other security officers...”²⁷⁵

The judgment on Adam Damiri also concluded:

“ In the attack on Manuel Viegas Carascalao’s residence on April 17, 1999, Danrem 164/Wira Dharma Col. Tono Suratman was aware of the attack, but he did not do anything.”²⁷⁶

²⁷³ See the judgment on Asep Kuswani et.al., p. 104.

²⁷⁴ See the judgment on Tono Suratman, p. 83.

²⁷⁵ See the judgment on Eurico Guterres, p. 150.

²⁷⁶ See the judgment of Adam Damiri, p. 169.

In the verdict of Tono Suratman, it was stated that there was no TNI member who was involved in the attack. The same was true of the verdict on Endar Prianto, where the Court stated that there were no testimony that was strong enough to state the presence of TNI members in the time of attack.

The judgment on Tono Suratman says:

“ ... Those who stop and secure the refugees from the crime scene were the police and TNI members.”

“ ... No witness can prove by law that the TNI member was from any particular unit. Indeed, the people who caused the conflict in two locations (Liquisa and Dili), those who happened not to be the member of TNI were never legally processed in the East Timor Police.”²⁷⁷

The judgment on Endar Prianto also concluded:

“ ... gross violations of human rights that occurred in Dili was not proven to be committed by the accused sub-ordinates...”

The TNI's institutional responsibility for attacks is implied by the judges' conclusions on Soejarwo, Adam Damiri and Noer Muis in regard to the attacks at Bishop Belo's residence, in Dili and at the Ave Maria Suai Church on September 6, 1999. The form of responsibility covers the aspect of knowledge (and involvement) of the accused on the existence of attack, provision of aid to the attackers, and their failure to prevent the attack. Moreover, institutional responsibility was also based upon the situation at the time of these attacks on September 6, where at that time, the TNI had full control to maintain security with the KODAL (transfer of command). On this basis the Court concludes that the TNI had the power to and should have prevented and taken action on the attack that took place.

As an illustration of this point, the Judgment on Noer Muis explains:

“ That the area of Suai Kodim in Kovalima district and area of Dili Kodim is a small town, thus when there was a huge mass movement, it should've been detected easily by the security officers, especially Dandim Suai, Letkol. Liliek Koeshadiyanto and Dandim Dili, Letkol. Soejarwo. Therefore, Dandim Suai and Dandim Dili must know and able to predict the event that will occur in their area when there was a concentration of a pro-integration mass who felt beaten in the

²⁷⁷ See the judgment of Tono Suratman, p. 86.

Popular Consultation and about to attack the pro independence mass who was staying in the complex of Suai Church and Dili Church.²⁷⁸

“ That since the very beginning, the security officers should’ve known the plan from pro integration group who were about to attack the pro independence group... Since the very beginning TNI officials did not seek for information regarding the presence of refugees who stay at Suai Church complex and Dili Church complex, where they should have received full protection from the security officers.”²⁷⁹

“That the statement from witnesses and accused could not reveal the officer’s attempt to block pro-integration masses who were about to attack the refugees in Suai Church complex, even though the security officers around the church were standing by, the same thing happened in Dili Church complex, they did not do anything. After the attack, then TNI members tried to evacuate victims who finally died. Meanwhile, the accused, as a Danrem who has full authority to control the troops in east Timor with the number of 10.900 personnel were not ordered to firmly take action upon the perpetrators, both from the pro-integration masses and pro- independence masses, as well as those from TNI members who were involved in the event. On September 6, 1999, the Kodal was fully controlled by the Danrem, who is the one who was responsible for security.

The judgment on Soejarwo describes this point:

“ ... Even though the troops under the command of the Accused (Soejarwo – dandim Dili) was not an active perpetrator upon the violation that occurred in Diocese Dili and in Belo Bishop’s residence, but the accused troops can be considered as passive perpetrators, as elaborated above, where they should have prevented, stopped, and controlled the troops to act effectively since he has the authority to conduct such action.”²⁸⁰

Again, however, the conclusion of the verdict on Noer Muis differed from the verdict upon Liliek Koeshadiyanto in the Judgment in the case of Herman Sedyono et.al., with regard to attacking the Ave Maria Suai Church. In this latter Judgment, the Court found that there was no evidence that showed that Dandim Dili previously knew about the attack or about TNI members who entered the Ave Maria Suai Church complex. They found that the TNI did not aid in the attack, but TNI members on the contrary helped to stop the conflict and evacuated the refugees.

The judgment on Herman Sedyono et.al.:

²⁷⁸ See the judgment on Noer Muis, p. 81

²⁷⁹ See the judgment on Noer Muis, p. 81

²⁸⁰ See the judgment on Soejarwo, p. 52.

“ That the event of clash occurred in Ave Maria Suai Church complex was an event that was not previously predicted by the accused (including Dandim Dili), where the accused were not aware of the cause of the conflict as well as the people who perpetrated such action.”

“ How is it possible that the Accused I (Herman Seyono), II (Liliek Koeshadiyanto), III, IV and V helped when they knew the event after they heard the explosion during the noon on September 6, 1999 from the location of the church.”

“ That based on the revealed facts on the trial, the conflict was slowly resolved after the accused IV, upon the order of the accused II, entered into the church complex together with the witness, Sonik Iskandar, to stop the conflict and evacuated the refugees to be moved to the Kodim.”

“ Considering the discussion above, the Court stated that aiding the crime was not proven for the accused I, II, III, IV and V.

“Considering that the element of intention, providing opportunity, effort or explanation to commit a crime, Article 56 point 2a can also be interpreted in a way that the material perpetrator has the initiative to ask for opportunity or an attempt to someone to assist him in committing the crime.”

“Considering that based on the discussion above, The Court think that the sets of event conducted by the accused I, II, III, IV and V did not fill the elements of giving the opportunity, efforts or explanation to commit crimes against humanity in a form of murder.”²⁸¹

Aside from the pros and cons of the different trial verdicts regarding the TNI's actual involvement in these attacks, it is important to also view this issue from the perspective of the relation of TNI (ABRI) with the militia groups (pro integration). Several verdicts find as legal facts that there was a close relation between the militia and TNI members, and that there were TNI members who became members of pro integration groups. For example, this can be seen from the legal facts found in the verdict upon Eurico Gueterres.

The judgment on Eurico Guterres:

“... In regards to the relation between Aitarak troops or PPI members who became Pam Swakarsa, Kamra, civil defense, some of them were not working, thus they became Kamra, under the guidance of Kodim and Police.”

“... Many East Timor sons turned to be TNI members and thereafter militia members.”

²⁸¹ See the judgment on Herman Sedyono et.al.

“... The accused was often requested by the police or TNI to help resolve a conflict, both in a form of information...”²⁸²

Aside from the testimony that the Court viewed as supporting these findings, there were also documents that pointed to the relations between the pro integration militias and the TNI. Such documents refer to the relation of the militia and TNI even when the attack took place. The Court found that the involvement of the TNI as an institution in the attack is represented by the document that showed the interrelation between the perpetrators from the militia and the TNI as a supporting party in the attack against Liquica church and the residence of Pastor Rafael. One of the documents used by the panel of judges in supporting the involvement of the TNI apparatus in the attack of Liquica church is the document with the number: R-184/LAPSUS/IV/1999. This is an official letter with the letter head and stamp of Pangdam Udayana.

In regards to this document the panel in Adam Damiri Judgment was of the opinion:

“ ... that the issue in regards to the documents submitted as the evidence lies on the Special Report document No. R-184/LAPSUS/IV/1999 dated 7 April 1999, signed by Brigadier General TNI Mahidin Simbolon the Kasdam Kodam IX/Udayana wherein the document there were words “the members of Polres and Brimob unit as well as members of Tribuana Task Force immediately backed up the Integration group...”, *it is the opinion of the panel that it is a widely accepted understanding that to back up means to assist or at least explains their partiality to the Pro-Integration group.*²⁸³

It is important to be reiterated at this point that, as explained above, there was evidence on this issue recorded in the court documents as having been presented in the court but not adopted as legal facts or analyzed in more depth, for example on the complicity of TNI members with the attacker group. The failure to fully evaluate all of the available evidence, coupled with the failure to produce key witnesses who had given important pre-trial statements, were among the most serious, and crippling, failings of the trials.

²⁸² See the judgment on Eurico Guterres, pp.65-73.

²⁸³ See the judgment on Adam Damiri, p. 156.

One form of such complicity that was contested between different trial panels involved the supply of arms by the TNI to the militias. There was testimony that indicated the supply of arms from the TNI to Besi Merah Putih and Laksaur groups in relation to the attack on Manuel Carascalo's residence on 17 April 1999 and on the Ave Maria Suai church on 6 September 1999. This can, for example, be seen from the testimony of Leandro Issac.

Testimony of Leandro Issac (CNRT member):²⁸⁴

“that the Besi Merah Putih group has radio communication equipments in Liquisa District, Maubara hamlet; on the beginning of July 1999. The witness saw the radio communication equipment and it was the same with the equipments that ABRI's carried on the assault of witness' house on April 17, 1999. The weapons that were used by militias are caliber 9, the same with weapons that were used by TNI, therefore the witness is quite sure TNI assisted the militias.”

The testimony of Tobias Dos Santos gives another view on this issue:²⁸⁵

“militias that were led by Olivio Mau and [sic] Olivio Moruk owned weapons. On September 6, 1999 Olivio Mau was carrying an SKS weapon from the Commandant of Kodim 1635 Kovalima, Let.kol. Achmad Mas Agus. Olivio Moruk was carrying a weapon that he said he bought in Java.

Although the BAP's indicated that military weapons such as SKS and M16 had been confiscated and taken into evidence, these weapons were never produced in court as evidence. Even upon repeated requests by the judges of certain panels, the prosecution failed to produce such evidence that the BAP indicated was available. Also, the media footage which was taken during attacks and could have substantiated claims about the weapons used was also not introduced at trial, despite being part of the KPP HAM collection of evidence. Because of the different findings of the various panels, and because of the failure of the prosecution to take effective steps to offer proof on this issue, the differences in findings in the trial record cannot be resolved on the basis of the trial record alone. While the findings that such support was provided may be based upon testimony that could establish such a legal fact, the trial panels that refused to make such findings could also reasonably maintain under the circumstances that the prosecution failed to meet its burden of proof in establishing conclusively how many such weapons were distributed, under what circumstances, and above all, by whom. In order to reach conclusions as to institutional responsibility from the trial records of the Ad Hoc court, better evidence than the judges had at their disposal is vital. As will be seen, the situation

²⁸⁴ See the judgment on Eurico Guterres, p. 43.

²⁸⁵ See Herman Sedyono et al dossier, Testimony of Tobias Dos Santos on 25th July 2000, p 3 para 4. This is cited as written in the document]

in regard to proof on this issue is far clearer in some of the trails before the Special Panels in Dili.

Another form of complicity between the military and police in the 1999 violence is better documented. As was already explained in the section on patterns of perpetration, there was considerable evidence relevant to the issue of the participation of TNI or police personnel in attacks. Indeed, throughout the KPP HAM report, the dossiers (BAPs) and the trial judgments, there was a good deal of evidence unearthed about the direct involvement of TNI or Police members in the physical perpetration of the attack:

For example, the testimony of Armindo De Deus Granadeiro states:²⁸⁶

“that witness saw on Monday September 6, 1999 afternoon, me and my colleagues from Kodim 1635 Covalima were in the Kodim since all personnel should be ready. Prior to the assault, militia members (Laksaur) gathered in the regency, Kolonel. Drs. HERMAN SEDYONO’s residence and then they departed from Suai by using motorbikes and cars to the church.”

Tobias Dos Santos’ testimony also describes complicity:²⁸⁷

“militias (Laksaur Merah Putih/Garda Merah Putih, Mahidi/Hidup Mati Integrasi), TNI and Police were involved in the September 6, 1999 incident. They can be identified from their clothes. For Laksaur Merah Putih, on their t-shirt there was...”

The testimony of Rafael Dos Santos offered more evidence:²⁸⁸

“that witness saw that the attackers of church and presbytery complex are BMP militias, soldiers and Kodim, police, and Brimob. The witness can identify militias, soldiers, and police since the witness has lived in the presbytery for ten years and hung out with police, soldiers and civilians that were in the witness’ parish.”

“on April 6, 1999, witness saw that an assault happened around 1 pm in the presbytery complex, the attackers were Besi Merah Putih militia and soldiers of Kodim Liquisa and Police.

²⁸⁶ See the judgment on Herman Sedyono et.al. p 69. This is cited as written in the investigative dossier of Herman Sedyono, testimony of Amendo de deus Granadeiro on 26th July 2000, p. 2.

²⁸⁷ See the investigative dossier on Herman Sedyono et.al., testimony of Tobias Dos Santos on 26th July 1999, p. 3.

²⁸⁸ See Adam Damiri’s judgment, pp. 65-67.

“witness saw Tomi Diego, personnel of Kodim Liquisa shooting, Tomo Diego is a native East Timor from Liquisa district.”

“that aside from Tomi Diego other military personnel that were involved in the assault were Roymundo, Jacob and Isak Dos Santos – the witness’ nephew - who wore sarong, head band and carried an M 16 that was covered by a piece of cloth.”

The testimony of Bishop Belo also stated:²⁸⁹

“ ...a Let. Kol. of Kostrad came and asked about the witness’ condition. The witness asked for protection from the militia attack, and then the witness heard from children who lived in the witness’ house that when that aforementioned Let. Kol. had reached the end of road he shouted to the militia, attack, attack now or I’ll kill you.”

“ that the Kapolda at that time only gives orders, the kids said that even the police put some gasoline into the fire.”

Other testimony supports findings of other forms of involvement, including omission, in addition to participation:

An excerpt of the testimony of Asep Kuswani (Liquica Military District Commander) reads:

“that witness knew about the clash of pro-integration and pro-independence group on April 6, 1999 in the residence of Father Rafael Dos Santos in Liquisa. The witness saw that incident from his office in Dili Kodim.”²⁹⁰

In this passage the witness indicates that he had knowledge of the attack, but failed to take the appropriate actions to prevent or stop the attack. Rather, he allegedly only acted in the capacity of an observer, despite the responsibility to act as a member of the security apparatus.

Abilio Soares also stated:²⁹¹

“that witness was not aware of how many PPI members came to that event, but the witness saw there were thousands of people, some of them wore camouflage clothes, brought sharp weapons, such as cleavers, knives, spears, self-assembled weapons; there were TNI and Polri personnel at that time but they did nothing.”

²⁸⁹ See Adam Damiri’s judgment, pp. 75-76.

²⁹⁰ See Timbul Silaen’s judgment, p. 63.

²⁹¹ See Eurico Guterres’ judgment, p. 31.

“that witness did not prevent the participants of great briefing to bring weapons since it is the duty and authority of the police and TNI’s to prevent..”

The testimony of Lettu Pol. Sonny Sanjaya corroborates these other witness’ evidence regarding a pattern of omission on the part of TNI and Polri.²⁹²

“that there were TNI and POLRI personnel around the church of Ave Maria but they did not anything to prevent the assault, the witness saw they did nothing they were only ‘staying’. The witness asked them why they did not prevent the militias and they said because they are afraid since the number of militias was quite a lot. The witness was trying to separate the clash.”

There was also evidence that indicated that TNI officials were involved in the elimination of evidence after the crimes, which tends to show deeper involvement of the institution in the perpetration of the crimes. However, it should be noted here that the following excerpts, while recorded as facts as evidence to the court, was not even addressed in the analysis of legal facts adopted by the panel for Herman Seyono et.al.’s case. This failure by the Court to even consider this evidence is most peculiar due to the fact that this particular issue should have been considered because it is relevant to the liability of Sugito (Defendant V, former Danramil Suai Kovalima), who was also charged with aiding and abetting.

The testimony of Sudarminto is revelant to the discussion here. Sudharminto was a member of the Police, and had served at various postings during 1999. The witness had been posted in Dili, but also had been working on the East Timor border since January 1999. In September 1999, he was on BKO assignment at the border's Polsek Wemasa, under Polres Belu's command for one month in a cross-border operation during the Popular Consultation. He explained to the Court:

“The witness saw an unidentified man in camouflage uniform followed by several other men wearing red and white headbands carrying traditional weapons approaching the witness with JULIUS BASA BAE and another witness PELIPUS KANAKADJA, who was the Kapolsek of Wemasa. Then the witness PELIPUS KANAKADJA asked the man in uniform: "What's happening?" which was

²⁹² See Abilio Soares’ judgment, p. 43.

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

"The witness knew that they dug three graves for the 27 corpses, and the witness had time to see the digging of the third grave, and had time to see some of the men praying for the dead just as commonly done at a funeral.

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

"The witness saw that some men in the group wore red and white headbands in camouflage uniforms, and were carrying machetes, lances, as well as bows and arrows."²⁹³

Another policeman gave testimony to the Court that also described Sugito as a participant in the burial, and corroborated other points in the above witness' story. The witness, Julius Basabae, was serving in Metamauk within the jurisdiction of Polsek Wemasa, Belu regency, NTT. He testified:

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

"The witness was suspicious of the procession of the three cars, and then reported it to Witness PHELIPUS KANAKADJA, the Kapolsek of Wemasa. Then the witness, who was the Kasospol, with the Commander of the First Platoon of Brimob squad, and the Kapolsek, rode on motorbikes, and upon arrival at the beach, the witness with Kapolsek and SUDHARMINTO found a group of men digging graves of more or less 10 corpses.

"The witness saw and heard Witness PHELIPUS, as the Kapolsek talked with an unidentified man in camouflage uniform: "Why bury them here?" which was then answered by the man: "There's no chance in Suai."

"The witness with the chief of the Kapolsek and the Brimob Commander, at first, prevented the group from continuing the burial process, reasoning that the area was not part of Kovalima sub-district, and that it was part of the Kobalima sub-

²⁹³ See the judgment on Herman Sedono et.al. pp. 36-37

district, which was in Belu regency, NTT province, but the men kept on insisting, then Witness PHELIPUS had no chance to refuse anymore.

“The witness saw Defendant V, who was always in silence, just stood by one of the vans doing nothing.”

“When the witness stood near the corpses, he had time to see there were more or less 27 corpses with most of their clothes stained with dry blood.”

“The witness saw the 27 corpses consisting of ten women and 17 men, including three pastors who had been buried, then the funeral prayers were led by a man the witness recognized as MARTINUS BERE, worked as a school teacher in Suai.²⁹⁴

The testimony of Pelipus Kanakadja, the Kapolsek of Wemasa, Belu, NTT, from 1998 to 1999, contained a similar account of the events:

“On September 1999 around 8 am, the witness received a report from Witness JULIUS BASA BAE, the Kapolpos of Metamau, saying that a convoy of vans had been riding with lights on towards the beach. The witness with Witness JULIUS BASA BAE, and Witness SUDHARMINTO, rode on motorbikes to Metamau.

“Upon arrival at the Metamau beach, there were three cars; a Fuso truck with a license plate No. DH-8321-F, a red Kijang van with a police license No. DF-90225-AH, and a mikrolet public transport van without license plate.

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

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

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

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

²⁹⁴ See the judgment on Herman Sedyono et.al. pp. 37-38

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

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

“The witness saw bloodstains and a severe cut on the left arm of one of the pastors.²⁹⁵

There are no straightforward or easy answers to the question of the TNI’s institutional responsibility that can be derived from the record of the trials and cases before the Ad Hoc Court. This is because, as we have seen, the different judgments reach contradictory conclusions on this issue. As we have also seen, there was considerable evidence that could be considered to support the findings of TNI participation as a matter of local policy. This evidence takes a variety of forms and was surely sufficient to support the findings of the panels that they found this testimony to be more credible than that of witnesses who testified to the contrary. On the other hand, it was similarly within the discretion of other trial chambers to find that this testimony was not substantial enough to outweigh the testimony to the contrary given that the burden is upon the prosecution to prove its case and the accused is presumed to be innocent until proven guilty.

Two further points deserve to be highlighted here. First, as noted above, the failure of the Ad Hoc Court to reach definitive conclusions on this issue may be traced directly to the failure of the Prosecution and investigators to use the evidence available to attempt to prove this crucial element of their case. Testimony of key witnesses, documentary evidence, and physical evidence, for example in the form of confiscated weapons, was not brought before the judges. Second, the findings of certain panels as to command responsibility of high ranking officers might be seen as indicia of institutional responsibility. It must, however, be said, that to the extent that those judgments rely upon a theory of command responsibility, it is difficult to conclude that the evidence sufficiently established that there was a superior-subordinate relationship in the form of effective control between the militia who were the principal perpetrators of those attacks and the Accused. While the Court may have effectively established that there was a failure to prevent, this failure does not result in criminal liability unless it is also proved that a superior-subordinate relationship existed at that time between the Accused and the perpetrators. That relationship may be established by proving that the Accused had the power to prevent or punish the perpetrators. To the extent the court regarded it as proven that some of the perpetrators were TNI, there may be a rebuttable presumption that their superior officers possessed the power to prevent or punish. To the extent, however, that the perpetrators were militias not under the formal military hierarchy of the Indonesian Army, these are elements that the Prosecution has the burden of proving. In short, while there was evidence before the Ad Hoc Court that suggests institutional responsibility of TNI at least at the level of the East Timor or regional commands, the findings of the

²⁹⁵ See the judgment on Herman Sedyono et.al.

panels on this issue must be regarded as falling short of being conclusive in and of themselves. Of course, a different conclusion might be reached when the evidence before the Ad Hoc Court is considered together with evidence from different sources, such as the SPSC, SCU, and KPP HAM.

Recommendations: Given the discrepancies between the different judgments it should be a matter of the utmost importance to pursue this issue systematically. This may be done by conducting a more extensive examination of the BAP document lists and the KPP HAM database. It is also a matter that could perhaps be definitively resolved through access to the documents produced by local TNI commanders in East Timor in 1999.

IV.d. Police

The Indonesian Police, bound by the May 5th Agreement, were responsible for maintaining security and order in preparing for the Popular Consultation. It is worth noting that during that period of time, the Police was still part of the Indonesian defense institution, and under the command of the same commander of ABRI, but as an institution the Police had been separated from the TNI.²⁹⁶

Therefore, the police at the district level bore the responsibility to maintain the security and order of the society, which included ensuring the protection of the people. These duties were further emphasized in the Hanoi Lorosae I and II Operation plans that aimed at maintaining law and order during the Popular Consultation period.²⁹⁷ In addition, these operations also contained strategic planning to protect refugees.²⁹⁸

Based on the indictments established by the Attorney General Office, four police personnel were brought before the court, on the ground of their complicity either directly or indirectly in the crimes against humanity committed in the attack at three different places, namely the attack against Manuel Carascalao's residence in Dili, the attack against the Liquica Church, and the attack on the Dili Diocese.

²⁹⁶ See the judgment on Timbul Silaen, pp. 106-107.

²⁹⁷ See the judgment on Hulman Gultom, p. 86.

²⁹⁸ The term refugee is directly translated from the term 'pengungsi' in Indonesia language. The term refers to both the term 'refugee' as recognized in the international law, and the civilian seeking protection in various shelters, such as churches etc, or internally displaced persons.

The four defendants were high ranking police officials who were charged with command responsibility for the involvement of their subordinates in the crimes. Additionally, two out of the four had been accused of aiding and abetting the attack against the Ave Maria Church and Pastor Rafael's residence, namely Adios Salova and Gatot Subyaktoro.

Out of twelve cases tried by the Ad Hoc Court at the first instance, only Hulman Gultom (former Kapolres Dili) was found guilty and was sentenced for three years in prison for his failure to prevent the attack against Dili Diocese. The following excerpts from his trial and judgment form the basis of this decision:

“Police and the TNI were outside the Diocese Dili complex, but they did not help victims of the assault committed by those who attacked the building (statement of Nonato Soares)”

“TNI members and the police cursed at the refugees, and members of the mobile brigade who were witnessing the assault did not do anything to help or even to prevent it from being committed. Moreover, they did not prevent the militia's attack against the Dili Diocese (tatement of Nello Mesquita Da Costa Rego)

“Those who burnt Bishop Belo house were Aitarak militias, TNI and police personnel (statement of Francisco Kalbuadi, read from the BAP)

“Based on the facts revealed at trial, the panel of judges was of the opinion that the perpetrators were not direct subordinates of the accused who was under his effective control”.

“...the panel of judges viewed that it was convincing that even though there was an attempt to prevent and to help the victims, the aforementioned incidents occurred since the Defendant failed to effectively control his subordinates.”²⁹⁹

In the case of the attack against Manuel Carrascalao's house, the Defendant Hulman Gultom even was considered as participating in planning the attack. Besides, the Defendant also did not take any legal procedure to hold those who committed the crimes legally accountable, by way of carrying out investigation over his subordinates that deliberately allowed the attack to be committed.

In this instance the judgement on Hulman Gultom reads:

“... [the] Defendant's deed as well as his subordinates for not being able to anticipate the attack against Manuel Carasscalao's house constituted the act of

²⁹⁹ See the judgment on Hulman Gultom, p. 80.

omission as it meant that preventive action was not taken. Such omission can be considered as an attempt to abett the crimes as stipulated in Article 55 of the Penal Code, and can be categorised as conspiracy, which was a gross violation of human rights as stipulated in Article 44 of the Act no 26/2000 jo article 340 of the Penal Code, on which the Defendant can be qualified as actively taking part in planning the attack and the killing of twelve refugees at the Carrascalao's house³⁰⁰

“...on the Dili Diocese attack, the defendant did not carry out inquiry and investigation or other legal procedures to uphold law enforcement over the omission committed by his subordinates.”³⁰¹

This decision on the complicity and omissions of police personnel in the attack against Manuel Carrascalao's house and the Dili Diocese was different from the decision on the Timbul Silaen case, which affirmed that there was no police personnel involvement in the attack.

For example, the judgment of Timbul Silaen found:

“...Even if the defendant did not have any knowledge and had received information, since, as was mentioned earlier, there was no subordinates under his control who were found guilty of committing the gross violation of human rights
...”³⁰²

A decision on the absence of police complicity also can be found in the Judgment of the defendant Adios Salova (for the attack against Liquica church, 6th April 1999) and Gatot Subyaktoro (for the attack against Ave Maria Church, Suai, 6 September 1999). In these judgments both defendants were held not liable for the attacks. Additionally, the charge in the indictment that both defendants aided and abetted the attack was not successfully proven at trial.³⁰³

The judgment on Herman Sedyono et.al. explains:

“... the defendant I, II, III (Gatot Subyaktoro), IV and V had no direct hierarchical chain of command or effective control with the Laksaur and Mahidi group united in the pro-integration group, and in reverse the Laksaur and Mahidi group were not troops under the command or effective control [of the defendants].”

³⁰⁰ See the judgment on Hulman Gultom, p. 84.

³⁰¹ See the judgment on Hulman Gultom, p. 86.

³⁰² See the judgment on Timbul Silaen, pp. 129-130

³⁰³ See the judgment on Asep Kuswani et.al, and judgment on Herman Sedyono et.al.

“Considering that by answering the relation between the defendants and the Laksaur and Mahidi group... defendant I, II, III (Gatot Subyaktoro), IV and V cannot be held liable for the gross violations of human rights.”³⁰⁴

Based on the aforementioned description, institutional responsibilities of the police in relation to its task and responsibilities in maintaining security and order of the society was only considered in the Judgment against Hulman Gultom, while the three other defendants who also were members of the police were acquitted, as their trials failed to demonstrate their complicity in the crimes.

It is worth noting here that the series of attacks directed against civilian populations and the pro-independence groups were repeatedly committed (constituting at least five incidents) and brought about many fatalities. This quantity of attacks clearly demonstrated the failure of security system, including the institution of the Police.

The failure of this security system can also be seen from a number of indications, which tacitly showed a conducive situation, enabling the perpetrators to carry out the attacks. The environment which allowed for violence were obvious from the failure of the police personnel to take necessary and adequate actions in anticipating the attacks.

In the case of the attack against Liquica church, Liquica’s police personnel failed to take firm actions to dismiss the crowd of pro-integration militia who were planning to attack the church. The police did not take necessary preventive actions even though it was obvious that there was a concentration of armed BMP’s militias around the church. While the negotiations were going on to halt the plan of attack, the crowd began to launch the attack and there was not any action taken by the police to stop it.³⁰⁵

³⁰⁴ See the judgment on Herman Sedyono et.al. p.

³⁰⁵ However, most TNI and police appeared before the court challenged this statement. They argued that every possible measure to prevent the attack actually was taken; however, as they lacked personnel in the location of the attack, it was then not able to be stopped. See the testimony of Brig. Gen. Tono Suratman in the case of Abilio Soares who explained the lack of capacity, stating that there were only five battalions present to cover 662 villages, 64 sub districts before the Popular Consultation.

Further, as was discussed earlier in the subchapter on the TNI's responsibility, there were documents that pointed out the involvement of the police personnel, that of members of the mobile brigade (BRIMOB) who backed up the attack and supported the pro-integration groups.³⁰⁶

In the attack against Manuel Carascalao's house, the district police issued permission for the mass rally to take place on 17 April 1999 and did not disarm the militia groups even though there was clear indication of the planning to attack the pro-independence supporters, particularly in the speech of the leader of the pro-integration groups, Eurico Gutteres.³⁰⁷

The testimony of Raja Karina Brahmana explains:³⁰⁸

“that indeed on the great briefing April 17, there were some people carrying sharp weapons, ... and the police did not detain those weapons.”

The complicity of the Police in the attack against the Ave Maria church complex in Suai could not be proven in the trial; however, the failure of the police to protect civilian populations who were targeted was evident. According to witnesses' statements, the attack was systematically planned as they surrounded the location before launching the attack. Therefore, it could not be seen as a spontaneous action. As a result, there were 26 fatalities reported, which include priests, women and children.

The testimony of Lettu Pol. Sonny Sanjaya described the attack:

“that there were TNI and POLRI personnel around the church of Ave Maria but they did not do anything to prevent the assault. The witness saw they did nothing: they were only ‘staying’. The witness asked them why they did not prevent the

³⁰⁶ See Special Report document No. R-184/LAPSUS/IV/1999 dated 7 April 1999, signed by Brigadier General TNI Mahidin Simbolon, the Kasdam Kodam IX/Udayana

³⁰⁷ As the speech was broadcast on the local radio, there was a request for protection from the pro-independence supporters as can be found in the witness statement during the investigation process. However, the statement might not be considered and adopted as supporting evidence by the panel judges in the trial.

³⁰⁸ See Timbul Silaen's judgment, p. 61.

militias and they said because they are afraid since the number of militias was quite a lot. The witness was trying to separate the clash.”³⁰⁹

Based on various witness statements before the Court, it was mentioned that the police personnel also had attempted to prevent the attack and helped victims. This was evident from various documents (letters) which stated appreciation for the Police’s attempt to maintain law and order before and after the Popular Consultation. Besides, in September 1999 there was a shift of control from the police to the TNI as the situation was worsening. This shift also marked the shift of responsibility in maintaining security and order.

V. CONCLUSION

The trial process, due to the fact that it is designed to seek individual accountability for the crimes against humanity, gave diverse and often conflicting accounts as to what happened in East Timor in April and September 1999. As noted above, however, there were also important conclusions common to ALL of the judgments, such as the commission of gross human rights violations and crimes against humanity, and the identification of pro-integration groups as responsible for those attacks which targeted pro-independence civilians.

The fact that the defendants tried in twelve different cases were presided over by different panels of judges resulted in different conclusions. The following is a table that depicts the judgments reached by the panels:

Judgments by the Ad Hoc Human Right Court on the Case of East Timor

No	CASE DOSSIER	Summary of Judgments With Regards to the Occurrence of Gross Violations of Human Rights, and Perpetrator/Defendant Criminal Liability
1	Abilio Jose Osorio Soares	<ol style="list-style-type: none"> 1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity 2. The perpetrators in Liquisa : pro integration group. Dili: pro-

³⁰⁹ See Abilio Soares’ judgment, p.43

		<p>integration group. Suai : pro-integration group and omission by security apparatus</p> <p>3. the defendant has failed to take preventive or disciplinary measures and to report and to surrender the subordinates for prosecution therefore the Defendant was judged guilty</p>
2	Timbul Silaen	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the perpetrators were pro-integration groups</p> <p>3. the defendant's accountability cannot be pursued because it was not proven that the subordinates of the defendant were participating in the attack.</p>
3	<p>1. Herman Sedyono</p> <p>2. LilieK Koeshadiyanto</p> <p>3. Gatot Subyaktoro</p> <p>4. Achmad Syamsudin</p> <p>5. Sugito</p>	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. The perpetrators were Laksaur and Mahidi who were united as part of a pro-integration group.</p> <p>3. the defendants accountability cannot be ruled upon because they do not have command nor effective control over Laksaur and Mahidi, and there were not troops under the Defendants' command</p> <p>4. there is no relation between the Defendants and the perpetrators of gross violations of human rights</p> <p>5. there was no aiding committed by the Defendants in support of the militias</p>
4	Endar Prianto	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. there were no subordinates of the Defendant who were involved in gross violations of human rights</p> <p>3. The perpetrators were from the pro-integration group, Besi Merah Putih.</p> <p>4. the Defendant's accountability cannot be ruled upon because it has not been proven that there were subordinates of the defendant under his chain of command who committed the attack</p>
5	Soejarwo	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the perpetrators of the attack were from the pro-integration group</p> <p>3. the Defendant did not take the appropriate measures to maintain security</p> <p>4. the Defendant committed negligence by withdrawing troops under his command from the residence of Bishop Belo when the mass was about to start. The Defendant was accountable due to his failure to prevent or stop the violence at the residence of Bishop Belo</p> <p>5. Before withdrawing the troops the defendant did not consult his superiors</p>
6	Hulman Gultom	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the Defendant failed to take security measures. The Defendant failed to effectively control his subordinates who were committing</p>

		<p>ommission that contributed to the gross violation of human rights committed by pro-integration militias</p> <p>3. The perpetrators were from a pro-integration group</p>
7	Asep Kuswani Adios Salova Leonito Martens	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. The perpetrators of the gross violations of human rights is the militia, namely the Besi Merah Putih group.</p> <p>3. there were no subordinates of the Defendant who were involved in the violations.</p> <p>4. the defendants criminal accountability cannot be decided. Defendant Asep Kuswani was acquitted because it was unproven that his subordinates were committing the attack. Leoneto Martins and Asep Kuswani were acquitted because it was not proven that there was any relation between the perpetrators and the defendant. Adios Salova was acquitted because it was not proven that there was any relation between the perpetrators and the defendant.</p> <p>5. there was no aiding committed by the Defendant in support of the militias</p>
8	Yayat Sudrajat	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the perpetrators of gross violation of human rights are the Besi Merah Putih militia led by Manuel Sousa</p> <p>3. there was no subordinate of the defendant who was involved in the violation</p> <p>4. the defendant's criminal accountability cannot be pursued because it remains unproven that the troops under his command participated in the attack against Pastor Rafael's residence and there was no chain of command or effective control between the commander and the Besi Merah Putih group</p>
9	Adam Damiri	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. The perpetrators were pro-integration groups with TNI involvement</p> <p>3. the Defendant is judged guilty for crimes against humanity</p>
10	Tono Suratman	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the perpetrators of the attack were pro-integration groups</p> <p>3. there were no subordinates of the Defendant who were involved in the violations.</p> <p>4. The defendant's criminal accountability cannot be pursued for the crimes that occurred</p>
11	Nur Moeis	<p>1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity</p> <p>2. the perpetrators were pro-integration groups supported by TNI members, namely the subordinates of the defendants, i.e. Dandim</p>

		<p>Suai and Dandim Dili</p> <ol style="list-style-type: none"> 3. the Defendant did not take the appropriate measures to maintain security. 4. the Defendant did not take the appropriate and needed measures within his authority to prevent or stop or to surrender the perpetrators to the officials with the authority to conduct inquiry, investigation and prosecution.
12	Eurico Guterres	<ol style="list-style-type: none"> 1. Gross violations of human rights have occurred in the form of murder and assault as crimes against humanity 2. the perpetrators were the militia groups Aitarak and Besi Merah Putih as well as members of TNI from Maubara who committed the attack after the mass rally held on the grounds of East Timor's Governor's office and the security apparatus that committed omission. 3. the Defendant is accountable for the deeds committed by his subordinates. Aside from that, the panel in presiding over this case also stated that Tono Suratman, East Timor's Governor, the Mayor of Dilli, and other parts of the TNI apparatus have committed omission with regards to this attack.

Yet as already elaborated in the sections above, there were some points in which all the judgments agreed on in regards to what happened in the determined *tempus* and *locus*:

1. Within the time period there existed two political objectives within the community of East Timor, namely the pro-independence and the pro-integration, each wanting to win the Popular Consultation. Therefore, in regards to the five incidents processed by the court, the underlying policy of those who perpetrated the gross human rights violations was to ensure the victory of pro-integration in the Popular Consultation.
2. In the five incidents processed by the Court, the pro-integration armed group committed attacks against the civilian population, consisting of men, women, and children who were at the time taking refuge at the crime scene- some of whom were allegedly supporters of independence.
3. These incidents represented widespread or systematic attacks against the civilian population that resulted in fatalities, injuries, as well as material and immaterial losses. There are differences at this point, however, namely as to how the panels reached the conclusion that a widespread or systematic attack had occurred. Some cases, in which the defendants were charged with involvement in more than one incident, relied on the repetition, pattern, and massiveness of the attacks, whereas

others that dealt with only one case relied more on the quantity of victims. The requirement to fulfill the element of policy as part of the “systematic” element was also interpreted differently by the panels. Some emphasized premeditation as illustrated by the continuity of an organization’s policy, while others tried to capture the presence of a state or “systemized” policy underlying the crimes.

In the previous section on institutional responsibility it was already explained that the indications of institutional responsibility can be derived from the involvement of individuals within those institutions, not only in the physical perpetration of the crime but also in the construction of the policy and/or the preconceived plan underlying the perpetration of the crimes. As already apparent in the table above, however, different panels derived different conclusions on whether *or not the pro-integration armed groups were assisted or supported by individuals from the TNI, Police, Militia and the Civilian Government*. Mainly there were four versions of the relationship between these parties with regards to their involvement in the commission of crimes against humanity stated in the twelve judgments:

- 1) There was no relation between the Militia and TNI, Police, and Civilian Government. The militias planned and perpetrated the attack themselves.
- 2) The relation between the militia and TNI, Police, and Civilian Government is unknown because it is considered as irrelevant to the cases which involve only individual responsibility.³¹⁰
- 3) Some members of the TNI were involved in the attacks, but did so on their own volition without the approval or order of their superiors.
- 4) TNI, Police, and Civilian Government supported the pro-integration militias in perpetrating the attack by providing finance, arms or through acquiescence or omission before, during or after the attack.

³¹⁰ See Judgment for the case on Endar Priyanto, in which the victim witnesses testified there were members from Koramil Maubara involved in the attack of Manuel Viegas Carrascalao’s residence and the other witnesses claimed there was no member of military there, and the judges ruled that since even if there were members of Koramil Maubara there, the Defendant did not have any relation to the chain of command within the Koramil Maubara. Therefore, the involvement of military members in the attack was of no relevance to the case.

The discrepancies between these four versions were largely due to issues related to witnesses and evidence presented by the Prosecutor. As already explained in the section on factors influencing the performance of the court, there were very few victim witnesses present in the trial: most of the witnesses present were those related by profession to the Defendant. The testimonies of these two categories of witnesses were often conflicting with one another,³¹¹ and the judges had to choose which version to be adopted. Some panels decided to make decisions based on the quantity of the witnesses present who supported a particular version, whereas some others decided to determine the version to be adopted based on the identity of the witnesses to determine the credibility of their testimonies³¹². Since there were so few victim witnesses, any panel that opted to take into account primarily the quantity of witnesses on each side would inevitably find in favor of the Accused. On the other hand, the panels that convicted Defendants, did so because they analyzed the testimony of the different witnesses and found the testimony of the victim-witnesses more credible.

These evidentiary problems were worsened by the fact that there was a significant lack of documents used in the Judgment to support their deliberations, and therefore the proceedings relied heavily on the testimony of witnesses. Some documents referred to in the judgments were 1) the document with number: R-184/LAPSUS/IV/1999, an official letter with the letter head and stamp of Pangdam Udayana, containing the military report on the attack in Liquica, 2) the Governor's Decree 100/734/ [unclear]/99 on "Support for the Effort for the Finalization of East Timor Status" 3) the Decree of the Establishment of Pam Swakarsa in the District of Dili (unnumbered and undated, only stating the year of 1999.) 4) Visum et repertum No.001-026/TT.3002/SK II/XI/1999 of the victims excavated from the mass grave in South Alas Village, Kobalima Sub-District, Belu District, The Province of East Nusa Tenggara. 5) List of evidence unearthed in the same

³¹¹ As an example the testimony of a victim/witness, Florindo de Jesus Jesus and Alfredo Sanches stated that there were members of TNI from the Koramil Maubara who were involved in the attack against Manuel Carrascalao's residence from Koramil Maubara, but this assertion was denied by other witnesses. See judgment of Endar Prianto, p. 47.

³¹² In the judgment for Adam Damiri, the panel concluded that although the victim-witnesses were smaller in number, their account represented the truth. See judgment on Adam Damiri, p. 150. In other judgments, the victim accounts were read in the court and denied by other witnesses, weakening the weight of proof of the evidence. See the judgment on Herman Sedyono et.al.

excavation 6) List of weapons confiscated in East Nusa Tenggara. *These are only six out of more than 45 documents listed in the BAP, yet they were the only ones brought into evidence and considered.* Further, there are *more than a thousand documents* referred to in the document lists in the KPP HAM report.

Despite the differences on essential issues bearing upon institutional responsibility, there are nonetheless some facts which were undisputed in any of the trials and bear upon the issue of shared political objectives between the various institutions in question:

1. That the establishment of the pro-integration groups had been done with full knowledge of the regional government and TNI/POLRI apparatus³¹³.
2. The mass rally of the pro-integration group on 17 April 1999 was attended by the regional government as well as the TNI/POLRI apparatus and it was held using government's facility, namely the Governor Office³¹⁴
3. That the civilian government provided funds from the official regional budget for organizations that were acknowledged as PAM SWAKARSA yet were also implicated in the perpetration of the attack, such as AITARAK.³¹⁵

As was seen, on the basis of such evidence, some judgments ruled the indications were sufficient to infer a common policy between the institutions:

For instance, the judgment on Abilio Soares finds:

“Bearing in mind that murder, assault, committed by the pro-integration group is part of a planned strategy to ensure the victory of the pro-integration group in the

³¹³ In all court judgments, based on the witness accounts and legal facts, it is shown that the Defendants knew about the presence and formation of pro-integration groups. In several judgments, such as that of Asep Kuswani et.al., the Defendant Leoneto Martins knew the leader of Besi Merah Putih, Manuel Sousa. In a larger scope the presence of pro-integration group once conducted the mass rally attended by the regional leaders in Dili. See the judgment on Asep Kuswani et.al, p. 117.

³¹⁴ See the testimony of Raja Karina Brahmana. The legal facts adopted by the judges from his testimony was that the attending officials in the mass rally were the Muspida (assembly of regional leaders) of First Level Region (Province), The Governor, the Chair of the East Timor Regional Parliamentary, the mayor of Dili, The Vice Chief of the Regional Police and The Commander of Military Sub-region (Danrem). See also the judgment on Abilio Soares, p. 66.

³¹⁵ This conclusion is based on the account of witnesses in the court, including the testimonies of the heads of districts who were also on trial in other cases (Herman Sedyono and Leoneto Martins) and adopted as a legal fact in the judgment of Abilio Soares. This was also in part based on the testimony of Eurico Guterres who stated himself to be a member of Aitarak. See the judgment of Abilio Soares, pp. 21, 39, 40, 66.

popular consultation, wherein the policy of Pemda possesses the same political ideology with the pro-integration group.³¹⁶[...] Bearing in mind all the above considerations it is the opinion of this panel that the crimes indicted against the defendants in the first and second counts have been proven legally and convincingly.”³¹⁷

Some panels also found the existence of a policy to ensure the victory of the Popular Consultation, so that East Timor would remain part of Indonesia, was also implied by a common political vision between the attacking groups, the military and security forces, and the regional government.

The judgment on the case against Eurico Gutterres explains:

“... the Defendant has committed omission in regards to the attack against Manuel Viegas Carascalao’s residence. This omission was committed not only by the Defendant but also by the military apparatus, such as Danrem Tono Suratman, the authorized civilian officials including the Governor and the Mayor of Dili, as well as other [parts of the] security apparatus who are supposedly responsible. The collective omission by the above elements demonstrates the common aspiration, namely to retain East Timor as part of the territory of the unified state of the Republic of Indonesia. The consistent pattern of omission in several other incidents in East Timor is considered to be sufficient to prove the existence of a systematic plan to ensure the victory of the pro integration group, which resulted in attack against the civilian population.”³¹⁸

It also should be noted that whether or not the Defendant was found guilty of the charges, it should not be used as a parameter to determine the conclusive truth. First of all, as already elaborated in the section on factors that influence the judgments, in some cases there were some issues in the implementation of the law, such as inappropriateness of the article used in the charges. Second, the court procedure is intended to determine the accountability of an individual, and therefore the evidence submitted by the Prosecutor and considered by a particular panel is what was thought to be relevant to the liability of the defendant- which in most of the cases resulted in a failure to consider the whole

³¹⁶ See judgment on the case against Abelio Soares p. 91.

³¹⁷ See judgment on the case against Abelio Soares p. 96.

³¹⁸ See Judgment on the Case against Eurico Guterres, p. 150.

context of the violence in 1999 in East Timor.³¹⁹ As will be seen, this is a failing also common to most of the Judgments of the Special Panels for Serious Crimes.

It is also important to underline again that the emphasis on the analysis of the accountability of pro integration armed groups, TNI, Police and Civilian Government at the time in this research is due to the nature of the three bodies of documents studied, which are documents of the legal process in Indonesia about gross violations of human rights in East Timor. That process itself was focused on revealing whether or not there were gross violations of human rights committed by individuals who were under the Republic of Indonesia's legal jurisdiction. For this reason little attention was paid in these documents to crimes committed by other groups, such as those supporting independence. There were indications in the documents that such crimes also occurred - for example in the case of the attack against Liquica Church, which some witnesses claimed as being precipitated by the violence committed by pro-independence forces led by Jacinto da Costa.³²⁰ It was not within the jurisdiction of Indonesia's legal system to pursue the validity of this allegation, and therefore this research cannot offer an analysis of this issue. There needs to be separate research to determine this, again to capture the conclusive truth about the violence in 1999 in East Timor. However, as a note of caution, the working principle here is that *whichever* party commits gross human right violations should be held accountable, and *there is no justification* to permit impunity in the employment of extrajudicial violence and gross violations of human rights as means to resolve an issue even if in retaliation to another party's criminal conduct. If this is the case, what should be done then is to hold both parties as accountable.

VI. RECOMMENDATIONS

There were a number of recommendations already mentioned above which shall be reiterated at this point:

Priority Recommendations

³¹⁹ For example see the judgment on Herman Sedyono et.all, the judgment on Asep Kuswani et.al., and the judgment on Endar Prianto.

³²⁰ See judgment on Asep Kuswani and Yayat Sudrajat

1. The research of the Commission should be extended to obtain and analyze all of the important available evidence that was not reviewed in this report. This is, in the first instance, the KPP HAM document database of approximately 1000 documents and the documents and other evidence cited in the BAPs but not contained therein. As noted above, ***given the discrepancies between the different judgments on the issue of institutional responsibility it should be a matter of the utmost importance to pursue this matter systematically. This may be done by the fuller examination of the BAP document lists and the KPP HAM database. It can also be pursued through further research in the SCU archives. Finally, it is a matter that could perhaps be definitively resolved through access to the documents produced by local TNI commanders in East Timor in 1999.***
2. The Commission should make every effort to obtain the cooperation of the TNI in regard to furnishing the documents requested for this research. The request for those documents was made as part of the research plan for this report. There is no question that obtaining such documents would add decisively to any further research and is also essential in establishing the conclusive truth.

Secondary recommendations

3. Any assessment of truth should be made from the bottom- up - namely to seek for the accounts of the victims and eyewitnesses first, then work upwards to the parties accountable for maintaining order. One of the problems of determining the truth in the Ad Hoc Court was the grossly imbalanced proportion between victim-witnesses and other witnesses presented.
4. In capturing the conclusive truth, there needs to be further research on the history of Indonesia's civil and security policy in regards to East Timor to test the vailidity of the KPP HAM conclusions as to whether the gross human rights violations committed in April to September 1999 represented a furtherance of pre-existing patterns or policies.

5. There needs to be a separate evidence and documentary assessment about the allegations of gross violations of human rights committed by pro-independence forces as well as a comparison between the massiveness of the crimes with what is found in the bodies of documents researched here.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS FOR PART I

I. INTRODUCTION

The evidence and analysis in the three bodies of documents analyzed in the preceding chapters, representing the steps of the legal process in Indonesia for the violence in 1999 committed in East Timor, led to common conclusions as follows:

- ❖ All three bodies of documents agree that in the period before and after the Popular Consultation in East Timor in 1999, there were gross violations of human rights.
- ❖ All three agree that the gross violations of human rights were massive in terms of geographic area and the amount of victims.
- ❖ They also agree that this massiveness is one of the key elements in determining that Crimes Against Humanity (CAH) were committed
- ❖ The three documents agree that these gross human rights violations involved attacks directed against a civilian population, another key element of Crimes Against Humanity.
- ❖ In terms of the underlying causes of the crimes, the three documents agree that they have been driven by the conflicting political objectives during that period, namely for East Timor to remain with Indonesia or to be an independent state.
- ❖ The three documents agree that the crimes were perpetrated with at least some extent of premeditation (planning).
- ❖ The three documents agree that crimes against humanity were directly perpetrated by the pro-integration militias.
- ❖ The involvement of Indonesia's armed forces in the attacks has been acknowledged in the KPP HAM report and the Investigative Dossiers (BAP), but there are different conclusions as to their involvement in the twelve judgments of the Ad Hoc Court.
- ❖ In the KPP HAM, BAPs and some judgments, there is agreement that there was at the least tacit support by the Government for the perpetration of the crimes by

way of omission, namely not taking the necessary action to prevent or stop the perpetration of the crimes, or not taking appropriate actions against those responsible for the crimes perpetrated.

These issues will be elaborated further in the next sections of this chapter. It shall contain analysis on the similarities and differences between the documents as well as what can be concluded from the available evidence. This analysis will be structured based on the elements of crimes against humanity as defined in the Guidelines of the Supreme Court of Indonesia for the Indonesian Human Rights Courts, since it is the international crime identified for the basis of the legal process, and also what is defined by Indonesia's Law No. 26/2000 as one of the forms of gross violations of human rights that can be pursued through the available law mechanism, namely the Ad Hoc Human Rights Court.

At the end of the chapter, there will be a brief conclusion, including noting the weaknesses of each body of documents and further bodies of evidence necessary to unearth the definitive truth as to what happened in 1999 in East Timor,

II. CRIMES AGAINST HUMANITY IN EAST TIMOR

As already previously noted, the three bodies of documents provided ample evidence that there have been gross violations of human rights that cumulatively were regarded as crimes against humanity. This can be shown from the conclusions of KPP HAM that elaborated on how throughout the period there had been **massive** gross violations of human rights which included mass killing, torture, and assault, enforced disappearance, violence against women and children, rape and sexual slavery, enforced migration, scorched earth policy, and destruction of property. The massiveness is shown by the amount of victims and the spread of the violence within the period.³²¹

Following that, the Investigation, documented in the BAP or Investigative dossiers also was built upon the primary assumption that crimes against humanity occurred in East Timor. There was however in the investigative dossiers (BAP) the lack of a concentrated

³²¹₃₂₁ KPP HAM Report, point 64

effort to prove the chapeau elements of the crimes. Instead, the concentration was on individual accountability in the narrow sense; that is, treating each crime charged as an isolated incident. In the process before the Ad Hoc Court, the ruling that crimes against humanity had occurred within the relevant time period in 1999 was one of the most important conclusions that each panel of judges reached.

There were, however, differences between the three bodies of documents in defining the elements of the crimes - for example in regards to the widespread nature of the crime, or the pattern that differentiate the crimes from random attacks. This will be shown in the following sections.

II.a. WIDESPREAD

II.a.1. Massiveness of Victims

- a. There is no dispute as to the massiveness of the crimes in terms of number of casualties. Yet this was determined with different approaches. While the KPP HAM report includes the calculations of fatalities as a whole throughout January-September 1999 (394 fatalities), the BAP and the Court applied a different approach. Perhaps because the BAPs and prosecution strategies were formulated by parties with no experience in prosecuting or investigating crimes against humanity, the findings of both bodies of documents have the tendency to be fragmented, often ignoring the larger context of the crime. Therefore, “massiveness” of the number of the victims was often calculated per-case, namely the victims are considered massive in number because they were killed in one particular incident. This ignores the fact that for crimes against humanity the specific offense must be part of a larger attack directed at a civilian population. For example, in the BAP against Asep Kuswani et.al. based upon accountability for the attack against the Liquica Church Complex and Father Rafael’s Residence, April 6, 1999, the massiveness was substantiated by noting 22 fatalities and ± 21 wounded for that particular

attack.³²² Whether this attack was *part of* a widespread or systematic attack against a civilian population was largely omitted from the discussion. Before the Ad Hoc Court, some judgments note the amount of victims across all the five incidents, but only when the defendant was being tried for accountability for all the cases processed in the trials, such as in the cases of Timbul Silaen and Adam Damiri:

The Judgment of Timbul Silaen reads:

*“Considering that from the legal facts conveyed in the court it is clear and proven that the perpetrators have committed a murder that is conducted “Deliberately” and with “premeditation” to the victims at the sites of the incidents, namely the Liquica church complex on 6 April 1999, were 9 (nine) fatalities, at the residence of Manuel Carascalao on 17 April 1999 were to the amount of approximately 12 (twelve) fatalities, one of them being the son of Manuel Viegas Carascalao, Dili Diocese approximately 2 (two) fatalities as well as in the Ave Maria Church Complex Suai Covalima and the house of Bishop Bello respectively on 5 and 6 Spetember 1999 to the amount of 27 (twenty seven) fatalities.”*³²³

Other judgments only note the victims of the incident relevant to the case against the particular defendant, such as in the case of Herman Sedyono et.al., which only dealt with the attack of Ave Maria Church Complex with its 27 fatalities.

For example, Herman Sedyono et.al. judgment states:³²⁴

“that according to the facts revealed in the court due to the attack... there were victims of the civil population from the pro-independence group consisting of the pro independence group in the church complex, approximately ±26 died.”

II.a.2. Scope of *Tempus* and *Locus*

It is clear in the KPP HAM Report how the violence occurred from January-September 1999 in almost all the 13 districts of East Timor at the time, albeit with different escalations as already cited in chapter two:

Month	Types of violations of human rights
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³²² See AsepKuswani Dossier, p. 42.

³²³ See Timbul Silaen’s Judgment p. 116

³²⁴ See Herman Sedyono et.al. Judgment, pp 104 - 105.

	01	02	03	05	13
Jan '99	17	11	7		2
Feb '99	5		2		4
Mar '99		1	1	2	
Apr '99	190	19	24	1	41
May '99	2	5	2		1
Jun '99		7			1
Jul '99		3			1
August '99	28	13			4
Sep '99	142	24	6	14	29
Oct '99	7	7			1
Des '99	3				1
Total	394	90	42	17	85

The report then elaborated upon the 13 prominent cases of violence, but only on three cases of gender-based violence out of the 142 listed in the report. Yet this larger context of widespread attacks in terms of locations of crimes was largely ignored in the other two bodies of documents. This is due to the failure to capture the whole context and only concentrating on substantiating the individual accountability, as already noted above. Thus the scope of *tempus* and *locus* for the investigation and the court process was limited to five incidents, extending from April-September 1999, two before the Popular Consultation and three after.³²⁵ These are the cases utilized as the basis of the indictments and in turn as the underlying crimes that serve as the foundation of the determination of guilt of the defendants. Yet throughout the investigation period, as captured in the BAP, more than five cases were explored with the witnesses. This is especially clear with

³²⁵ The two incidents cited before the Popular Consultation were: the attack against Liquica Church Complex and Father Rafael's Residence on April 6, 1999 and the attack against Manuel Carrascalao's House, on April 17 1999. After the Popular Consultation the incidents cited were: 1) Attack against Dili Diocese, September 5, 1999, 2) Attack against Bishop Belo's Residence, September 6, 1999, and 3) Attack against Ave Maria Church, Suai, September 6, 1999

regard to the scope of *locus* in the Adam Damiri case files, in which the prosecutors alleged that there were twelve major incidences before the Popular Consultation: one during the consultation and five afterwards, including incidents at Bazartete, Liquica, Covalima, Alieu, Ainaro and many others.³²⁶

II.a.3. The Incidents as Parts of a Pattern of Organized Conduct

This section refers to whether or not the incidents are separate and isolated events, or organized and patterned. In other words, were the violations perpetrated in an organized fashion or according to an implicit or explicit plan or policy which unites these incidents as parts of larger patterns of collective action? The answer to this question will be discussed in the subsequent section on the pattern of crimes in 1999 in East Timor, but it should be noted here that this qualification has sometimes been misinterpreted, especially in some judgments, as referring to “togetherness”, i.e. whether the attack was committed together, for example, between the militias, TNI, and Police. This misunderstanding is apparent, in one particular judgment - the case dossier of Herman Sedyono et.al. - which contains an altogether peculiar definition of widespread: “the element of widespread means an activity that shall bear impact, nationally and internationally, causing material and immaterial damages, horrendous, a brutal act to enforce one’s own political interest, creating discomfort for individuals as well as the society and *involving many parties, creating a chain of similar events.*” This definition has no foundation in any recognized interpretation of crimes against humanity as a doctrine of international humanitarian law and jurisprudence. It is also contradicted by the guidelines of the Supreme Court of Indonesia. Indeed, it was to remedy such blatantly idiosyncratic and incorrect applications of the doctrines of Law 26/2000 adopted from the Rome Statute that the Indonesian Supreme Court adopted the Guidelines. Such erroneous interpretations and applications of the law were a serious problem in terms of the crucial role they played in determining some of the judgments.

³²⁶ See Adam Damiri investigative dossier, pp 44-46

The collective or organized nature of the crimes is important especially to determine the validity of the allegations that the crimes had been spontaneous and unpremeditated. This, in turn, will determine whether or not there is institutional responsibility for the crimes. In order to explore this further, the section below shall discuss the particular patterns that characterize the crimes which can form the basis for some of the conclusions as to institutional responsibility.

II.b. PATTERN OF CRIMES

It has already been pointed out that while the establishment of a series of crimes over an expansive area and causing multiple victims is crucial in determining whether or not crimes against humanity occurred. Law No. 26 also requires proof of the existence of a policy or planning that binds together these crimes as part of a collective action, although the policy does not have to be a formal one³²⁷. While the ultimate, indisputable evidence of such a policy is a document or other official pronouncements, the existence of a policy is usually inferred from indications that can prove beyond a reasonable doubt that these are not random crimes. The indicators shall be further discussed below:

II.b.1. Specific target population

“Specific target population” refers to a commonality of identities of victims in the attacks. Common identity may be used as an indicator that the crimes were not random crimes, but targeted to a specific group. Referring to the section on the KPP HAM report above, the classification of a target population was clear. The report clustered the victims based on three classifications a) a civilian population targeted due to their real or suspected political beliefs, namely pro-independence, b) Victims from amongst civilians who were not affiliated to a specific political stance such as children, students, members of the press, etc. and c) Victims who are victimized due to their gender and subjected to sexual violence. As noted all of these victims were members of the civilian population

³²⁷ See the Republic of Indonesia’s Supreme Court’s Guidelines to Elements of The Crimes of Gross Human Right Violations and Command Responsibility, 2006 p. 25-26. Also see the Elucidation Section of Law No. 26 for Article 9 of the Law: “What is meant by “an attack directly directed to civilian population” is a series of acts committed against civilian population as a furtherance of the policy of the authorities or the policy related to an organization”

targeted specifically due to their alleged affiliation, sympathy, or relationship with pro-independence supporters or groups.

In the investigation process, namely the BAP, as already noted in Chapter Three, there was no particular effort to define the civilian population targeted. As already mentioned, the term civilian population throughout the investigation process is considered as self-explanatory, and just as in regards to the other chapeau elements. There was no identifiable approach to reveal or underline the *specific common identity* of the target. Nonetheless, the BAPs implicitly identify the victims as typically either pro-independence, or seeking shelter with pro-independence supporters. The dossiers use several terms in addressing the victims, namely, “refugee”³²⁸, “people”³²⁹, “civilian population”³³⁰, “pro-independence supporters,”³³¹ “civilian people,”³³² or the definition of civilian population were used collectively namely by stating that the group attacked was pro-independence taking shelter and belonged to the civilian population.

Yet despite these differences in approach and definition, what is clear in all the judgments is that the court concludes that the attack was targeted against a civilian population. Some went further and specified that the civilians attacked were targeted as affiliated with the pro-independence group. This for example, can be seen in the following judgment of Adam Damiri’s.³³³

“On 5 and 6 April there occurred an attack committed by the pro-integration group against the pro-independence [supporters] seeking refuge at Liquisa Church and the residence of Pastor Rafael Dos Santos ... and has caused 20 fatalities from the pro-independence side ...”

³²⁸ This term is translated from the word “pengungsi” in Indonesian language. However, it has a very different meaning from the term ‘refugee’ as recognized in the international law. The term used in the dossier refers to people who seek for protection in that particular place, which in this case, can be house or church.

³²⁹ This term used in the investigative dossier of Asep Kuswani refers to people living in a civilian settlement in Maubara. See Asep Kuswani Dossier, p. 40-42, the section of Legal Analysis, wherein the civilian populations referred to by the terms enlisted in the main text

³³⁰ See Tono suratman dossier, pp. 125-126

³³¹ The term is used to refer to those seeking for protection inside the Ave Maria Church, Suai

³³² See, investigative dossier on Herman Sedyono, et al, in the case of attack against the Ave Maria Church, Suai, 6 September 1999

³³³ See Adam Damiri’s judgment, pp. 166 -167.

“the attack of the pro-integration group against the pro-independence [group] taking shelter at Bishop Belo’s residence caused a child to die.”

II.b.2. The consistent modus of perpetration of attacks

In regards to the incidents taken as the key cases in the investigation and prosecution, they are portrayed as manifesting a consistent pattern of perpetration. This provides an even stronger indication that these crimes were not spontaneous, random or isolated acts. As already pointed out in Chapter Two, that can be seen from the following: first of all, in all five incidents, the perpetrators had a specific target location, as opposed to spontaneously committing violence in a clash (i.e. unplanned fights between two groups due to a chance encounter). The attacking masses had been mobilized first in a location, then moved to the target location as a group. Upon arrival at the target location they would besiege the target location, before eventually launching the attack. The target locations were always refugee centres. Before, throughout, and after the attack, there would be either the absence of the military and/or the police force, or they were there but stood aside before and during the attack- or even actively participated in it. In some cases, the armed forces would be actively involved in eliminating the evidence. This pattern was acknowledged in the conclusion reached by the panel in Adam Damiri’s Judgment.³³⁴

“ ... in the crimes against humanity in East Timor such as the cases in the aforementioned three sites, there are similar characteristics although not formalized formally, namely:

- *Always preceded by the gathering of masses consisting of pro-integration organizations that attained a clear organizational structure and [were] recognized by the government’s apparatus, TNI, and the Police Force (POLRI);*
- ...
- *The victims of the attack were always pro-independence [supporters] taking shelter outside the assigned refugee sites determined by the power holder;*
- *The locus of the incident is widespread in scale and repetitious in Dili, Liquisa and Suai;*
- *Blatantly the Army of TNI has committed discriminative actions or at least have a strong tendency to side with the pro-integration group.”*

³³⁴ See Adam Damiri’s Judgment, pp. 167-168.

As noted in the analysis in the preceding chapters, there were other panels of judges who reached very different conclusions as to the role of the TNI and other Indonesian institutions.

II.b.3. Part of Policy

As pointed out by KPP HAM, a crucial point in determining whether or not the crimes reflected a policy or planning, is the context, or the history of the approach that the Government of Indonesia had employed in East Timor before the Popular Consultation to maintain Indonesia's presence and power over the territory. This mode of historical analysis was ignored almost completely during the investigation, prosecution, and trial phases of the Indonesian judicial process. According to KPP HAM on the other hand, since 1975 the Indonesian Armed Forces had employed the method of arming civilians and integrating them into a campaign against the fighters for independence.

After the announcement of the two options and the signing of the May 5th Agreement, the official stance of the military was to encourage peace and order in the region and that they shall maintain neutrality. Yet, the KPP HAM and some of the Ad Hoc Court judgments concluded that the reality at the field level was different. As Adam Damiri himself admitted in the interview with Komnas HAM, there were strong psychological links between the military and the pro-integration group.³³⁵ He also presented this emotional link as a factor that made the security situation more precarious. The clear implication of this line of argument is there was an awareness at the regional command level that local TNI garrisons were closely connected to the pro-integration forces in their communities and were likely to support them.

It was also already elaborated above how evidence before the Court supported findings of partiality in favour of the activities of pro-integration groups. This is evident implicitly in the language used by the military in some documents referring to the pro-independence cause. Some formal reports and other communications referred to pro-independence

³³⁵ See Transcript of Adam Damiri's Interview by the KPP HAM, [undated] December 1999

sympathizers as an obstacle, or a “hindrance to the cause of integration.” In other documents, there were comments that show implicit or explicit approval of violence by pro-integration militias against pro-independence groups or sympathizers because such violence was seen as ensuring the success of the pro-integration cause.³³⁶

As detailed above, in all three bodies of documents there was evidence that indicated forms of support that implied the presence of a policy aimed at achieving victory for pro-integration through means that supported militias engaging in violence and intimidation against civilians. One form of clear support from the civilian government was the integration of militias within the structure of Community Security (Pam Swakarsa), as well as granting them financial support. As shown in the decree of the Head of Dili District on the Pam Swakarsa establishment, the local militia, namely Aitarak, was given a budget and authority, and its commander was appointed to be its Operational Coordinator. Aitarak was later implicated in the perpetration of numerous crimes, namely the attack on Manuel Vegas Carascaló’s residence, the attack against Bishop Belo’s residence, and the attack against Dili Diocese. This financial and material support was also addressed by the other bodies of documents.³³⁷

Another form of support was in armament and facilities. The government provided some facilities, for example for the mass rally in Dili, the front of the Governor’s Office was availed for the pro-integration forces to mobilize. Examples of these forms of support can be found in the following testimonies.

Testimony of Drs. Raja Karina Brahmana (Ex- East Timor Regional Area Secretary-Sekwilda).³³⁸

“that indeed on the mass rally on April 17th, there were some people carrying sharp weapons and self-assembled weapons. That for the purpose of mass rally

³³⁶ For more elaboration and clippings of evidence, see Chapter 2 of this report on KPP HAM.

³³⁷ For discussion about the financial support and interrelation between PAM SWAKARSA and the government as well as the interrelation of militias such as Aitarak and PAM SWAKARSA in the Investigative Dossier, refer to pp. 51-52 of this paper. Whereas for the analysis of evidence found in the court documents for the same topic, refer to p. 95.

³³⁸ Abilio Soares’ judgment, p. 53.

they had asked permission from the local government to use the location. The event was conducted from 9 am until 11 am.

Testimony of Abilio Soares:³³⁹

“that indeed on April 17, 1999, a mass rally took place in the front area of East Timor’s Governor’s office, [and] the event was attended by thousands of people. The original purpose of the event was a PAM SWAKARSA briefing The event was organized by the Mayor of Dili Administrative City.”

Other evidence indicated that military provided support in the form of arms, headquarters and means of transportation for the militias throughout the period investigated and processed.³⁴⁰ Other testimony contradicted these claims and different panels reached different conclusions as to the relative credibility of the conflicting evidence. The same was true as to the crucial question of the direct involvement of TNI or Police members in the physical perpetration of the attack³⁴¹. Some of the evidence strongly pointed in this direction such as the testimony of Armindo De Deus Granadeiro:³⁴²

“that witness saw on Monday September 6, 1999 in the afternoon, he and his colleagues from Kodim 1635 Covalima were in the Kodim since all personnel should be ready. Prior to the assault, militia members (Laksaur) gathered in the regent, Colonel. Drs. HERMAN SEDYONO’s residence and then they departed from Suai by using motorbikes and cars to the church.”

The testimony of Tobias Dos Santos indicated a similar pattern:³⁴³

“militias (Laksaur Merah Putih/Garda Merah Putih, Mahidi/Hidup Mati Integrasi), TNI and Police were involved in the September 6th, 1999 incident. They can be identified from their clothes. For Laksaur Merah Putih, on their t-shirt there was...”

Rafael Dos Santos’ testimony further stated:³⁴⁴

³³⁹ Eurico Guterres’ judgment p. 30

³⁴⁰ For discussion about arms support and other facilities in the KPP HAM Report, p. 32. For the same topic in the Investigative Dossiers, see p. 53 of this report. Whereas for the analysis of evidence found in the court documents for the same topic, refer to p. 105

³⁴¹ For further discussion about this issue please refer to pp. 30-31 of this paper with regard to the KPP HAM report, and for discussion of the evidence in the Investigative Dossiers see pp. 46-49, and for the court documents, see pp. 79, 92, 95.

³⁴² See Herman Sedyono et.al. judgment, quoting from the BAP against the defendants, p. 18.

³⁴³ See Herman Sedyono et.al. judgment, quoting from the BAP against the defendants, p. 15.

“that witness saw that the attackers of the church and presbytery complex were BMP militias, soldiers from Kodim, Police, Brimob, witness can identify militias, soldiers, and police. Since the witness has lived in the presbytery for ten years and hung out with police, soldiers and civilians that were [part of the] witness’ parish.”

“on April 6, 1999, the witness saw that an assault happened around 1 pm in the presbytery complex, the attackers were Besi Merah Putih militia and soldiers of Kodim Liquisa and Police.

“the witness saw Tomo Diego, personnel of Kodim Liquisa were shooting, Tomo Diego is a native of East Timor from Liquisa district.”

“that aside from Tomo Diego other military personnel that involved in the assault were Roymundo, Jacob and Isak Dos Santos – the witness’ nephew- who wore sarong, a head band and carried a M-16 that were covered by a piece of cloth.”

The testimony of Bishop Belo also reported direct perpetration:³⁴⁵

“ ...a Lieutenant Colonel of Kostrad (Army Strategic Command) came and asked about the witness’ condition. The witness asked for protection from the militia attack, and then the witness heard from children who lived in the witness’ house that when that aforementioned Letkol had reached the end of road he shouted to the militia, “Attack, attack now or I’ll kill you!”

“ that the kapolda at that time only gives orders, not serious, the kids said that even the police put some gasoline into the fire.”

On the other hand, there was testimony from members of the TNI, typically subordinates of the Accused, who testified that this was not the case. Again, some panels reached the same conclusion as KPP HAM, affirming the direct involvement of members of the TNI, while some panels of the Ad Hoc Court arrived at contrary conclusions. As noted above, while there was evidence to support the findings of the panels affirming direct involvement, there was also evidence on the basis of which other panels could have concluded the opposite by assigning different weight to the testimony of different witnesses (for example by not discounting the credibility of testimony by direct subordinates of the Accused). The underlying problem was that not enough of the available evidence, in the form of testimony, documents, and physical evidence was

³⁴⁴ See Adam Damiri’s judgment pp. 64-67.

³⁴⁵ See Adam Damiri’s judgment pp. 75-76.

produced before the Court. This was a clear and utter failing of the Prosecution. The situation was further complicated by a significant number of witnesses (again typically subordinates of the Accused) who recanted their sworn pre-trial statements and changed their testimony to diametrically the opposite of what they had said before, in favour, of course, of the Accused. All of these factors, and others elaborated above, made the Ad Hoc trials an extremely imperfect mechanism for establishing the truth as to institutional responsibility for the crimes against humanity committed in East Timor. That there was institutional responsibility on the part of the pre-integration militias was clear to all those who investigated and judged these cases. The failure of unequivocal proof leading to such great differences in conclusions had to do with the institutional role of the Indonesian military, police, and civilian authorities.

Aside from the issue of participation in attacks, the evidence was clearer as to support by the act of omission, or neglecting to prevent or stop attacks or to act against the perpetrators of the crime after the attack:

For example, Asep Kuswani (Liquica Military District Commander) testified:³⁴⁶

“that the witness knew about the clash of pro-integration and pro-independence groups on April 6, 1999 in the residence of Father Rafael Dos Santos in Liquisa. The witness saw that incident from his office in Dili Kodim.”

The testimony of Raja Karina Brahmana also noted that there was a failure to disarm on the part of security authorities:³⁴⁷

“that indeed on the mass rally on April 17th, there were some people carrying sharp weapons, ... and the police did not detain those weapons.”

The testimony of Abilio Soares also noted:³⁴⁸

“that witness was not aware of how many PPI members came to that event, but the witness saw there were thousands of people, some of them wore camouflage clothes, brought sharp weapons such as cleavers, knives, spears, self-assembled weapons. There were TNI and Polri personnel at that time but they did nothing.”

³⁴⁶ See Timbul Silaen’s judgment p. 63.

³⁴⁷ See Timbul Silaen’s judgment , pp. 60-61.

³⁴⁸ See Eurico Guterres’ judgment p. 31.

“that witness did not prevent the participants in the mass rally to bring weapons since it is the Police and TNI’s authority to prevent..”

Lettu Pol. Sonny Sanjaya stated:³⁴⁹

“that there were TNI and POLRI personnel around the church of Ave Maria but they did not do anything to prevent the assault. The witness saw they did nothing: they were only ‘staying’. The witness asked them why they did not prevent the militias and they said because they are afraid since the number of militias was quite a lot. The witness was trying to separate the clash.”

As seen above, there was greater agreement among the trial panels with the conclusions reached by the BAPs and KPP HAM that there was the failure to prevent or punish the attacks against civilians that resulted in crimes against humanity. There was less agreement about other modes of commission of human rights violations.

III. CONCLUSIONS

Thus it can be concluded that based on the findings of all three bodies of documents and the evidence supporting those findings, gross violations of human rights in the form of crimes against humanity occurred from January to September 1999 in East Timor. Yet, in the course of the judicial process of the Ad Hoc Human Right Court for the crimes, namely from the inquiry process of the KPP HAM until the trials, there was a an increasing narrowness and inadequacy in the attempt to find the truth and determine accountability for these crimes against humanity. The following factors reflected or accounted for this trend:

1. Significant narrowing of the *tempus* and *locus* covered in each process, from January-September 1999 in regards to 16³⁵⁰ main cases in the KPP HAM process, to five incidents over the period of April-September 1999 in the prosecution’s investigations and trials.
2. A significant decrease in the amount of evidence investigated and presented. While the KPP HAM report interviewed more than 130 witnesses, collected more than 1000 documents, and also used secondary sources, the BAPs listed

³⁴⁹ See Abilio Soares’ judgment, p. 43.

³⁵⁰ The KPP HAM report lists 13 main cases, but there are subsidiary focus cases within the categories which can expand the number up to 16.

only 54 documents and prosecutors introduced into evidence far fewer at trial. The number of witnesses with relevant and credible testimony at trial were so few that some panels repeatedly demanded that the prosecution produce more witnesses and evidence.

3. The failure of the investigation, prosecution, and most trial panels to consider the context of the particular crimes or to analyze the interrelation between the incidents or parties. This factor contributes greatly to the difficulty in reaching clear and credible findings and final decisions bearing upon institutional responsibility.

In short, based on the analysis upon this evidence, testimony and legal rulings in this research it can be established that there is adequate evidence to conclude that the crimes against humanity has occurred, namely crimes committed systematically and in widespread manner, causing massive amounts of victims and destruction of property. Beyond this the contradictory findings and verdicts of the Ad Hoc Court and the subsequent decisions by the Supreme Court on appeal, produce a situation in which there is little agreement about the existence or scope of institutional responsibility. While the KPP HAM report suggests that such responsibility reaches to the highest levels of the Indonesian military and political authorities, its report does not cite conclusive evidence to prove those conclusions beyond a reasonable doubt. That, of course, was not its task, but rather that of the Ad Hoc Court's, a task in which they manifestly failed. The KPP HAM report also frequently does not cite and analyze specific evidence in support of some of its conclusions. This doubtless has to do with the overly narrow timeframe in which they had to complete their work. The BAP, on the other hand, fails to make use of the mass of evidence collected by KPP HAM. Indeed, the lack of interest and cooperation by the Attorney General's office in utilizing this evidence was another easily avoidable but very damaging failing in the process. Finally, the greatest disservice to the cause of establishing the truth occurred through the utter failure of the Prosecution in most of the trials (apart from exceptions like that of Eurico Gutierrez) to display even a minimum of competence in presenting the evidence in the BAPs to the Court. These failings included, to name only a few, calling a number of witnesses who could not support their case or

testified in favor of the defense; an obvious lack of preparation and familiarity with the evidence in the case; failure to utilize the evidence readily available, etc. From this perspective, regardless of the verdicts, the trials before the Ad Hoc Court cannot be regarded as having made a significant contribution to establishing the truth about institutional responsibility for the crimes against humanity they found to have been committed in East Timor in 1999. It remains for the CTF to correct this tragic failing.

IV. NEXT STEPS AND RECOMMENDATIONS

Towards establishing the conclusive truth about institutional responsibility for the crimes against humanity committed in East Timor this report recommends the following steps to fill in the gaps in the evidence noted above:

1. Obtaining and systematically analyzing the documents and evidence listed, but not included, in the BAP dossiers.
2. Obtaining and systematically analyzing the more than 1000 documents in the KPP HAM database.
3. Analyzing the media evidence (original film and video footage shot in East Timor in 1999, as well as other media documentation) in the possession of KPP HAM, the SCU, and other sources.
4. In-depth interviews with participants and witnesses, including large numbers of TNI personnel who held positions in local units and intermediate command levels in East Timor; international observers and other internationals present in East Timor who witnessed the violence and interacted with Indonesian authorities; leaders and members from ALL of the militias; leaders and members from FALINTIL and CNRT who can testify as to violence against pro-integration supporters; Indonesian officials with expert knowledge of the financing of civil defense and militia groups. Such interviews need to be of sufficient length and intensity that they cannot be completed within the narrow temporal confines of public hearings.

5. Conducting more comprehensive documentary research on the basis of TNI archival documents of the kind that have been requested by both the Jakarta and Dili research teams.
6. In the interest of the conclusive truth, there should also be a systematic investigation of alleged crimes against humanity or gross human rights violations committed by pro-independence groups in 1999.

PART II: DILI DOCUMENTS
SCU ARCHIVES, SPECIAL PANELS JUDGMENTS AND CAVR

Chapter 7

Core Document Analysis

The key aim of this section of the report is to demonstrate the reasons why different institutions were able to arrive at common conclusions from the available evidence about the violence in East Timor in 1999. This section of the report begins this task by showing how the three areas of documentation are not independent stores of knowledge, but rather are dependent on one another and inter-related. The CAVR findings about 1999 are based on Robinson's report, indictments and other evidence available through, or shared by the legal process. Robinson also uses the indictments by the SCU, and other pieces of shared evidence such as some of the documents that originate from the holdings of Yayasan Hak. The SCU and Special Panels based key assumptions about widespread and systematic commission of crimes on Robinson's and other UN-commissioned reports.

Yet, despite many shared sources and perspectives, each body also authored independent interpretations. Therefore, a second aim of this section of the report is to identify the methodologies and institutional goals that can lead to different uses and interpretations of similar evidence. An Addendum to this Chapter provides greater detail on the CAVR's use of statistical analysis in regard to the 1999 violence.

The CAVR Final Report³⁵¹

A. Mandate, Concept, Structure

The CAVR mandate required the investigation of grave violations of human rights committed in East Timor from 1974 to 1999 in order to establish the "truth" of these events.³⁵² The factors that were included in their concept of "truth" included establishing an understanding of the context, causes, precedents and impacts of these violations as viewed from multiple perspectives.³⁵³ In addition to creating a comprehensive history of these violations, the CAVR was charged with the task of identifying the nature of these violations and identifying both individual and institutional responsibility for grave violations of human rights, as well as identifying systematic patterns of violations. The mandate also allowed for the CAVR to recommend prosecutions to the Prosecutor-General of East Timor. In summary, the investigative portion of the CAVR mandate is

³⁵¹ All citations to the Final Report refer to the electronic version available on CD-ROM in English. Chapters are cited because in the electronic version pagination begins again at the start of a new chapter.

³⁵² The exact dates are April 25, 1974 - October 25, 1999. CAVR Final Report, "Mandate of the Commission," p. 2.

³⁵³ CAVR Final Report, "Introduction," p. 8. For the original text of the Commission's mandate refer to its establishing legal order, "UNTAET Regulation 2000/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor" and the Constitution of the Republic of Democratic Timor-Leste, Article 162.

similar to the CTF's, but with a broader temporal scope and with a more explicit view towards defining individual responsibility for violations of human rights.

In addition to the "truth" component of the CAVR's mandate, the Commission was engaged in a variety of programs to promote reconciliation and prevent future human rights abuses at the grassroots level. The implementation of this element of the mandate included village-level hearings and reconciliation ceremonies between victims and perpetrators, as well as special hearings, trainings, healing workshops and a modest "urgent reparations" program administered at the national level.³⁵⁴

Although the truth component of the CAVR mandate required the gathering of information about grave violations of human rights in 1999 (i.e. murder, torture, forced displacement etc), most village – level proceedings were meant to be limited to the discussion and interrogation of less serious crimes, such as looting, burning, and theft of livestock. There was public discussion of serious crimes committed prior to 1999 particularly in the forum of thematic public hearings,³⁵⁵ and community profile sessions and knowledge obtained through the statement taking process. Hence, a great deal of analysis of serious crimes committed prior to 1999 appears in the text of the CAVR Final Report. However, community discussion about serious crimes committed *in 1999* was purposefully and critically limited within the program referred to as the Community Reconciliation Procedures (CRPs). These procedures in theory were designed to deal with perpetrators of lesser crimes only, so there would be no interference with the concurrent judicial process that encompassed "serious" crimes.³⁵⁶ In theory, if a participant in the procedures revealed information about the commission of a serious crime, the public discussion of the case would cease, and the information about the serious crime would then be referred to the Prosecutor General.

Thus, the CAVR's perspective on and documentation of the violations of human rights committed in 1999 was sculpted by two key factors:

- 1) Their mandate's long temporal scope
- 2) Their subordinate relationship to the investigation process conducted by the SCU, in theory resulting in a focus on less serious perpetrators.

These two factors account for the cursory nature of their discussion of grave violations committed in 1999. In the Final Report, there is merely an Annex devoted to 1999, in addition to the small sections of information regarding 1999 in some of the key thematic chapters, including the "Killings," "Sexual Crimes," "Forced Displacement," "Torture and Ill Treatment" and "Accountability" chapters. However, the relative brevity of their focused discussion of 1999 can also be considered one of the report's greatest strengths,

³⁵⁴ CAVR Final Report, "Introduction," p. 24, 34.

³⁵⁵ Some information about 1999 was presented at the public hearings, although this was not the temporal focus of these sessions. Neither the Final Report nor other secondary sources have clarified how the discussion of 1999 crimes in public hearings was monitored in accordance with the SCU agreement.

³⁵⁶ For more information regarding the details of the relationship between the SCU and the CAVR, See CAVR Final Report, p. 46. Also, see Burgess, Patrick. "Justice and Reconciliation in East Timor," *Criminal Law Forum* 15: 135-158, 2004.

because this structure allows the information about the grave violations of human rights that occurred in 1999 to be placed into a developed historical perspective. Furthermore, this structure demonstrates how patterns of human rights violations persisted over time, and were not isolated to the timeframe of 1999. Their analysis of a 25-year period in the Final Report convincingly shows that human rights abuses in 1999 cannot be understood without fully considering the evidence of sustained human rights violations by the Indonesian State since 1975, and the implications for institutional responsibility for human rights abuses also committed by FRETILIN, APODETI and UDT.³⁵⁷

Therefore, the task of our team in analyzing the work of the CAVR only encompassed a small part of the institution's knowledge and findings, and any critique this report makes of the CAVR analysis of 1999 is not an evaluation of the whole body of their work. Our discussion is confined to the methods and conclusions of the CAVR Report regarding crimes committed in 1999.

B. Sources and Frameworks of the CAVR's Analysis

The CAVR's research sources and frameworks can best be described as historical, with a heavy emphasis on the authority of the oral narrative. The CAVR's introduction to their Final Report eloquently explains the reasons for and benefits of privileging oral testimony in both their collection of evidence and their methods of interpretation of this evidence:

“The truth contained in this Report comes largely from the words of those who directly experienced the years of conflict. The Commission has attached special importance to listening directly to those who suffered human rights violations throughout the 25-year period, most of whom had not spoken outside the narrow circle of their family. These many voices, from across the country, have given Timor-Leste a priceless asset. They tell us who we are, what we have been through, what we have lost, and show us the value of what we have gained. From the stories of our sisters and brothers we learn that victory is not a simple matter of heroes and villains; that history is more than the listing of major events or the biographies of those who are called leaders. The experiences of “ordinary people”, both the many who died and those who survived, tell us where we have come from and help us understand who we are today. From their stories we see more clearly both the extremes of human dignity and of human degradation that were manifested in our country during these 25 years. We must learn from both sides of this human story. We must acknowledge our potential for both extremes, and strive always to bring the best of our humanity into our lives and relationships - our families, our communities and our nation - each day as we build a new future.”

In practice this research principle took the form of the CAVR collecting 7,824 oral statements from all the districts of East Timor about people's knowledge and experience of violations of human rights. In addition to collecting statements within East Timor, the

³⁵⁷ These final three acronyms indicate three different political parties in East Timor.

CAVR partnered with non-governmental organizations to collect 91 statements from East Timorese living in West Timor.³⁵⁸

The process of collecting the oral statements was standardized and statements were given on a purely voluntary and confidential basis. The sources of testimony included both victim and perpetrator groups, although the victim statements comprise the majority of the testimony. Interviews were conducted one-on-one, although a deponent could have a supportive family member, friend or a member of the CAVR Victim Support Team present. Statements were taken in narrative form. Testimony was recorded in written form in either Tetum or Bahasa Indonesia. Statements were tape recorded and often played back to the statement provider. These statements were then coded and transferred in summary form into an electronic database in the national CAVR office.³⁵⁹ These individual oral testimonies in their electronic format comprise the majority of the primary source evidence collected and used by the CAVR for their investigations, including the period of 1999. In addition to the oral testimonies collected by the CAVR, their human rights database includes statements taken by Amnesty International from 1979-1999, portions of the KPP-HAM database and Fokupers, an East Timorese non-governmental organization that provides support services and advocacy for women. The CAVR also contracted an international and independent study to partner in the collection of statistical data on mortality in order to estimate death tolls over the period of their mandate. This statistics database became part of the CAVR human rights database. Although this mortality information is catalogued in their Final Report, this portion of the human rights database is not currently available even to the current CAVR staff for further investigation.³⁶⁰

Other primary source material included approximately 1000 solicited interviews conducted worldwide with individuals who had served in leadership positions, including a collection of 15 interviews with officials labeled “VIP”s.

These interviews focused on themes identified by the CAVR staff as priorities, which coincided with the themes explored in the Public Hearings. These themes included:

- Famine and forced displacement
- Structure, policies and practices of the Indonesian military and police
- Structure, policies and practices of Fretilin and Falintil
- Detention and torture
- Killings and enforced disappearances
- Children
- Women
- Internal conflict of 1974-1976 [sic]
- The role of international actors in the self-determination process

³⁵⁸ Final Report, “Introduction” p. 26

³⁵⁹ Although there were some written copies of testimony, interviews with former CAVR employees indicate the most common method of transfer of data was to code and translate into Bahasa Indonesia directly from the tape-recorded transcripts.

³⁶⁰ Interviews with current and former CAVR staff members.

- Massacres

Although the majority of information collected in these interviews was not specific to 1999, each thematic area touches on events in 1999, and the research in the areas of Killings and Disappearances, Forced Displacement and the effects of conflict on Women and Children make significant and unique contributions to our knowledge about human rights violations committed in East Timor in 1999. Some individuals targeted for these interviews submitted written statements to the Commission in lieu of a private interview, or instead of participating in the National Hearings dedicated to these themes.

Community Profiles of individual villages across East Timor were also collected from group discussions with village representatives and community mapping exercises, that sometimes included reports of events of 1999. However, these testimonies were recorded in a more general format from the individual statements and were not utilized as a main source for the Final Report. The Community Profiles are primary sources but their content is heavily determined by the CAVR's guiding questions and chronologies that facilitated discussion during the workshops where these profiles were compiled. Furthermore, the content of the Community Profiles was influenced by the group dynamics, as opposed to the statements that were taken by the CAVR in private settings with particular individuals.

The CAVR's secondary sources also covered a wide range of perspectives and forms. The institute received a large number of donated sources from individuals, non-profit organizations and governments. The family of the renowned Southeast Asian historian, Professor Herb Feith, donated his private collection of books and documents to the CAVR and the governments of Australia and the United States donated classified research material that covered the Indonesian Occupation period. A collection of television, film, and audio coverage of East Timor is also part of the CAVR collection, and includes information relevant to 1999. The most important secondary source relevant to 1999 is Geoffrey Robinson's report. The United Nations High Commissioner for Human Rights commissioned this report as their donation to the CAVR, with the intention that it would grant the CAVR access to confidential materials held by the UN and by the SCU.

The CAVR was granted limited access to some Serious Crimes Unit documents and files,³⁶¹ and were given copies of the SCU's national indictments and some witness statements in order to facilitate the writing of their Final Report.³⁶² This knowledge-sharing between the Serious Crimes Unit and the CAVR was part of a frequent and standardized communication strategy between the two institutions which required the CAVR to report testimony regarding serious crimes and recommend individuals for prosecution to the Prosecutor General of East Timor. These communication channels were constructed to avoid the violation of deponents' rights, and to avoid conflicts

³⁶¹ Based on author's personal observations at Serious Crimes Unit in 2004 and interviews with former CAVR staff.

³⁶² For a more detailed discussion of the Memorandum of Understanding (MOU) between the CAVR and the SCU, see the text box on page 46 of the Introduction to the CAVR Final Report.

between the two institutions' prerogatives.

The portions of the CAVR Final Report that deal with 1999 in the thematic sections are mostly shaped by the collection of primary oral testimony. The statistical analysis performed on the data regarding 1999 was taken directly from their Human Rights Database,³⁶³ and is therefore shaped by their conglomerate of primary information in that database (see a more detailed discussion of this statistical analysis in Part II of this report). The portion of the CAVR Final Report that discusses accountability for 1999 and gives a chronological and structural account of the events of 1999 is mostly constructed from the secondary sources, especially Robinson's report and the Wiranto Indictment.

C. CAVR Perspectives on Grave Violations of Human Rights

The CAVR clearly describes itself as an institution that is not confined to legal definitions in its mission to define the truth about human rights violations in 1999. It claims that international human rights principles more than legal definitions drove the basis of its conclusions. The Final Report notes that the perspectives used to determine accountability include political, historical and moral considerations which supplement and complement international legal standards. The result of this inter-disciplinary methodology is an expansive list of human rights violations and a focus on identifying high-level perpetrators, including States, as well as low-level perpetrators. In addition, this methodology leads to recommendations that illustrate the multiple forms accountability can take such as apologies, prosecutions, reparations and reconciliation processes.

Domestic and international legal definitions were the basis of assessing human rights violations and weighing accountability throughout the report.³⁶⁴ The types of crimes that the CAVR used to categorize the evidence and describe the broad patterns of violations included Genocide,³⁶⁵ War Crimes, and Crimes Against Humanity from international law in addition to criminal acts as defined by the Indonesian Criminal Code (i.e. Crimes Against the General Security of Persons) and the Portuguese Criminal Code (i.e. Crimes Against Personal Liberty). The specific criminal acts the Commission tracked included, but were not limited to, the following:

- Unlawful Killings³⁶⁶
- Disappearances or Kidnapping³⁶⁷

³⁶³ Interview with Patrick Burgess, 25 February 2007, Dili, East Timor.

³⁶⁴ See the Final Report, Annex A, "Relevant Legal Principles," for a complete listing of the international laws that were used as definitions and tests of the evidence. A detailed discussion of the types of international law and human rights principles considered can be found in the Final Report, "Mandate of the Commission," pp 14-45.

³⁶⁵ Although the report discusses and characterizes the crime of genocide, they do not make a definitive statement as to whether they judge the crime of genocide to have occurred in East Timor from 1975-1999. They explicitly defer that judgment to a court of law.

³⁶⁶ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission" p. 17.

³⁶⁷ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission" p. 18.

- Forced Transfer or Displacement³⁶⁸
- Arbitrary Detention³⁶⁹
- Torture³⁷⁰
- Unfair trials³⁷¹
- Rape³⁷²
- Sexual Slavery³⁷³
- Other forms of Sexual Violence³⁷⁴, including Forced Sterilization

Thus, although there are constant references to the CAVR's non-legal status in their report, methods of defining violations and accountability were highly legal in source and nature. However, because the CAVR was a non-legal body it had more leeway to use a variety of evidence, especially witness testimony, that it did not have to subject to certain stringent tests in order to account for authenticity or inconsistencies, as would be required by a sound legal process. Furthermore, because witness statements remained private, except during public hearings, there was not a public interrogation of evidence. The lack of public argument over evidence does not suggest the basis for the CAVR's conclusions is faulty. Rather, it suggests that the evidence used to determine the existence and degree of human rights violations was more comprehensive and less filtered than the judicial process, which has both advantages and disadvantages that will be discussed in more detail in subsequent sections.

D. CAVR Perspectives on Accountability

The CAVR defined the types of accountability for these crimes as individual and command responsibility in the discussion of its mandate.³⁷⁵ In its accountability chapter it adds a third, or sub-category, that describes co-perpetration in a common plan, or what is commonly referred to as Joint Criminal Enterprise (JCE) in legal jargon.³⁷⁶ The consideration of these multiple types of accountability were translated into the practice of identifying and creating a list of the names of individuals who were frequently cited in evidence, both primary and secondary, as either directly responsible for committing multiple violations of human rights, or responsible indirectly by failing to prevent crimes. However, the CAVR made a controversial decision to code names, instead of revealing the names of individual perpetrators in their Final Report.³⁷⁷ One reason given for the CAVR's lack of direct assignment of responsibility to individuals is it chose to defer this task to the Serious Crimes Unit.³⁷⁸

³⁶⁸ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 19.

³⁶⁹ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 19.

³⁷⁰ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 21.

³⁷¹ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 22.

³⁷² For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 24.

³⁷³ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 25.

³⁷⁴ For the relevant legal definitions of this crime see Final Report, "Mandate of the Commission", p. 25.

³⁷⁵ For the legal discussion of individual and command responsibility, see "Mandate of the Commission" pp. 39 - 41.

³⁷⁶ Final Report "Accountability and Responsibility" p. 2.

³⁷⁷ Final Report, "Mandate of the Commission," pp. 7-11.

³⁷⁸ Final Report, "Accountability and Responsibility" p. 5.

There were two exceptions to this naming policy relevant to the material for 1999. First, the discussion that addresses the institutional responsibility of the Indonesian military³⁷⁹ includes a list of specific commanders' names that could be liable for high level command responsibility, and is supplemented by an Appendix that tracks commanders' posts and careers over time in East Timor.³⁸⁰ Unfortunately there is not a detailed discussion of the reasons for alleged accountability for each of these officers. Second, in the section dedicated to 1999, the CAVR chose to include a list of names that is taken directly from the indictments by the SCU. This list is the most individualized assessment of responsibility in the entire report, which covered the 25-year period of violations. The choice by the Commission to not put these inditees' institutional affiliation further emphasized the individual nature of their responsibility. We have included this list of names in our report, but sorted them by Institutional Affiliation, so that the CTF can use this information in support of its mandate. They are included in the Document Annex.

A complete list of names of CAVR-determined perpetrators was intended to be submitted to the President of Timor-Leste and to the Prosecutor - General for further investigation.³⁸¹ However, the writers of this report have received some credible but confidential reports that this list of names may not have been presented to the President yet.

Institutional Responsibility

In terms of Institutional Responsibility, the CAVR Final Report tackles this question qualitatively and quantitatively for 1999. First, in its statistical review of the events of 1999, it attempts to determine how many crimes and which specific crimes each institution is responsible for separately and as joint perpetrators with other groups.³⁸² The categories the CAVR defines for institutional liability are the Indonesian military and police alone, the military in conjunction with the police and militias, the militias alone and FRETILIN/FALANTIL. Through statistical analysis the CAVR attempted to determine accountability proportionally by percentages, as well as quantify crimes by institution per local command (see Annex 2 to the Final Report – “Command Responsibility of Institutions Reportedly Directly Involved in Human Rights’ Violations, Timor Leste 1974 –1999”) For a detailed analysis of the breakdown and conclusions of institutional responsibility using these statistics, see Part II of this report. This statistical analysis was the most unique contribution the CAVR made to our knowledge about the violations of 1999.

The qualitative analysis of Institutional Responsibility for violations committed in 1999 relied heavily on the Robinson Report and the SCU indictments and mimicked their conclusions, by focusing on high level perpetrators and more specifically the

³⁷⁹ See “Annex 1 – Responsibility of the Indonesian Security Forces for the mass violations committed in 1999,” in “Responsibility and Accountability,” Final Report, p. 94.

³⁸⁰ See Final Report, “Annex 4 - Careers of Selected Indonesian Officers Who Served in Timor-Leste.”

³⁸¹ Final Report “Mandate of the Commission,” p. 10.

³⁸² Final Report, “Responsibility and Accountability,” pp. 94-96.

responsibility of the Indonesian military.³⁸³ They most directly refer to Wiranto and Zacky Anwar Makarim as the commanders likely to be the most central in bearing the responsibility for the institution.³⁸⁴ There is a bit of irony in using this tactic, since the report claims that it will not attempt to duplicate the work of the Serious Crimes Unit, but supplement it by focusing on institutional responsibility, when in fact it mainly rehashes the conclusions stated in the Wiranto Indictment with some supplemental elements brought in from Robinson to help explain the systematic nature of attacks as relates to the Indonesian military.

Analysis of Key Evidence Used to Determine Institutional Responsibility

Unfortunately, the CAVR report is incomplete in citing the specific evidence that helps determine institutional responsibility, and the individual elements of a systematic attack. They do a good job of identifying the types of evidence, patterns and events that are necessary to show institutional responsibility, and the commission of crimes against humanity. Most often the CAVR explains that they reviewed “overwhelming” evidence that proves these points, but they rarely reveal the original sources that prove their conclusions. As an example, this paragraph explains:

“The Commission received overwhelming evidence that during 1999 the TNI, the police and militia groups acted in a coordinated manner. Military bases were openly used as militia headquarters, and military equipment, including firearms, was distributed to militia groups. Some TNI personnel were also militia commanders or members. TNI intelligence officers provided lists of the names of people to be targeted, and coordinated attacks. Civilian authorities openly provided state funding for militia groups and participated in militia rallies and other activities. And, the Commission found, on many occasions TNI personnel were directly involved with the militia in fatal attacks or carried out such attacks acting alone. Instances of such open involvement include:

- The attack on the Liquiça Church on 6 April 1999, conducted by Besi Merah Putih militia, and troops from the local Kodim and Brimob (police mobile brigade), in which at least 30-60 civilians were killed.
- The retaliatory killing by Halilintar militia and TNI personnel of at least 20 civilians in the days following the alleged Falintil killing of an TNI soldier and a pro-autonomy leader in Cailaco Sub- district (Bobonaro) on 12 April 1999.
- The attack on Suai Church on 6 September 1999 by Laksaur militia and Indonesian security forces, in which at least 27 people, including three priests, were killed.
- The attacks in Dili on 5-6 September 1999 by Aitarak militia and Indonesian security forces on a number of buildings and complexes where civilians had taken refuge, in at least 19 civilians were killed or disappeared.

³⁸³ For an example, see the lengthy quote verbatim from the Wiranto Indictment that assesses command responsibility for human rights violations in 1999, but provides no evidence. Final Report, “Accountability and Responsibility,” pp. 100-101.

³⁸⁴ Final Report, “Accountability and Responsibility,” p. 114.

- The attacks on 8 September 1999 and succeeding days by Dadurus Merah Putih and other militias, under the command of Indonesian security forces, on persons who had sought safety in the Maliana police station (Bobonaro) and subsequently on those who had managed to flee the police station, in which at least 26 civilians were killed or disappeared.
- On 12 September 1999, Laksaur militia and Indonesian security forces, during an attempt to forcibly deport villagers from the village of Laktos, Fohorem (Covalima) killed 14 men who resisted being moved to West Timor.
- The random shootings by members of Battalion 745 during their retreat from Lospalos (Lautém) to Dili on 21-22 September 1999, in which at least eight people were killed.
- The execution of 12 persons around 20 October 1999 by Sakunar and Aitarak militia and Indonesian security forces, while rounding up villagers from Maquelab (Pante Makassar, Oecusse) for deportation to West Timor and subsequently.³⁸⁵

There is no citation to explain how the CAVR reached these conclusions, or a reference to the existing judgments or reports regarding some of the events they are referencing. In another section of the report they provide a list of key events where they claim the TNI were “directly involved.”³⁸⁶ However, they do not explain in detail or cite references to show exactly in what manner the TNI participated in these events. There are some citations to Robinson’s report and documents, such as on page 99, where they say the review of “a military document from April 1998” helped show patterns of TNI recruitment and funding for militias active in 1999. Unfortunately, they do not cite the document, or provide any of its text so that a reader can assess what part of the document provides the evidence for this conclusion.

Other sections of their report referencing 1999 provide some excellent examples to support the report’s initial claims regarding the TNI’s institutional responsibility. Two military telegrams from the Yayasan Hak Collection (#10 and #11) are correctly quoted and cited, and analyzed in a way that provides convincing support for the conclusion that the TNI directly gave training and support to militias.³⁸⁷ Another telegram (Yayasan Hak, #17) provides evidence that the militia groups, in this case Aitarak, benefited from the use of the TNI command posts and headquarters.³⁸⁸ These sections of the report (pp. 104-106) provide valuable insight into the way the TNI as an institution, as well as individuals such as Tono Suratman, may have aided and abetted the commission of grave violations of human rights and how they provided knowledge to their superiors (military telegrams) of their support of the militia groups. There are several other occasions where Yayasan Hak documents are cited in a way that is useful in determining patterns of

³⁸⁵ Final Report, “Accountability and Responsibility,” pp. 24-25.

³⁸⁶ Final Report, “Accountability and Responsibility,” p. 97.

³⁸⁷ Final Report, “Accountability and Responsibility,” pp. 105-106. Unfortunately, we have not been able to locate these documents in the SCU archives.

³⁸⁸ Final Report, “Accountability and Responsibility,” p. 106.

crimes and institutional responsibility, but unfortunately our review of the SCU archives has not been able to locate all of these documents and the CTF has not been granted access to the originals in the Yayasan Hak archives for us to examine and validate.³⁸⁹

The CAVR report also provides some valuable explanations of how specific evidence is linked to proving the overlap of membership and cooperation between the TNI and militias. We have been able to confirm and further analyze this evidence. Our team has obtained copies of the originals of the following documents that are cited by the CAVR. The CAVR conclusions appear in smaller font and our team's more detailed analysis of the same documents appears below in larger font. The CAVR interprets all of these documents as proving shared memberships between TNI and militia.³⁹⁰

DOCUMENT 1

- A letter from the Aitarak militia leader, Eurico Guterres, to the TNI Dili Military District Commander (Dandim) openly requested that a particular TNI intelligence operative, 1st Sergeant Elizario da Cruz, be given permission to serve with the Aitarak militia for an indefinite period.

³⁸⁹ The specific document I am referring to is Kodim 1631/Manatuto, Secret Daily Situation Report, May 12, 1999 [Yayasan HAK Collection, Doc No. 23]. We have a document from the SCU Archives that is labeled Yayasan Hak #23, but has different content regarding the Governor's budget. The other Yayasan important document cited by the CAVR that we have not been able to access is "Danrem 164/WD to Dandim 1627-1639 and others. Secret Telegram No. STR/44/1999, April 13, 1999 (Yayasan Hak Collection, Doc #10)."

³⁹⁰ See "Accountability and Responsibility", Final Report, p. 103.

AITARAK FORCE COMMAND HEADQUARTERS
SECTOR B
Jalan Dr. Antonio de Carvalho (Tropikal) Dili
Telephone: 0390-312061, Facsimile: 0390-312061

Number: 23/MK-AU/V/1999
Attachments:
Subject: Request for Exemption

To Respected:
Mr. District Military Command Commander 1627/Dili
In
Dili

With respect,

Firstly we say thank you for the cultivation of a good working relationship between us resulting in the formation of Paramilitary Youths Defending Integration Pro Autonomy with the name Aitarak Forces Command which consists of Integration Militias who are determined to maintain and enforce the authority of the Regional government of East Timor in the land of Timor Loro-Sae.

In relation to this, thus with this we inform that the Aitarak Forces Command in organising their secretariat and placing strategic posts in the city of Dili East Timor, to protect and secure the community from acts of an anarchy, terrorising, intimidating nature and wild harvesting from the Anti integration groups and other parties who are not responsible.

Request that we be given exemption with an undetermined time period to:

1. Full name:
2. NP/NRP: 516578
3. Rank/Group: FIRST SERGEANT/516578.-
4. Position: Intelligence body District Military Command 1627/DILI
5. Agency: District Military Command 1627/DILI

Thus is our request, for your attention and good working cooperation we thank you.

Dili, 22 June 1999
AITARAK FORCES COMMAND
SECTOR B
COMMANDER

EURICO GUTERRES

COPIES SENT TO:

1. District Military Chief of Staff 1627/Dili;
2. Intelligence Section Officer Intelligence District Military 1627/Dili
3. Section Officer Operations District Military 1627/Dili
4. Section Officer Administration
5. Archive

210283

Our team has examined this document and confirms the CAVR report's conclusion that it shows functional and regular cooperation between Aitarak and TNI.³⁹¹ The exact wording of the first paragraph of this letter is particularly suggestive of active collaboration between the two organizations. Guterres writes "Firstly, we thank you for the cultivation of a good working relationship between us resulting in the formation of Paramilitary Youths Defending Integration Pro-Otonomi" with the name Aitarak Forces Command [...]"³⁹² This sentence specifically notes the provision of support to Aitarak from TNI in the formation of the militia prior to the letter's request. Therefore, Guterres is making his current request for support in the form of human resources based on a previously existing good working relationship between the two organizations. This letter is dated and signed on 22 June 1999. It is CC'ed to all the relevant levels of military command at the post (District Military Command 1627) from which the party will be sent (i.e. the 1627 Chief of Staff, the SGI section commander at post 1627, the Operations Section Officer at 1627, and the Administration Officer for the requested personnel's section). Guterres' detailed attention to following the TNI chain of command suggests general knowledge of what channels and formats must be followed in order to make this kind of request to the military. Furthermore, it suggests specific knowledge of and respect for superior-subordinate relationships which one must obey when working with the TNI in order to achieve institutional objectives. The style of this request is formal, detailed, well-written and orderly, which all suggests the systematic nature of Aitarak's operations and most likely the existence of a systematic relationship between Aitarak and the TNI.

This document is unique in that a single name of the personnel requested appears in the text of the letter.³⁹³ In fact, this document seems to be one of several identical form letters that were sent on a regular basis to various organizations that Aitarak was actively collaborating with, including but not exclusively the TNI District Command in Dili. From the SCU archives our team has been able to locate another letter dated 26 May 1999 that is identical, except for the names of personnel requested and the recipients addressed. This letter is addressed to the Bupati of Dili's Administrative office and is CC'ed to the Governor of East Timor, the Head of the Parliamentary Assembly (DPRD), the Danrem at Post 164, The Chief of Police of East Timor, the Head of the Regional Office for East Timor, and the Aitarak archives.³⁹⁴ Therefore, it appears that Aitarak's

³⁹¹ A copy of the English version of this document is in the SCU's Wiranto case files and appears above. The name is redacted in accordance with SCU policies, although it is already in the public domain as part of the CAVR report. Our team also examined the document in its original language.

³⁹² The full sentence in the original language of Indonesian reads "*Pertama-tama kami menyampaikan terima kasih atas terbinahnya kerja sama yang baik antara kita selama ini sehingga terbentuknya laskar Pemuda Pembela Integrasi Pro Otonomi dengan sebutan Komando Pasukan Aitarak yang di dalamnya tergabung para Militan Integrasi yang bertakad mempertahankan dan mengakkan wibawab pemerintah daerah Timor Timur di Bumi Loro-Sae*"

³⁹³ We have checked all of the available Aitarak membership lists in the SCU archives and have located one member assigned to the POLDA as a member of Aitarak/Pam Swakarsa forces in 1999 by the same first name, with the same military rank indicated by his name. He was a member of the Western sector of the Aitarak forces. However, we can not completely confirm it is the same person without the last name and id number, which are not available in the membership evidence we currently have.

³⁹⁴ Guterres appears to have always archived his letters following a strict bureaucratic set of procedures. A portion of these records was recovered when Interfet forces seized the Aitarak headquarters. Interfet handed over at least some of these documents to the SCU.

standardized and systematic personnel requests for collaboration with Aitarak were not secretive and were in fact a matter of common knowledge at the highest levels of the civilian government, TNI and Police in East Timor in the period following the May 5th Agreement.

In summary, this document suggests even more about military institutional responsibility than the CAVR Final Report acknowledges. It is indicative of shared members between the TNI and Aitarak in the period where TNI neutrality has been explicitly declared according to the May 5th Agreement. Shared memberships between these two organizations are significant in determining whether crimes against humanity were committed, because it shows a systematic element. This document provides supporting evidence for both participation in and knowledge of the TNI aiding and abetting the criminal acts of the Aitarak militia by providing human resources. Furthermore, the supporting document to the Mayor of Dili offers evidence that the acts of aiding and abetting were part of a joint plan with organs of the civilian government, and occurred on a systematic and regular basis. This document strongly indicates institutional responsibility for the Indonesian military as well as the Indonesian civil government.³⁹⁵

Document 2

An official List entitled “List of Members of the Pusaka Special Company, Kodim 1628/Baucau”, from the District Military Command in Baucau (Kodim 1628/Baucau), dated 3 February 1999, shows that all 91 members of the Team Saka militia group in the district of Baucau were TNI soldiers, and gives their military rank and serial numbers. The list refers to the militia group as a “special company” of the TNI Baucau District Command (Kodim 1638). The commander of this militia group, Joanico Césarío Belo, was concurrently a sergeant 1st class in the Special Forces (Kopassus) and the Regional Commander of Sector A of the national militia umbrella group the PPI (Pasukan Pejuang Integrasi).

Our team has examined this document, but we can not confirm all of the CAVR’s claims at this time. The document is dated 3 February 1999. It lists ninety-one Special Pusaka members, their rank, service number, assigned weapon, and their weapon’s serial number, as well as number coded “explanation” information for selected individuals. These members are assigned to the TNI District Command Post 1628 in Baucau. The copy of the original we received has hand-written check marks by some but not all the names.

The document by itself does not prove a complete overlap between the Team Saka militia group and the TNI. However, we confirmed through other sources (and in fact it is general knowledge) that the first name on the list (Joanico Belo) was the leader of the Saka militia in Baucau in 1999 and a TNI soldier.³⁹⁶ Additional information is required to

³⁹⁵ CAVR Final Report, “Responsibility and Accountability,” p. 103.

³⁹⁶ Witness statement, #2-1b, p. 4. All witness statements from the SCU are coded in accordance with the MOU with the SCU, and references that link the codes to the originals are on file with the research team.

prove the membership of *all* the Team Saka militia members throughout the period of violations in 1999 were deemed part of the TNI. It is not clear from the CAVR Final Report whether they had supplemental information to show militia and TNI memberships over an extended period of time. Militia memberships appear to have fluctuated over time, and some memberships were nominal only, therefore it is important to compare this list with both military and militia membership records for an extended period of time in 1999. So far, we have not been able to locate a complete and authentic list of Team Saka names for us to verify the CAVR's claims independently, although we have found UNTAET - composed militia member lists for other districts in the SCU files. Our research into the SCU indictment for Baucau district has shown at least two other members on this list were indicted by the SCU as militia members, but are designated in this list as TNI. Therefore, the CAVR claim seems highly likely to be true. We recommend the CTF request access to this necessary supporting information from the CAVR to verify these claims.

Document 3

A 1998 document which lists 49 members of the Makikit militia in the district of Viqueque stated that six of the militia members were also members of TNI Infantry Battalion 328 Command (Kodim 1638).³⁹⁷

Our team has examined a copy of the original of this document and can confirm some of the CAVR's conclusions and expand upon them. Our copy of the original document does not contain an official date, although there is a handwritten note on the document that indicates it is from 1998. It is not clear who added this note with the date to the document. Furthermore, a list of members of Makikit in 1998 needs to be cross-checked with additional membership lists or perpetrations by Makikit in 1999 after the decision for the Popular Referendum, in order to offer conclusive, rather than moderately suggestive proof that the TNI and militia collaborated in a plan of orchestrated violence in 1999.

The original document contains the heading: "Names of Members of Team Makikit With Weapons" and it appears on stationary with the title of both the Regional Command (Komando Resor Militer 164) and the District Command (Komando District Militer 1630). This format proves it is a TNI compilation of knowledge about their distribution of weapons to members of a Timorese auxiliary military organization. The weapons include M-16s, SP-1s, and Garands, and each weapon's serial number is listed.³⁹⁸ Several members on the list are marked as actively engaged in military movements. Six people are marked on the list as simultaneously belonging to TNI Battalion 328. These individual's designation as TNI on an official, military weapons document indicates active cooperation between the TNI and a paramilitary group, and the TNI provision of material support to a group that became a militia in 1999 in the form of arms.

³⁹⁷ CAVR Final Report, "Responsibility and Accountability," p. 103.

³⁹⁸ Serial numbers of weapons can be checked with the SCU's cache of seized arms to see if any were used in the perpetration of specific crimes.

However, we were not able to locate other key pieces of evidence cited in the report including:

- In August 1999, UNAMET officials issued a formal complaint to the chief of the Indonesian government task force responsible for liaising with the UN mission, Agus Tarmidzi, and to Major General Zacky Anwar Makarim, the military representative on the task force, that TNI personnel, specifically two named sergeants serving in the Bobonaro District Command, were also serving in the Dadurus Merah Putih (DMP) militia group.* Major General Makarim acknowledged that the two men were indeed members of both the TNI and the DMP militia. In answer to the UNAMET complaint he stated that the two men had been confined to barracks. UNAMET officers stationed in Bobonaro found that this was in fact not true.

The CAVR simply refers to Robinson's report as a reference without independent analysis of the original source which is cited as a "document written by Ian Martin."³⁹⁹

- A document setting out the wages paid to members of the Aitarak militia in Dili, dated 24 August 1999, describes payments made to 96 members of the militia group who were either TNI members or government civil servants.

Our team has not located this particular document, but we have found several other examples of Aitarak membership lists, that indicate overlap in membership between civil servants and TNI members.

First, it is clear that Aitarak members were given standardized compensation for joining the militias. Multiple witness testimonies indicate that this money was always promised, but not always given. Members were also paid with rice, instead of, or in addition to, a monthly take-home salary in cash. An example from the final page of a membership document seized at Aitarak headquarters shows monthly salaries in the form of cash (150,000 rupiah per month) and rice ("*Beras*" in the cumulative accounting below the chart). Members are called Pam Swakarsa in this document. The excerpt from the document appears below⁴⁰⁰:

³⁹⁹ CAVR Final Report, "Responsibility and Accountability," p. 103.

⁴⁰⁰ The note "160c" is our team's signification of redactions and does not appear on the original document. The light print of the original makes the scanned reproduction here rather unclear, but we have filed a clear, paper copy of the original with the CTF archives in Bali. The electronic version is attached in our document index.

Daftar : Nama-Nama Pegawai Negeri Sipil Yang Menjadi Anggota Komando
 Aitarak Kompi "C" Peloton "III" Desa Bidau Santa - Ana.

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J a b a t a n	I n s t a n s i	K e t.
S t a f	Dinas Perikanan Tk. II Kabupaten Dili.	
-Sda-	Dinas Perikanan Tk. I	
-Sda-	Propinsi Timor Timur.	
-Sda-	-Sda-	
-Sda-	Kan.Dep. Penerangan Tk.II Kabupaten Dili.	
-Sda-	Dinas Perikanan Tk. I Propinsi Timor Timur.	
-Sda-	Dinas LLAJ Tk. I Propinsi Timor Timur.	
-Sda-	Dinas BKPM Tk. I Propinsi Timor Timur.	
-Sda-	Dinas Pekerjaan Umum Tk.I Propinsi Timor Timur.	
-Sda-	Polisi Pamongpraja Penda Tk.I Propinsi Timor Timur.	
-Sda-	Sekretariat Korpri Tk. I Propinsi Timor Timur.	
-Sda-	Dinas Kesehatan Tk. I Propinsi Timor Timur.	
-Sda-	Kantor Pos dan Giro Timor Timur.	
-Sda-	KPLP./Kesyabandaran Dili	
-Sda-	Dinas Pekerjaan Umum Tk.I Propinsi Timor Timur.	
-Sda-	Penda Tingkat II Dili	
-Sda-	Dinas LLAJ Tk. I Propinsi Timor Timur.	
K a d i a	Dinas Pekerjaan Umum Tk. II Kabupaten Liquica.	
S t a f	Dinas Perikanan Tk. I Propinsi Timor Timur.	

Dili, 24 - April - 1999.-

* Mengetahui :
 Koordinator Dili Timur,

An. Komandan Kompi "C"
 Dan Ton "III",

[Redacted Signature]

[Redacted Signature]

Along with membership lists, the SCU Archives contain a collection of photocopied civil servant identification cards (IDs) that were seized from the Aitarak headquarters. Therefore, it appears that the recruitment of civil servants, and identifying their political loyalties was an institutional goal of the militias. The reasons for focused attention on civil servants may include the need for members who had professional qualifications such as office management, institutional organization and financial skills. From other Aitarak documents we can observe that a Treasurer was appointed,⁴⁰¹ and professional writing skills were prized.⁴⁰² A second membership document from Covalima district also highlights the role that civil servants played in militia organizations. In this document the civil servants are listed as receiving payment of 400,000 rupiah from the FPKD in exchange for their militia membership (our team has redacted the names).

⁴⁰¹ See Aitarak letter # 01/MK-AT/VIII/1999, SCU document index #:YDRL-5JPP7A.

⁴⁰² Witness statement, #2-1b, p. 3.

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DAFTAR : NAMA SATUAN TUGAS LAKSAUR MERAH PUTIH KOMPI 2 TILOMAR
YANG MENERIMA BANTUAN BIAYA DARI FPKD KABUPATEN COVALIMA
BULAN APRIL S/D JULI 1999 KHUSUS UNTUK PEGAWAI NEGERI SIPIL.

	Besarnya Rupiah	Tanda Tangan
	400.000	1.
	400.000	2.
	400.000	3.
	400.000	4.
	400.000	5.
	400.000	6.
	400.000	7.
	400.000	8.
	400.000	9.
	400.000	10.
	400.000	11.
	400.000	12.
	400.000	13.
	400.000	14.
	400.000	15.
	400.000	16.
Jumlah	5.400.000	

Mengetahui/Menyetujui :

FORUM PERSATUAN DEMOKRASI DAN
KEADILAN KABUPATEN COVALIMA
K E T I A

suai, 1999.

Bendaharawan FPKD

Civil servants seemed to have had little political independence, which may also account for their inclusion in militia groups. Their membership in many cases appears to have been forced under the threat of losing their jobs, rather than purely voluntary. There are multiple documents that demonstrate the Governor of East Timor insisted that all civil servants prove their support for the pro-autonomy option if they wanted to keep their job.⁴⁰³ On 13 April 1999, just before the rally, Eurico Guterres issued a press release that threatened all civil servants who supported independence, and insisted that they resign and give up all of their resources (i.e. cars, housing etc) to the pro-autonomy cause. See the original in Bahasa Indonesia below:

⁴⁰³ See Letter #:200/827/SOSPOL/V/1999 from the Governor's Office. SCU index #: YDRL-5JMUDE. Our team has seen supporting witness statements in the SCU archives, but do not have the resources or time to cite them as supplemental evidence at this time.

KOMANDO SEKTOR - B

AITARAK

HIMBAUAN

1. Menyikapi pernyataan Porang yang diumumkan oleh Xanana Gusmao pada tanggal 5 April 1999 agar Falintil dan rakyat pro-kemerdekaan bangkit melawan ABRI dan kelompok pejuang dan pembela integrasi;
2. Menyadari bahwa hingga saat ini 13 daerah administrasi, 62 kota kecamatan dan 442 desa di Timor Timur masih dikuasai oleh rakyat pro-integrasi;
3. Mengakui bahwa hingga saat ini kelompok pro-integrasi masih menguasai Provinsi Timor Timur;

Maka, terhitung mulai tanggal 17 April 1999, diimbau kepada:

1. Semua Pegawai Negeri Sipil, mulai dari golongan I s/d IV yang anti-integrasi untuk segera mengundurkan diri;
2. Pegawai Negeri Sipil yang anti-integrasi yang masih menggunakan fasilitas-fasilitas pro-integrasi seperti rumah dinas, mobil dinas dan motor dinas agar segera dikembalikan kepada pemerintahan pro-integrasi untuk kemudian diserahkan kepada pejuang dan pembela integrasi yang lebih berhak;
3. Rakyat kecil yang sering diintimidasi, diteror dan dipungut uangnya dengan paksa agar segera bekerja sama dengan pejuang dan pembela integrasi untuk sama-sama memberantas pengacau integrasi sampai ke akar-akarnya.

Akhinya kepada rakyat kecil di mana pun anda berada, kami kelompok bersenjata pejuang dan pembela integrasi menyatakan siap membentuk pagar betis untuk melindungi anda dari tindakan-tindakan anarkis kelompok anti-integrasi.

Demikian himbauan ini dibuat untuk mendapat perhatian dan dinyatakan berlaku terhitung mulai tanggal hari ini.

Dili, 13 April 1999

An. Panglima Perang Pasukan Pro-Integrasi
Komando Sektor - B

EURICO GUTERRES



Therefore, although we do not have this particular document to verify the CAVR's claims, we conclude that their attention to this kind of evidence is useful to determine patterns of militia membership, behavior and institutional responsibility.

There are fewer examples of TNI membership being openly acknowledged as members of Aitarak. However we have found one hand-written list in the documents from Aitarak headquarters that was begun and not finished that indicates TNI members who were joining Aitarak⁴⁰⁴ (Our team redacted names):

⁴⁰⁴ We have crosschecked these names with membership lists. There are three Aitarak members in our lists from the SCU archives with the same name as one of these TNI recruits, but due to the large number of people with the same name in East Timor, we are not able to confirm any of these members are the same person as appears as TNI in the list above.

Daftar Nama-Nama Anggota TNI
yg bergabung dengan Pasukan Aitarak

No	Nama	Pangkat / NRP	Satraus	Keterangan:
1.	[Redacted]	Korvet Botani [Redacted]	TNAAL	Pusat Sumbat
2.		SERDA [Redacted]	TNI-AD / Pasukan	—
3.		SERDA [Redacted]	TNI-AD / Koron.	

Another document shows the address of all the Aitarak recruits on the list as the Korem 164, or Provincial Military Command Headquarters. The first page of this list with redactions appears below. We were not able to reproduce the copy in this document with

Allegations of a Common Plan

Another interesting part of the CAVR's conclusions regarding institutional responsibility is a terse description of a common "plan" for the commission of human rights violations, that could be used to characterize the types of violations committed (i.e. systematic in a way that suggests crimes against humanity) or the type of accountability (i.e. JCE). The CAVR description of the "plan" that led to the commission of the violations of human rights in 1999 is as follows:

"The Commission finds that senior members of the Indonesian security forces were involved in the planning, coordination and implementation of a programme which included widespread and systematic human rights violations committed against East Timorese civilians amounting to crimes against humanity. These senior commanders hold both direct and command responsibility for the crimes against humanity committed.

The Commission finds that the initial purpose of the plan that was implemented was to ensure that a majority of East Timorese voted to remain part of Indonesia in the Popular Consultation conducted in August 1999. An integral part of the plan to achieve this goal was the use of East Timorese militia groups as agents of the TNI, in an attempt to deflect charges of responsibility from the TNI itself."⁴⁰⁵

Unfortunately, this discussion of the plan only appears in the final paragraphs of this section. A more in-depth discussion of the plan's motives, construction, and actors at all levels and all institutions would have been a further contribution the CAVR could have made given the breadth of evidence that was apparently available to them. A precise outline of the planned aspects of institutional perpetration of violations in 1999 is a contribution that the CTF has the ability to make.

In addition to individual and institutional responsibility, the CAVR defined "State Responsibility." This category of accountability supercedes legal categories and offers a more general term that could have accounted for high-level, informal, diplomatic and political support for human rights violations. However, it seems that the CAVR chose to define the responsibility of the Indonesian State in terms that emphasize the Indonesian military and their auxiliary security forces again, more than other sectors of the Government. There are only brief allusions to the role the civil government played in the commission or support of the commission of crimes, and no detailed analysis of how other branches of the Indonesian State may have interacted with the military in 1999 in a

⁴⁰⁵ Final Report, "Accountability and Responsibility," p. 116.

way that makes them liable for the commission of grave violations of human rights.⁴⁰⁶ The Final Report makes the finding that the Indonesian state is responsible for the commission of War Crimes and Crimes Against Humanity throughout the period from 1975 – 1999.⁴⁰⁷

Institutional Responsibility of Timorese organizations

The CAVR also addresses the institutional responsibility of Timorese political parties, most specifically FRETILIN. In the section of their report that examines the violations committed prior to 1999, the CAVR examines the institutional responsibility of these parties with considerable equity and depth. Although the CAVR report acknowledges violations were committed by FRETILIN/FALINTIL in their statistical analysis and in the thematic section devoted to “Killings and Disappearances”, they tend to discount them as insignificant relative to the volume and gravity of crimes committed under the purview of other institutions in their qualitative analysis. They make no findings regarding FALINTIL/FRETILIN accountability for violations committed specifically in 1999. In two places in the CAVR Final Report, the text explains that FALINTIL troops were ordered and mostly obeyed these orders for restraint, and proportionally the number of violations by FALINTIL/FRETILIN that were recorded were few. Their report acknowledges violations perpetrated by FALINTIL in the 1999 section:

“There were reported instances of targeted killings reported during this period [1999], where, for example, Falintil killed civilians who had been ordered by ABRI/TNI to search for relatives in the forest on their own, when it assassinated members of Hansip and other collaborators and before and after the Popular Consultation in 1999. In at least some of these cases the Commission received credible information that the Falintil High Command did not institutionally condone these violations.”

Unfortunately, once again, the CAVR does not cite its information. Further documentation is needed to give conclusive proof of these violations and their actors, and that Falintil committed violations without the knowledge, support or planning of its institutions’ superiors. Furthermore, the CAVR does not explain or inquire into what preventative or punitive actions were taken by this institution regarding these violations.

However, in the thematic chapter on “Killings and Disappearances” the Final Report is more frank about crimes committed in 1999 by Falintil. One of the most useful aspects of the information presented in this section is it shows how crimes committed by all armed groups (military, police, militia and pro-independence groups) occurred within the same temporal patterns. Peaks in alleged Falintil crimes occurred in April and in the post-ballot period, as did the crimes of the other armed perpetrators. However, it is not entirely clear

⁴⁰⁶ The Chapter on “Unfair Trials” makes a valuable contribution to explaining how the judicial system enacted and supported the commission of violations of human rights during the period of the Indonesian Occupation, but it does not feature significant information regarding 1999.

⁴⁰⁷ Final Report, “Accountability and Responsibility”, p. 5.

from the evidence whether these patterns were consistent in terms of who initiated the violence. TNI reports usually claim that Falintil or pro-independence supporters initiated violence, but the evidence does not consistently or conclusively support this claim. The case of the killing of Manuel Gama is the best example of ambiguous perpetration (See the Bobonaro district section of this report for a detailed explanation of this incident). At times TNI appear to have initiated reprisals against Falintil for their attacks on TNI members. At other times Falintil appears to have instigated a reprisal against the TNI or militia for an attack on a civilian population, or Falintil member. The CAVR Final Report features one witness' testimony about a revenge killing in the post-ballot period by Falintil perpetrators:

On 8 October 1999 Falintil forces, with their leader M233, ambushed some members of Tim Alpha [militia] in a place called Warusira, Tenu, subdistrik Moro [now distrik of Lautem]... Falintil forces shot Mário João Lopes and his friends dead in this incident...because they were suspected of killing the nuns. I got this information about the killings from the Falintil commander M233, after the killings.

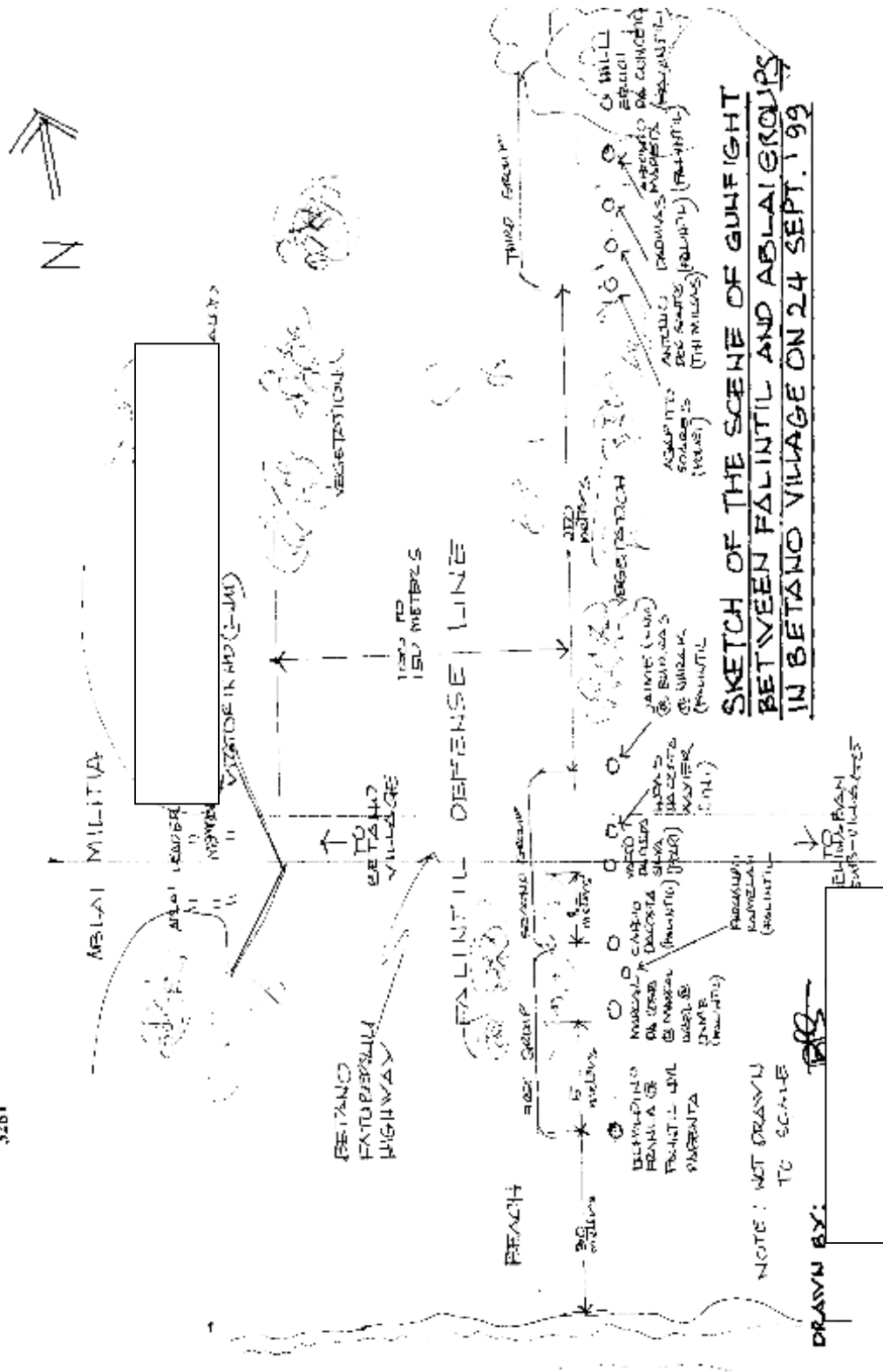
This witness' reference to a Falintil commander further suggests that more investigation needs to be conducted to determine at what level in the chain of command FRETILIN either condemned or condoned these reported violations of human rights.

In the SCU archives we have discovered one document that confirms CAVR witness statements that report incidents of FALINTIL breaking cantonment in the post-ballot period, when many of the violations attributed to them as an institution occurred. A crime scene map⁴⁰⁸ reveals an initial investigation into a conflict between ABLAI militia and FALINTIL in the Same area. A radio transcript in the SCU evidence confirms that a conflict between militia and Falintil took place in this area after the Referendum.⁴⁰⁹

⁴⁰⁸ White boxes on the document indicate our team's redactions.

⁴⁰⁹ Radio Transcripts of conversation between Ablai militia and TNI, SCU index #2558.

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However, what the limited scale of crimes committed by Falintil seems to indicate is a cycle of vengeance between Falintil and TNI can be characterized as directly responsible for only a small portion of the crimes committed in 1999. We have encountered no evidence that suggests that the overwhelming pattern of violations were spontaneous clashes between Falintil (or other, armed independence supporters) and pro-autonomy militias. The majority of the victims of violence in 1999 were Timorese civilians, who were un-armed combatants who were not directly parties to the conflict between these two specific groups. The Summary Autopsy Report filed in 2000 at the Serious Crimes Unit by an independent team of forensic specialists (medical doctors and forensic anthropologists at the Phd level) evaluated a sample of over 80 exhumed bodies from the 1999 conflict from various parts of East Timor, and determined that the majority of victims were civilians.⁴¹⁰ There was not a single body exhumed that had remains of clothing or other identifiable objects that marked the person as a combatant – not even a militia.⁴¹¹ The only evidence of a victim wearing a uniform was a body exhumed that showed the victim had been wearing an UNAMET staff hat at the time of his murder.⁴¹² All the armed combatants – TNI, militia and Falintil – targeted civilians at various times in lieu of their real military and political aims, and therefore, are liable for extremely serious violations of human rights.

The CAVR candidly stated the following crimes were committed by Falintil in its “Killings and Disappearances” thematic chapter:

The Commission has received reports about 11 fatal violations (killings and Disappearances) committed by Falintil between January and May: in February three civilians were killed in Covalima; in March two civilians were killed in Ermera, in April two civilians “disappeared” in Baucau and one individual was killed in Bobonaro; and in May Individuals were executed singly in Ermera, Covalima and Liquiça. In terms of the number of violations, the identity of victims and the locations, these cases appear to be a continuation of the pattern observable during the previous three years[...]. In all the Commission received information about 22 extra-judicial executions and seven disappearances committed by Falintil in 1999, 17 of these coming in the post-ballot period.⁴¹³

The Dili team has reviewed some of the reports to the CAVR of the unlawful killings by Falintil members that were available in the database. Violations listed in the database prior to the ballot can appear scattered and sometimes appear to have resulted from civilians being trapped between skirmishes between pro-autonomy militia and Falintil groups.⁴¹⁴ Intentional abductions, detentions and murders by Falantil were reported for

⁴¹⁰ “Summary Autopsy Report,” Wiranto case files, p. 040002.

⁴¹¹ According to witness statements, the majority of pro-autonomy militias wore identifying objects such as t-shirts, or red and white bandanas, and were armed with objects that could be used to commit violent acts.

⁴¹² “Summary Autopsy Report,” Wiranto case files, p. 040006.

⁴¹³ Final Report, “Unlawful Killings and Forced Disappearances,” p. 244.

⁴¹⁴ Falintil allegedly killed at least two civilians in a fight with the Mahidi militia in Ainaro on March 1, 1999. Search on CAVR Human Right Database.

the pre- and post-ballot period, especially in the periods between late April –May and September-October 1999 in the Western districts. We reviewed reports of 4 separate incidents of civilians who were allegedly abducted, tortured and killed in Ermera district from April – May 1999, and another killing was reported from the district of Viqueque and another from Liquica during the same month. CAVR witness statements also confirm other reports and SCU witness statements that Falintil killed three soldiers at the KORAMIL in Lolotoe on May 16, 1999 and another incident of a killing of a SGI member in the Bobonaro district.

Two districts, Bobonaro and Ermera, appear to have suffered a significant number of unlawful killings, detainment and torture by Falintil during the post-ballot period. On September 1, 1999, a civilian was allegedly⁴¹⁵ tortured and killed by Falintil in Ermera and a separate killing occurred the same day in Bobonaro. On an unspecified day in September 1999, Falintil allegedly illegally detained and mistreated a man in Cailaco they suspected of formerly belonging to a militia group. There are three separate incidents of civilians in Ermera allegedly being detained and tortured in September. On September 21, 1999 Falintil allegedly detained and killed one civilian in Ermera. On September 25, Falintil allegedly detained and killed a civilian on his way to Atambua. On September 28, Falintil allegedly detained, tortured and killed another civilian. Falintil allegedly killed one man who was reportedly an Aitarak combatant in September 1999 as well. The motives for these killings appear to be revenge for any kind of collaboration with pro-autonomy groups. While these violations are included in the statistical analysis of institutional responsibility, they were not discussed thoroughly in the CAVR Final Report.

Based on the evidence found in the statistical analysis of the CAVR report, and the witness statements that our team was granted limited access to in the CAVR human rights database, the Dili Team recommends the CTF further research and request supporting documentation of these claims about violations by FALINTIL/FRETILIN in 1999. The temporal spread of these crimes and similar pattern of crimes across at least two districts suggest that more information needs to be gathered in order to determine whether these crimes meet the standards of “grave violations” and whether they occurred in a widespread or systematic manner.

Conclusions

In summary, without knowing more about the specific documents and witness statements that led the CAVR to their qualitative claims about accountability and responsibility we can not fully assess the validity of their conclusions or the independence of their judgment with regard to the evidence pertaining to 1999. Instead, we can assess the Robinson report and SCU documents that the CAVR had access to and frequently relied upon. Therefore, we will focus in a later section on the portion of the CAVR report that was mostly independently collected and clearly documented – the statistical analysis. See

⁴¹⁵ We use the term allegedly because these crimes have not been proven in a Court of Law. We have no concrete reason to doubt these witness reports, but maintain that they must be investigated and go through a process of confirmation before their full validity can be assumed.

Part II of the East Timor section of this report for this analysis of the CAVR statistics regarding 1999.

The final conclusions of the CAVR regarding institutional responsibility weigh heavily and almost exclusively on the TNI and certain members of its senior leadership. Their basis for assigning this responsibility is well supported, if the evidence they cite from the SCU and Robinson can also be determined as valid. Further research would be required to do this.

D. Strengths of the CAVR Final Report

The strengths of the CAVR Final Report in the sections that address 1999 that were the result of using the sources and methods discussed above include:

- **Extensive background information to understand the violations of 1999 in a cultural and historical context.**
- **The only comprehensive collection and analysis of quantitative data related to human rights violations committed in East Timor in 1999.**
- **Considers the institutional responsibility of both Indonesian and Timorese institutions.**
- **Provides the only comprehensive reporting on sexual crimes committed in 1999.**
- **Features individual victims stories to humanize reporting of grave violations of human rights.**

In summary, the CAVR Final Report is a valuable source for understanding the events of 1999 because it combines quantitative and qualitative methods, and legal and historical perspectives in reaching its conclusions.

E. Weaknesses of the CAVR Report

Although the CAVR documents provide an excellent base for the CTF to assess the “truth” about the events in 1999, there are some areas of weakness in the methods and analysis. These areas include:

- **Over-reliance on the human rights database.**

Although the Human Rights Database is a tool that in general strengthens the quality of the CAVR report, it should be used with caution. The database catalogues summaries of testimony rather than the original testimony, so a full understanding of an event must rely on the original testimonies and not merely on the database summaries. In our relatively small number of searches, our team also found a number of errors in the database, such as accidentally coding the wrong crime or only recording one crime without recording

others in an event. The only accurate way to assess the statistics is to view each statement for each event, because the database returns all references to keywords in searches. For example, when cross-checking the report's claim that there were no sexual crimes committed by Falintil in 1999, our database search returned five events of sexual crimes by Falintil. Only by searching the event records closely for each case were we able to determine that all five of those incidences were technical errors in the coding, and invalid reports. This high incident of error in this case suggests that the Human Rights Database must be used carefully with a system of crosschecking to verify each claim. The data regarding 1999 also needs to be supplemented with more independent and thorough qualitative analysis.

- **Insufficient discussion and evidence of civilian government institutional responsibility (i.e. public officials) in 1999.**
- **Insufficient discussion of FRETILIN and other pro-independence groups' violations in 1999.**
- **Insufficient citations to show the basis for some of the reports' conclusions.**
- **Lack of independent analysis of violations of 1999. The report relies too heavily on the indictments filed by the Serious Crimes Unit and Geoffrey Robinson's report, without providing a critical discussion of these sources.**

F. Future Research

We recommend the following areas for further investigation by the CTF using the CAVR Final Report and supporting evidence.

- A thorough confirmation of all the statistical information about 1999 and access to the second, statistical database
- An analysis of the transcripts of the VIP interviews
- A review of the Community Profiles and the information they contain about 1999
- A more intensive inquiry into Falintil/Fretilin institutional responsibility for violations committed in 1999
- The negotiation of an exchange or inter-institution loan of secondary resources to the CTF from the CAVR about 1999
- Access to documents cited in the CAVR Final Report that are not accessible through the Serious Crimes Unit
- The negotiation of an MOU between the CAVR and the CTF that addresses the issues of confidentiality, photocopying, and citation.
- Exchanges and trainings that allow the CAVR and CTF staff to share knowledge and discussion about how conclusions about accountability can be implemented (i.e. reparations, community reconciliation ceremonies etc).

The Serious Crimes Unit

A. Institutional Structure and its Impact on Evidence

UN Security Council Resolution 1264 established the UNTAET mission and supplied the following two statements which became the basis for the prosecutions of violations of human rights in 1999. First, they declared: “Expressing its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor, and stressing that persons committing such violations bear individual responsibility.” Second, the Security Council resolved first among all of its other priorities in the resolution that it, “Condemns all acts of violence in East Timor, calls for their immediate end and demands that those responsible for such acts be brought to justice;”. The SCU became the Prosecution unit for the hybrid human rights tribunal charged with adjudicating these grave violations of human rights that the UN Security Council had identified as occurring in East Timor in 1999.⁴¹⁶ Although the composition and institutional goals of the SCU fluctuated over time, for the CTF’s purposes it is sufficient to understand the general investigative structures, methods, and timelines that created the various components of evidence housed at the SCU archives.

Although in theory the possibility of prosecuting crimes prior to 1999 existed, early on the SCU decided to limit its investigations to 1999.⁴¹⁷ The SCU divided its investigative teams into districts, so that there would be one investigative team per district, which would be linked to a Prosecution team. In addition to district - specific teams, a National Investigative and Prosecution team was formed to develop cases where evidence suggested a widespread and systematic plan that spanned all districts, which would target the perpetrators who organized and orchestrated attacks at high levels of command, either military or civil government.

Investigation priorities were determined by several factors, including time, staff and money, which shifted with time. The SCU was charged with providing the evidence to hold accountable those who were responsible for gross human rights violations in 1999. However, its resources and timeline were curtailed from the start. One of SCU’s responses to this challenge was the designation of “priority cases.” However, which ten cases were considered a “priority” shifted with time and the changes in leadership within the SCU. After a 2002 report by the UN Secretary General that rephrased the judicial mandate for East Timor in terms of pursuing those who have the “greatest”

⁴¹⁶ UNTAET Regulation 2000/11 reestablished a judiciary in East Timor and UNTAET Regulation 2000/15 established the Special Panels as a hybrid international/domestic court to adjudicate grave violations of human rights. UNTAET Regulation 2000/16 established the Serious Crimes Unit as the public prosecution arm of the judiciary that was responsible for adjudicating grave violations of human rights in East Timor.

⁴¹⁷ For a discussion of why prosecutions were limited to 1999 crimes see Coalition for International Justice and The Open Society Justice Initiative, “Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor”, November 2004, p. 40.

responsibility,⁴¹⁸ the priority cases, and prosecutions of the Indonesian High Command received greater attention. In addition to the priority cases, communities would refer cases to the SCU that required immediate attention in order to maintain peace, particularly when a perpetrator would return from West Timor.⁴¹⁹ Then, there were the cases that had been filed in the early days of the SCU when priorities had yet to be as tightly defined. Time and attention had to be devoted to these cases that were already moving through the judicial system, even if they were not theoretically the cases most reflective of those who had the “greatest” responsibility for crimes. There were also a few attempts at thematic investigations to determine who was most responsible for specific categories of crime including Gender Crimes and Finance and Funding investigations, however none of these initiatives were ever brought to completion.

Investigations technically spanned the life of the SCU, but in early 2004 the United Nations Headquarters began to downsize the investigation teams, and all investigations were completed by 2004 per their order.⁴²⁰ Standard legal procedures governed the investigative methods that included the taking of witness statements, the collection of physical evidence, and the analysis of forensic evidence.⁴²¹

Although the focus of the SCU mandate is on individual responsibility, the products of its investigation and indictment processes are some of the best resources available that can yield the information necessary to determine institutional responsibility.

B. Components of SCU Evidence

The evidence that resulted from these investigations appears in an array of formats and in various stages of completion. The components of evidence included in the SCU collection are:

- 1) Audio-visual files as both primary and secondary evidence
- 2) Physical Evidence – such as confiscated weapons
- 3) Forensic Evidence
- 4) Witness Statements (these can be located by case if a case was opened, or by District)

⁴¹⁸Ibid, p. 42. They provide the citation for the actual report by the Secretary General to the Security Council, UN SCOR, S/2002/432.

⁴¹⁹Siri Frigaard. Presentation at “Legacy of the Serious Crimes Process in East Timor” conference, Bangkok, Thailand. 26 May 2007.

⁴²⁰UN Security Council Resolution 1543 required all investigations be completed by November 2004 and all trials must be completed by 20 May 2005.

⁴²¹The SCU created the only forensic lab in East Timor at that time. The lab has offered its services to the Dili National Hospital and the SCU structure has now become the basis for the East Timor domestic legal system’s forensic investigations. Many experts comment that the establishment of a forensic process and the effective training of local staff to manage the process is one of the best results of the SCU process in East Timor. However, it is notable that this success was achieved despite severe under-resourcing. This unit was the only forensic lab administered under the auspices of the United Nations among all the other international tribunals who did not receive funding for DNA technology, among other key technological inputs. Interviews, Forensic Lab staff, Serious Crimes Unit, June, 2004.

- 5) Documentary Evidence (Much of the Documentary evidence is contained in the National paper files unsorted, and in a more organized form in the case files for Case #5/2003, which is often referred to as the Wiranto Indictment).
Documentary evidence is also part of other case files, but the bulk of evidence relevant to the CTF's mandate is confined to these areas.
- 6) District investigative file summaries and evidence (District Summary binders were found for Ainaro and Bobonaro districts. Witness statements and other evidence is sorted by district in paper format)
- 7) Individual case files for both indicted and un-indicted cases
- 8) Full case files for adjudicated cases that include indictments, judgments and, in some cases, transcripts.
- 9) Internal correspondence regarding cases
- 10) External press releases, correspondence and memos
- 11) Secondary reports and research including Geoffrey Robinson's report, and other UN or special consultant reports.

Some of this evidence is available electronically, but much of the information remains in paper format only. Cases that have not yet been indicted, or have been indicted and have not yet gone to trial have special restrictions placed on their access.

C. Assessments of Violations of Human Rights and Crimes Against Humanity

The evidence that is most explicit in its attempts at determining the scale and patterns of human rights violations across East Timor was compiled by and for the National Investigation and Prosecution Team. The SCU's interpretation of the commission of Crimes Against Humanity is most reflected in the Wiranto Case Files that were used to compose the indictment and request for arrest warrants against superior officers in the Indonesian military and civil service, which became Special Panels Case #5/2003. These files contain approximately 15,000 pages of evidence regarding Crimes Against Humanity. The indictment and evidence files were supported by a more than 90 page brief that summarized the relevant law and evidence for the Court. Charges specific to each person who was indicted were also summarized in a brief filed with the applications for arrest warrants.

In response to the indictment and applications for arrest warrants the Special Panels issued an arrest warrant for Yayat Sudrajat quickly, but it took over one year before they made the decision to issue arrest warrants for the others who were indicted including General Wiranto, Zacky Anwar Makarim, Kiki Syahnakri, Adam Rachmat Damiri, Suhartono Suratman, Mohammad Noer Muis, and Abilio Jose Osorio Soares. One factor in the delay in issuing the warrants was the Court expressed a need for further clarification of the indictment's charges of Crimes Against Humanity, which resulted in the filing of the supporting Wiranto Brief in April 2004 that addressed the elements of Crimes Against Humanity and other charges. The Timorese government decided to not

forward these arrest warrants to Interpol.⁴²² Their decision along with the lack of political will on the part of the UN made arrests and further adjudication of the Wiranto case, and others, impossible.⁴²³

Widespread

The specific crimes for which the SCU alleged the commanders in the Wiranto indictment were liable for on the scale of Crimes Against Humanity were Murder (281 victims), Deportation or Forcible Transfer (200,000 victims) and Persecution (no number is given, but “independence supporters” were the target group of attacks). The supporting brief claims these crimes were widespread based on the definition that “widespread” means “an attack on a multiplicity of victims.”⁴²⁴ They support their definition by referring to jurisprudence from both the ICTY and ICTR that uses words like “massive,” “large-scale” and “frequent” as descriptive terms to indicate the level of attack considered “widespread.”⁴²⁵

They allege:

“The widespread nature of the attack is shown by the evidence that the TNI and pro-Indonesia militia killed up to 1500 civilians, approximately 200,000 East Timorese, or one-quarter of the population, were deported or forcibly transferred to West Timor; and approximately 70% of all buildings and houses in East Timor were destroyed.”

Unfortunately, the supporting evidence regarding these particular statistics is not explained in detail, as it should have been, given the available evidence. Admittedly, the scale of these figures far exceeds the minimum degree of attack required to meet a standard of “widespread,” so even if there are significant margins of error in these statistics it is likely they will prove the existence of widespread commission of murder, forced transfer and destruction of property. The numbers for people killed are the most carefully explained figure, which was reportedly derived from reports made directly to the SCU.

⁴²² The Timorese Prosecutor General, Monteiro Longhinos, issued a statement that disowned the Wiranto indictment, but he also claimed that it was not he who was responsible for refusing to forward the arrest application. Some observers claim the UN strongly encouraged the Timorese government in its decision to block the warrant. Many observers claim Xanana Gusmao is personally responsible for blocking the arrest warrants. None of these claims are adequately documented, but it is clear the Timorese government is the institution which failed to forward the warrant. The UN legal team was responsible for the preparation and filing of the applications of the arrest warrants, and an UN judge issued the arrest warrant. Therefore, it is not clear where the political impasse could have been rooted within the UN, although other parts of the UN outside of the judicial community distanced themselves from the initiative to pursue the Wiranto case. Bilateral politics also likely played a significant role in this decision. For a discussion of this problem see *Unfulfilled Promises*, pp. 43-44

⁴²³ Only 77 of the 165 arrest warrants for Indonesians were filed by the Timorese government with Interpol. *Unfulfilled Promises*, 43. However, interviews have revealed that some of these warrants were not filed with Interpol because of technical problems with the arrest warrants themselves, such as insufficient identifying information. Interview with former SCU employee, October 2007, Dili.

⁴²⁴ Wiranto Indictment Supporting Brief, p. 10.

⁴²⁵ *Ibid.*

However, the claim about deportation does not strongly agree with the evidence we reviewed in the files that support the indictment and brief. There are 73 witness statements in the Wiranto case files that give evidence regarding deportations, and some of these statements show strong evidence of forced transfer, particularly in the districts of Covalima and Bobonaro. One witness statement recounts how an entire village was forced to leave their homes and board trucks to West Timor by armed militia and TNI soldiers. The witness estimates in total all 33 families in the village were forcibly removed to West Timor on September 6, 1999.⁴²⁶ However, some of the witness statements included in the SCU's compilation of evidence for the indictment actually suggest that some people left East Timor voluntarily. They used the convoys as a means of escape, and evacuation. However, these people were often subjected to other grave violations of human rights in the course of their journey, in refugee camps or while waiting in detention centers. Clear evidence for arbitrary detention and subsequent forced transfer exists in the Wiranto files, but the supporting evidence suggests that the approximate number of people who left East Timor (200,000) is not indicative of the actual number of people subjected to the violation of deportation.

Our research team has discovered from the CAVR Final Report that the figure of 70% destruction of infrastructure was most likely derived from a report by the World Bank compiled at the end of 1999, but this source is never documented in the Wiranto case files.

There is also an assumption of institutional responsibility in this paragraph that is premature given no evidence or allegations have been presented yet to prove this number of crimes can be fully attributed exclusively to the TNI and militia. The supporting CAVR statistical data in Part II, and the analysis of other documents contained in the SCU collection of evidence in Part III of this report better summarize the widespread nature of attacks in East Timor in 1999.

The supporting evidence that is referenced in the brief in addition to the SCU statistical argument for the "widespread" element, is essentially a list of the priority cases of the SCU at that time, which included the Cailaco case, the attack on the Carrascalao house, attacks at Suai Church, attacks at Liquica church, the Team Alfa attack on clergy in Los Palos, the Passabe killings in Oecussi and the attacks committed by TNI Battalion 745. These events that contain multiple violations of human rights spanned multiple districts. Thus, the Wiranto case files do not cover every district, as our statistical analysis shows is possible, but extract sufficient evidence from these key cases to still meet the "widespread" standard. They chose key cases, and alleged that the volume of crime in these areas is sufficient to fulfill the "widespread or systematic" requirement for Crimes Against Humanity.

Systematic

The SCU defines their interpretation of "systematic attack" as an attack carried out according to a preconceived policy or plan. However, they nuance this definition by

⁴²⁶ Witness statement: Victoria Da Cruz, p. 1600010

using ICTY/ICTR jurisprudence to explain the different ways a “plan” can be interpreted. States and their organs are not the only actors that can plan an attack⁴²⁷ and the plan or policy does not have to be explicitly stated by the State or other actors, but can be inferred⁴²⁸ especially from the widespread nature of an attack.⁴²⁹ Their brief explains:

“The policy in the case of a systematic attack would be to provide at least some guidance regarding the prospective victims, in order to coordinate the activities of the individual perpetrators.”⁴³⁰

The SCU described the “policy” in general terms and by claiming specific elements of institutional support and participation. They allege two distinct plans. First, they allege there was an overall policy in the pre-ballot period, or plan. This plan provided for the TNI to cooperate with the militias to use intimidation tactics in order to ensure the victory of the autonomy option of the popular consultation.⁴³¹ People who were believed to support independence were the target of the plan’s methods of arbitrary detention, arrest, and other human rights violations (It is curious why this section of the brief uses “arbitrary detention” as an example of crimes committed but does not indict anyone for this crime. Imprisonment can be prosecuted as a Crime against Humanity⁴³²). Crimes were committed, incited and/or planned by militia in the presence and with the material and moral support of TNI, police and government officials (One government official was indicted in this case, although government officials are not mentioned in the SCU statements regarding widespread attacks). Second, in the post-ballot period the SCU alleges the TNI and militias acted jointly to implement a Deportation/Forced Transfer plan and a Scorched Earth policy.⁴³³

However, little time is spent on explaining the details of “systematic.” The thrust of the SCU argument is that a pattern of co-perpetration between the TNI, POLRI, government officials and militias is sufficient evidence that the crimes were committed in a systematic manner. They also suggest that this pattern of co-perpetration required institutional support, which further underscores the systematic nature of the violations. Although the SCU says the “systematic” element is fulfilled by co-perpetration, it focuses its argument for accountability on theories of command responsibility. The brief uses many of the same types of supporting themes (funding, recruitment, moral support through rallies) and evidence (telegrams, policy documents, and witness testimony) as Geoffrey Robinson, but they concentrate on portraying a purely hierarchical system that

⁴²⁷ Tadic, para. 653, Blaskic, para. 204-205.

⁴²⁸ Tadic, para. 655; Kupreskic, para 551.

⁴²⁹ Subsequent ICTR and ICTY jurisprudence has clearly established that there is no requirement for a plan or policy in order to establish that an attack was systematic. A pattern or evidence of organization, preparation, and targeting of victims suffices. A plan or policy may be evidence of the systematic nature of the attack, but is not itself an element. The core idea is that the attack represents organized, patterned activity, not random occurrences.

⁴³⁰ Wiranto Brief, p. 10.

⁴³¹ Wiranto Brief, p. 19.

⁴³² Imprisonment is considered a Crime Against Humanity under section 5.1 of UNTAET Regulation 2000/15. This statute was derived from the legal codes of the Rome Statutes for the International Criminal Court.

⁴³³ Wiranto Brief, p. 19.

doesn't distinguish well between individual and command responsibility, and the different theories of accountability within these categories. The most effective part of the SCU's argumentation in all areas of the Wiranto brief, but in particular the sections relevant to command responsibility that correlate with their "systematic" argument, is its extensive citation of witness testimony.

Widespread AND Systematic

The SCU's main tactic in making an argument for the systematic and widespread nature of crimes is to cite precedents by the Special Panels. Their Brief highlights the ruling in the case of The Prosecutor v. Joni Marques and Others.⁴³⁴ The court ruled the following in this case:

The Panel is satisfied beyond reasonable doubt that there was an extensive attack by the pro-autonomy armed groups supported by Indonesian authorities targeting the civilian population in the area, namely those linked with political movements for the self-determination of East Timor. Most of the victims were unarmed and were villagers who were so scared that they decided to sleep in the forest rather than risk being burned alive in their houses or otherwise being caught in the attack on their communities. The evidence from the testimonies supports the conclusions of the International Commission of Inquiry into the patterns of human rights violations and breaches of humanitarian law in East Timor:

The court then goes on to cite extensively the UN-sponsored Commission of Inquiry report. The odd part of referring to this report as the foundation on which to rest its ruling and test the evidence is that the Courts had access to evidence in many of its cases, including this one, to make independent findings. Referring to an UN-sponsored report is certainly acceptable, but is not a necessary basis for making such a finding. The Court, and in this case the SCU, had sufficient time and evidence to determine its own findings with regard to the contextual elements of Crimes against Humanity, yet their analyses seems to avoid reaching their own conclusions first about the evidence at their own fingertips.⁴³⁵

Against Any Civilian Population

The SCU is careful to point out that according to international law a person's civilian status is to be determined at the time of attack, and is not a permanent category.⁴³⁶ Unfortunately, the SCU never takes the time to interpret this fundamental principle as it relates to the situation in East Timor. For example, they could have explained "civilian" includes the obvious categories of women and children who were not engaged in combat with an armed group. "Civilian Population" also includes individuals who may have

⁴³⁴ The Joni Marques Case is analyzed extensively in the SPSC section of this report.

⁴³⁵ The Court made findings in Prosecutor Vs. Sabino Gouveia Leite that also confirm there were "widespread and systematic attacks", but the judgment does not specify how it arrived at its determination that these elements were met. See Sabino Gouveia Leite, 7 December 2002.

⁴³⁶ Tadic para. 626, 641-3, Akayesu para. 574-6, 582, Blaskic para. 214. Wiranto Brief, p. 11

supported independence or autonomy as a political preference. “Civilian Population” also includes those who may be called “Clandestine,” if a person is not an identifiable, armed combatant at the time of attack. The SCU should have also defined the “civilian” status of various armed groups such as militia and TNI in circumstances such as when crimes are committed out of uniform. A more complete description of how these definitions were interpreted in their assessment of the number of crimes committed against a Civilian population and in their determination of individual responsibility could have clarified the charges in their indictment.

Intent

The SCU also defines how the crimes classify as Crimes Against Humanity based on the intent to commit the crime. The motive, or *mens rea*, required for Crimes Against Humanity is knowledge by the perpetrator that their individual attack was being committed in the context of a broader attack (i.e. knowledge that their acts were contributing to a broader pattern of crimes and were not random). The SCU overlooks making a sufficient argument with their evidence for this aspect of the case. They cite two precedents by the Special Panels regarding their accepted definition of the *mens rea* of the crime, but offer no direct discussion of which pieces of evidence best prove the necessary intent. The section that discusses “expert reports” on East Timor, which are all UN-sponsored Commissions of Inquiry or Rapporteur reports, may be considered supporting evidence for this claim; however, they make no direct links. It appears that in fulfilling the requirements of widespread and systematic, the SCU assumes that the *mens rea* can be organically derived. The evidence for the necessary intent is certainly present in the files, and even in the evidence cited in other parts of the brief. However, the brief failed to make a concise statement of the facts that support their claims in this regard.

In summary, the SCU did not articulate well in the Wiranto case files, or elsewhere, the evidence that supports the contextual elements of Crimes Against Humanity. This failure on their part does not mean the evidence does not exist, but rather that the evidence available needed to be used differently in order to extract the necessary information. See our discussion in Parts II, III and IV of this report for examples of evidence in the SCU and CAVR collections that portray the contextual elements of Crimes Against Humanity.

Violations that Constitute Crimes Against Humanity

The Wiranto indictment focuses on the crimes of murder, deportation and persecution (of independence supporters) as significantly patterned and scaled to constitute crimes against humanity. The sum of the SCU indictments includes almost the entire rubric of criminal acts that can be considered crimes against humanity including, torture, rape and inhumane acts. However, throughout the indictments the SCU placed a priority on the prosecution of murder as crime against humanity, as the Wiranto indictment also shows when it leads with the charge of 281 counts of murder as crimes against humanity.

However, our research indicates that the choice of this prosecutorial priority resulted in the neglect of prosecuting other crimes that existed as a prevalent part of the violent

landscape in East Timor in 1999. The most pronounced area of neglect was the prosecution of sexual violence as Crimes Against Humanity.

Although there were three cases heard by the Special Panels that addressed the crime of rape, only one of the cases adequately addressed the systematic and widespread nature of this crime in East Timor (See the discussion of the Lolotoe case by David Cohen in this Report), and it did not address the evidence that suggested the crime of Forced Sterilization also took place. The prosecution of the Lolotoe case did not fully capture the systemic nature and prevalence of sexual crimes being committed in East Timor in 1999, which the SCU had evidence to indict.

Our research of the SCU investigative files has revealed at least three distinct patterns of sexual crimes directed at a civilian population committed multiple times in at least three districts during the same period of time in 1999. The existence and patterns of these crimes are not surprising when viewed in the context of the socio-historical information about the period of 1975-1999 presented in the CAVR Final Report. Their report documents the same patterns perpetrated by the Indonesian military and its auxiliaries throughout the Occupation period and in 1999.⁴³⁷ In addition the non-profit organization, Fokupers, has published reports that document these crimes both in East Timor and in the refugee camps in West Timor in 1999. Geoffrey Robinson's report also references these crimes in his report.⁴³⁸ The SCU had access to Robinson's report and the same Fokupers data the CAVR used as the basis of its investigations. Fokupers donated their full database of statements and other evidence regarding sexual crimes in 1999 to the SCU. Furthermore, they offered to facilitate the investigations process for these crimes by providing transport and counseling services to victims who wished to make statements.⁴³⁹ They followed through on this offer by bringing victims to the Serious Crimes Unit from their home district to make official witness statements. Unfortunately, the SCU chose to not make full use of the evidence, nor the logistical support it was offered, when setting its prosecutorial priorities or in conducting investigations. It appears focused investigations of sexual crimes only occurred when individuals (two female Prosecutors and one female Investigator) specifically requested inquiries into sexual crimes for particular districts. One memo suggests a Prosecutor on the National Team began an investigation into sexual crimes, but it is not clear why these investigations never came to fruition. To date we have not been able to locate any SCU initiated investigations into sexual crimes in districts other than [REDACTED], [REDACTED] and [REDACTED]. However, all three of these districts produced strong evidence of the existence of widespread and systematic violations that have implications for institutional responsibility. We will present summaries of these cases in a way that protects victim identities and the cases. Our team consulted with Fokupers for permission to use this information that originated in their research and database reports that were donated to the Serious Crimes Unit and CAVR. We have supplemented this information by using the CAVR material to show how these crimes fit into a broader pattern of sexual crimes.

⁴³⁷ See Attached Annex from CAVR Final Report.

⁴³⁸ Robinson 44-45.

⁴³⁹ Interview with Fokupers staff, 28 February 2007, Dili.

Rape and Sexual Slavery As A Crime Against Humanity

The first pattern of sexual crimes in 1999 that was encountered in the SCU archives is **rapes at, and in transit to and from, detention centers.**

One representative case file reveals that on the 4th of September, uniformed TNI soldiers came to the victim's village in [REDACTED] district and forced her and her family members to go to a school.⁴⁴⁰ A soldier who was married raped her repeatedly for a month while she was held in detention, and often times with her children in the same bed. The soldier was always armed when he came to rape her and displayed his weapon openly. This perpetrator wore a uniform with two red stripes on the shoulder. He was armed with a Z3, Mauser and SKS at different times. He claimed to have been a member of the TNI since 1987. Later, TNI soldiers took the victim and her family to Atambua. The same soldier followed her later and continued to rape her in the camp. She became pregnant. The victim's village head submitted a supporting witness statement to verify the victim's statement, and his statement emphasized that she was a target of attack because she was the widow of a known independence supporter.⁴⁴¹ Other collaborating witness statements attest to the fact that the junior high school was used as a detention center and that TNI soldiers forced people to go there. Corroborating statements reveal [REDACTED] militiamen guarded the school grounds. These supporting witness statements suggest more than one TNI soldier committed sexual crimes in the same location. Another man who was known to villagers as a TNI member repeatedly raped a different woman at the school, although the testimony states he was not in uniform at all times.

A second set of sexual crimes cases are legally documented in a school in [REDACTED] in [REDACTED] district. Witness statements claim that seven women were arrested and detained in a school.⁴⁴² They were made to cook for TNI and militia members who were present at the site. At night two women were separated out from the rest and were raped repeatedly by six TNI soldiers and one militia member.⁴⁴³ At the time of their arrest and detention in the school an Indonesian TNI member threatened all the women with death. These women were all forced to pay TNI soldiers money for their involuntary transport to an Atambua refugee camp.⁴⁴⁴

The CAVR Report provides corroborating evidence of the existence of detention centers where instances of rape and sexual slavery occurred, that also followed the pattern of joint perpetration and/or assistance between the TNI and militia. They document similar cases in Aileu. They also document more cases of this genre, which they refer to as "rape centers," that include additional cases in the Bobonaro that do not appear in the SCU Rape Investigation files. The CAVR evidence shows women were detained and raped with the knowledge of the police and military command in the area, which made no

⁴⁴⁰ Witness Testimony, #2-3b, p. 1.

⁴⁴¹ Witness statement, #2-4b.

⁴⁴² Witness statements, #'s 2-7b, 2-9b, 2-10b.

⁴⁴³ Witness statements, #'s 2-7b, 2-10b.

⁴⁴⁴ Witness statement. #2-10b.

efforts at prevention.⁴⁴⁵ Their report includes one well-documented case of the abduction and detention of a girl by militia who was then brought to the Koramil Commander who raped her.⁴⁴⁶

In addition, the CAVR report contains corroborating evidence that women were detained and raped following the Suai Church Incident in Covalima district on 6 September 1999. In Suai women were detained and sexually abused at the Kodim, another Junior High School, an orphanage and at a non-profit organization's building. One victim of such an attack shared her testimony publicly at a CAVR hearing:

“We were taken to the school building - approximately 50 people, including children. I overheard the militia say: “Don't kill that one, we'll rape her.” I was scared and did not have the courage to look at them. On the way to the high school, we were escorted by Javanese police in uniform...At the school, we were all put into a dark room...A militia called PS189, a teacher from the village of Leogor, came to force me to sleep with him. But I refused. He became angry, kicked me in the back and slapped me on the face till it was swollen and I fell to the ground. Then he forced me he took off my clothes and raped me.

The second pattern of sexual crimes encountered in the SCU Archives was TNI soldiers or militia members **Forcing Women to have a Sexual Relationship on a regular basis in their home by threatening her life and her family.**

SCU files reveal UNPOL investigated a series of 21 rapes that occurred in [REDACTED] in [REDACTED] district, many of which were related to this pattern. Unfortunately the SCU files do not contain the details of all their investigations, but only a scattering of witness statements they took. However, these statements are sufficient to suggest the widespread existence of a pattern of sexual slavery that was both perpetrated and condoned by the TNI and militia members in 1999.

One statement by a victim recounted that a TNI soldier entered her home and threatened her parents to give her to him. He raped this girl twice weekly in her home from April until she was evacuated to Atambua in September 1999. He raped her repeatedly in the camp in West Timor until December 1999. The victim became pregnant and gave birth to the child. The TNI soldier wore a uniform with two yellow stripes on the shoulders.⁴⁴⁷ UNPOL conducting the investigation had a suspect name.

⁴⁴⁵ CAVR Final Report, “Sexual Violations, p. 38 (Par. 151).

⁴⁴⁶ Ibid, p. 36 (Par. 144).

⁴⁴⁷ Witness statement, #2-5b.

They document a second case where two TNI soldiers came to a victim's house and tried to pay her 50,000 Rupiah to have sex with them. The victim refused. The TNI officers were armed, and one of them threatened her physically. This soldier later returned to rape her and continued to come to the girls house every night and forced her to sleep with him. The soldier threatened her family with his weapon and verbally threatened to kill them if they did not let him come nightly.⁴⁴⁸

A third case documents two armed Halianar militia members entered a victim's home and repeatedly raped her in the same day. One of the militia members reportedly openly bragged about it in the village and to other Halianar militia members.⁴⁴⁹

In May 1999 in the same area a TNI soldier allegedly entered the home of a victim armed with a pistol and raped her. The girl's mother is a witness and made a supporting statement to the SCU.⁴⁵⁰ Traumatized by her rape the victim fled to the hills afterwards. The suspect was married and his wife received news of the incident. The suspect allegedly held the position of Vice Babinsa in the village. The victim is believed to have been targeted because her brother was an open independence supporter in the village.

There is another report that on April 18, 1999, a TNI soldier forcibly entered a victim's home and threatened her family with abduction if they refused to allow him to come into their home and have sexual intercourse with their daughter.⁴⁵¹ The rapes continued nightly in the victim's home. The perpetrator would always come when he finished his patrol duties at the Koramil. The rapes ended when the victim fled to Atambua. The suspect is still rumored to be an active TNI member in West Timor.

At least one witness statement implicates a SGI officer in the repeated rape of the same victim. This person was identified because he left his ID card in the victim's bedroom.⁴⁵² The widespread and systematic nature of these attacks is underscored by this victim's testimony that when she boarded the truck to Atambua, she lists the names of other women in the vehicle. These women are some of the same victims who independently gave their statements about the other crimes committed above.

The third common pattern of sexual crimes that appears in the SCU archives is **Sexual Harassment and Rape at Militia Parties**. One incident of women being made to dance for militia members is recounted in the Lolotoe case. Case files from the Manufahi district also reveal parties were regularly held by militia where women were forced to dance as a form of sexual harassment and intimidation. Sometimes women were forced to engage in sexual intercourse (often publicly) during or after these parties.⁴⁵³

⁴⁴⁸ Witness statement, #2-6b.

⁴⁴⁹ Witness statement, #2-17b.

⁴⁵⁰ Witness statement #2-18b.

⁴⁵¹ Witness statement #2-19b.

⁴⁵² Witness statement #2-20b.

⁴⁵³ Witness statement #2-11b. The militia group implicated in this statement is [REDACTED].

The CAVR report offers corroborating evidence to support this pattern. Their report explains prior to the ballot women in villages would be forced to attend parties organized by the militia, and often were forced to cook food and make other preparations for the parties. They would be forced to engage in sexual acts prior to, during and after these militia parties. One woman gave public testimony at a CAVR public hearing, which is almost identical to the experience, recounted by another women who gave testimony to the SCU, whose identity must remain confidential. The public testimony explains:

“ [M]ilitia [commanders] PS383, PS143, PS144, PS145 and PS146...shoved their hands in our bras and pulled out our breasts. We had to let them do it because they threatened to beat us with wooden blocks. On the way home from the party the DMP commander called me and three other women friends...to be interrogated. He had photographs of us when we were cooking for Falintil. I replied: “It is true that my friends and I have cooked for Falintil, but we are just ordinary people. We don’t understand politics. If they say they are hungry, yes, I have to feed them because we are all human beings. What is wrong if we feed them? I am scared too, because the Falintil carry weapons.” After the interrogation I went straight home. As soon as I got to my room, four members of DMP - PS383, PS143, PS144 and PS145 - were already naked and waiting for me. They dragged me, took my clothes off and took turns raping me. My children came into the room and the men beat and kicked the children out of the room.”⁴⁵⁴

In addition to these specific patterns of crimes, numerous incidences of rape that fall outside of these strict categories occurred. The pervasive use of rape in 1999 as a method of intimidation and terror deserves further investigation by the CTF and findings regarding the resulting institutional responsibility. The cases presented above indicate multiple members of the Indonesian military and militia organizations committed egregious crimes that reflect on their institutions. The CAVR Final Report documents that 26% of all rapes that were committed in East Timor from 1975-1999 occurred during the ballot-related violence in 1999. Their data also demonstrates an increase of rape cases in 1999 with higher number of incidences occurring in April and September 1999, which suggests their systematic perpetration of these crimes occurred in the context of a policy that condoned and failed to punish such acts.

The CAVR Final Report’s chapter on Sexual Violence is attached as an appendix to this report for reference and elaboration on the available evidence to support the existence of these patterns of sexual crimes. It is a tragic failure of the Serious Crimes Unit to adequately document and prosecute these violations that clearly meet the standards of crimes against humanity. The failure to deal with these grave violations of human rights indicates that the substance of the indictments filed by the SCU alone is not sufficient to establish the conclusive truth about what crimes occurred and on what scale in East Timor in 1999.

E. SCU Perspectives on Institutional Accountability

⁴⁵⁴ CAVR Final Report, “Sexual Violence,” p. 32-33 (par 127).

In the Wiranto Case files, there is evidence that strongly suggests the TNI, the police, and the Indonesian civilian government all incurred institutional responsibility for crimes committed in 1999. A review of other SCU files shows there were also some investigations, indictments and prosecutions of Falintil members that could indicate that FRETILIN/FALINTIL incurred institutional responsibility. Below we will summarize the conclusions of the SCU indictments most relevant to the CTF mandate and some of their best supporting evidence that suggests institutional responsibility. We will also analyze the weaknesses in their approach to this issue.

With the emphasis on the Wiranto indictment that charged senior officers in the Indonesian military with crimes against humanity, the SCU endeavored to build a top-down case to prove the institutional as well as individual responsibility of members of the TNI for human rights violations that occurred across East Timor in 1999. The main focus of the SCU's investigative efforts in this regard was the head of the Indonesian Armed Forces, General Wiranto. The SCU also constructed some detailed cases against Kiki Syahnakri, Zacky Anwar Makarim, Adam Damiri, Tono Suratman, Yayat Sudrajat, Noer Muis and Abilio Soares, however much of the evidence compiled for their cases and the other TNI indictees overlaps with witness testimony regarding Wiranto.

The case files as they were summarized in briefs are most effective in showing the TNI had knowledge of crimes committed by the militia and its own members at the highest levels of command. There is also significant evidence that suggests the highest levels of military command had the ability to control the actions of their own members and the militia, but chose not to exercise this control to prevent the commission of crimes. Additional evidence shows that the Indonesian government funds were used to fund the militias and other elements of the pro-autonomy campaign. This evidence implies institutional responsibility is shared among multiple organs of the Indonesian government, and not the military alone. The best evidence in these case files comes from key witness statements collected by the SCU investigative team.

Institutional Responsibility based on Key Witness Testimony

1. Worldview: International Liaison Perspectives

One of the most important indicators of institutional responsibility is a series of witness statements by senior UN officials who met regularly with the diplomatic and military leadership of Indonesia in 1999. These witness statements provide sound and credible evidence that the senior leadership of the TNI and other sectors of the Indonesian government had knowledge of ongoing human rights violations in East Timor in 1999. These statements also suggest that the Indonesian military had effective control over the militias and their own troops, at least in some instances, which they regularly failed to exercise to prevent human rights violations. Finally, these statements reveal that the senior leadership of these institutions was aware of their responsibilities under the May 5th Agreement as well as international law.

For example, one senior official in the UN gave testimony to the SCU that shows both ABRI and the civil government of Indonesia had knowledge of human rights violations committed by militia, police and the TNI in both the pre and post- ballot periods. This official met on a regular basis with senior officials in the Indonesian military and civilian government, including the Commander of the Armed Forces of Indonesia and the Minister of Foreign Affairs.

In his testimony he detailed the content and specific occasions on which he provided information regarding the commission of grave violations of human rights in East Timor and evidence that suggested the Indonesian military and police were involved in these violations. At these meetings senior Indonesian military leadership indicated they intended to play a neutral role in the elections as required by the May 5th Agreement, and that they understood the reports of violations. For example the witness said,

“I believe I had a total of four meetings with Gen. Wiranto in Jakarta... I think the first of these meetings (on 29 May) was at TNI headquarters. Gen. Wiranto gave general commitments that the military would play a neutral role.”⁴⁵⁵

However, despite these pronouncements of neutrality, an examination of a military telegram written on 9 June 1999 shows that the military was still actively ordering and engaged in campaigning for pro-integration in East Timor.

The telegram is sent from the Dandim of Bobonaro, post 1636 (Lt. Col. Siagian) to a sub-district post (Danramil 1636-01 in Maliana, Captain Modjip Anwar) and to the Danki (Lt. Col. Saripudin) of the external combat troops based in Liquica (Yonif 143).⁴⁵⁶ It is CC'ed to the head of the East Timor command at Korem #164 (Tono Suratman) and to the reporting section of his own post, which would have presumably passed by the chief of Intelligence for 1636 (Lt. Sutrisno).

In the first paragraph of the telegram he references a telegram sent two days earlier (7 June 1999) from the Danrem (Tono Suratman) numbered ST/140/1999⁴⁵⁷ with orders to “optimize the role of the Kodim in making the plan for the popular referendum on August 8, 1999 a success.”⁴⁵⁸ These words can be interpreted either as innocent orders to clarify the TNI's role in the referendum process, or, in a more ominous fashion, to direct the district commands to mobilize support for pro-integration by using their military powers. Whatever the original intent was, it is clear that this particular Dandim intended to implement the optimization of his role in the Referendum in a subjective manner. In part three of his telegram he commands his subordinates to implement the orders from the Korem by saying:

⁴⁵⁵ Witness Statement, #2-13b, 12 March 2002, p. 0102242

⁴⁵⁶ Secret Telegram #: STR/130/1999.

⁴⁵⁷ We do not yet have a copy of this telegram but it is on our list of requests from the TNI.

⁴⁵⁸ The telegram reads in the original, “ Ref Surat Telegram Danrem 164/WD Nomor ST/140/1999 Tgl. 7-6-1999 ttg perintah utk mengoptimalkan peran kodim dlm menyukseskan rencana jajak pendapat di tims pada tanggal 8-8-1999.”

“Increase the hours of command and patrol to socialize the widespread status of Autonomy to the members until they are able to socialize the members of their families and throughout society.”

Members is a translation of the word “*angotta*.” The use of this word is ambiguous, so that “members” could indicate members of groups affiliated with the TNI (possibly militia or other pro-integration supporters) or TNI members themselves. It is clear the Dandim envisions the first groups of “members” as a distinct and separate category from civilians, or “society” (*masyarakat*). Other evidence at the SCU archives indicates it is most likely that these orders to socialize the masses were meant to be passed to militia, because recipients of the orders in this telegram would have certainly included 2nd Sergeant Moises Leite de Jesus, who was not only a TNI officer posted at 1636-01, but also recognized as the Commander of the militia Dadurus Merah Putih.⁴⁵⁹

Thus, as a whole this evidence suggests that while the leadership of the military may have been promising neutrality in accordance with the May 5th agreements, at the operational level, TNI personnel were actively carrying out a policy of partisanship. Knowledge of these activities extended at least up to the ranks of the commander of the provincial headquarters - the Danrem (Tono Suratman). The personnel who wrote this telegram was eventually removed from his post after persistent complaints from UNAMET officials, however the change of command did not occur until late August, months after several violent attacks occurred under his command, and this commander reportedly never left the district of Bobonaro. He was observed involved with the pro-autonomy groups after his removal from office in the same area where the most senior officer in East Timor, Zacky Anwar Makarim, would have been able to observe and punish him.⁴⁶⁰ Under military command, a person of this level of rank cannot be unaccounted for in such a place for such a long period of time.

It is likely that knowledge of such operations on the ground regularly extended farther up the chain of command via the usual military channels of communication. Testimony from the UN senior liaison staff provides evidence that senior institutional military leadership was aware that they had the duty to monitor events in East Timor closely, especially if a possibility of human rights violations existed, through their own institutional means, in addition to the meetings with the UN. There are the usual means of communicating via telegrams and daily operational reports, but in addition the military had appointed a senior officer to monitor the situation on the ground in East Timor, Zacky Anwar Makarim.⁴⁶¹ Therefore, it is unlikely that the senior leadership knew nothing of the actions of its troops on the ground and even more so, the actions of its commanders at the level of the KOREM. A portion of this witness’ statement reads,

⁴⁵⁹ Bartu, Peter. “Expert Report on Crimes Against Humanity in Bobonaro District 1 January 1999-25 October 1999.” UNTAET Commissioned Report. Canberra, 2001.

⁴⁶⁰ Witness Statement, #2-15b, p. 8. This witness submitted his complaint about sighting Siagian in Bobonaro after his removal in writing to Zacky Anwar. Also, see Bartu, p.53. Zacky Anwar also was sighted in Bobonaro after he had been removed from his post in East Timor by order of President Habibie. See Bartu, p. 54.

⁴⁶¹ We have obtained a copy of Zacky Anwar’s deployment orders to East Timor. It is attached in our supporting documents section.

“Gen. Wiranto said that he was following the situation closely and that the morning reports from Dili, from Maj. Gen. Anwar and the Government task force, had become his daily ‘breakfast.’”⁴⁶²

This official had multiple conversations about measures that could be used to prevent future human rights violations. One of these suggestions was the disarmament of militias in East Timor, especially considering that according to the May 5th Agreement no organization other than the Police can exercise a security function. In response to these suggestions, senior military institutional leadership indicated their ability to take away weapons from the militias, but refused to do so without the reciprocal disarming of the Falantil forces.

“During this meeting I clearly recall Gen. Wiranto telling me that if Falintil was ready to surrender its weapons to the Indonesian Police, he could guarantee that the militia would be disarmed within two days. I regarded this comment as a significant indication of the degree of control the TNI had over the militia. I believe this was not the only occasion Gen. Wiranto said this. However, this was the only occasion he said this to me directly”⁴⁶³

Subsequent to this meeting, disarmament ceremonies of pro-integration forces took place in several places in East Timor, including Dili and Liquica.⁴⁶⁴ Falintil designated four cantonment areas in the country, and worked closely with the UN in monitoring this policy.⁴⁶⁵ (See Part III of this report for more analysis of a weapons handover ceremony document). Part of the initiative for these weapons to be surrendered came from the group General Wiranto claims to have formed, the Peace and Stability Commission (KPS), which included TNI liaison officers in the districts. On 18 June 1999 this commission signed an agreement on the confiscation of weapons.⁴⁶⁶ Eurico Guterres himself turned over weapons to UNAMET with great pomp and circumstance, although we do not have documentation yet of where or why his decision to do so came from. Therefore, it seems possible that the Indonesian military was at the minimum able to exert significant influence to disarm the militias. However, despite the weapons’ surrender ceremonies, Aitarak was armed again promptly, and no further preventative actions that our team has been able to find evidence of were taken to keep militias

⁴⁶² Witness statement, #2-13b, 12 March 2002, p.0102262. Another witness statement confirms that Wiranto claimed to have daily contact with Zacky Anwar in order to keep abreast of the situation in East Timor. See Witness Statement, #2-21b, 14 March 2002, p. 0101243. Another witness statement confirms Wiranto claimed to be monitoring the situation in East Timor closely. See Witness Statement, #2-15b, 5 February 2003, p. 0202032.

⁴⁶³ Witness statement, #2-13b, 12 March 2002, pp.010220-0102216. This statement by Wiranto was confirmed in the witness statement of #2-14b, 5 February 2003, p. 0100144.

⁴⁶⁴ See supporting documents, “Speech prepared for the ceremony to surrender weapons” by Eurico Guterres. SCU Index # YDRL-5JPQY3 (old system) and “Signed Schedule for the August 19th ceremony to surrender weapons in front of UNAMET.” SCU Index # YDRL-5JPQY7.

⁴⁶⁵ Witness Statement, #2-15b, p. 5.

⁴⁶⁶ Operation Hanoin Lorosae, “Defense and Security Aspect” point 3. SCU Files, Case #5/2003, p. 210032.

unarmed. The flagrant bearing of arms by militias without any preventative measures by Police or TNI was documented in another witness statement by a senior UNPOL commander: “Firearms were carried [by militia] right through, this [disarmament] was not enforced. Nothing seriously was done on this front.”⁴⁶⁷

Our team obtained one document that shows the re-supply of TNI ammunition stores on 21 July 1999,⁴⁶⁸ but this document does not offer conclusive proof of an increase of weapons to the districts, or their distribution channels. Further supporting documentation is needed, including historical weapons supply information and implementation orders for the distribution of these weapons at the district and sub-district levels in order to determine if the TNI could have provided a sufficient number of weapons to redistribute arms to militias, and whether there was an intent for these weapons to be used by militia for the purposes of violence against a civilian population. One of the weapons handover ceremonies occurred after this re-supply of ammunition stocks, therefore information for the months of August and September would be crucial in revealing the truth about TNI weapons supply to militia during the referendum period.

Another statement from a Senior UN Official who met with Wiranto regularly to give briefings confirms that the senior leadership of the military at least believed they exercised control over the militias and their weapons supply:

“The militias were not given unrestricted access to modern firearms. Rather, the weapons were stored...and distributed to militias in advance of particular military operations. After an operation, the weapons would be returned to the military. Speaking to Indonesian investigators in late 1999, Gen. Wiranto made precisely this point: “Sometimes weapons were provided,” he said “but this does not mean that [militias] carried weapons wherever they went. The weapons were stored at Sub-District military headquarters.”⁴⁶⁹

As a point of clarification, it is clear that Wiranto would have been aware that the term “militias” included groups who were not labeled as what are sometimes considered by the Indonesian government to be the legal and normal auxiliary civilian security forces such as WANRA, KAMRA and HANSIP. A witness statement explains that a contingency plan collected and cited by the Indonesian Commission on Human Rights Violations includes a statement from Wiranto that says:

“The armed forces is about 1100 people with 46 weapons of various kinds, including assembled weapons, they are joined in pro-integration organization. The mass of militant supporters is 11,950 people joined in opposition organizations like Besi Merah Putih, Aitarak, Mahidi, Lauksar Merah Putih, Guntur Kailak, Halintar, Junior, Team Pancasila, Mahadomi, Ablai and Red Dragon.”⁴⁷⁰

⁴⁶⁷ Witness Statement, #2-14b, p. 11.

⁴⁶⁸ Surat Perintah # Sprin/84/VII/1999.

⁴⁷⁰ Robinson, p. 94. Original quote appears in KPP-Ham report, p. 030251, as reported in the Wiranto Brief, p. 76.

Thus, the institution of the military appears aware that statements regarding their ability to disarm militias would include the militia groups listed above.

In addition to an institutional belief that the military could control the militias at certain times, there is evidence that suggests senior military leadership was aware that TNI soldiers could have been engaging in human rights violations with the militia. According to the high-level UN witness:

“I then met with Gen. Wiranto in Jakarta on 7 July...At this meeting my main concern was to put to him this pattern of threats towards UNAMET, and I gave him a frank account of the incidents and general security climate. I put directly that we had mounting evidence that TNI soldiers were closely involved in militia activities. I made it clear that the problem was the lack of control of the behavior of the pro-integration militias. I urged that immediate action be taken against those responsible for these incidents and those that were roaming around the territory carrying out illegal activities.”⁴⁷¹

There is also testimonial evidence from these senior UN officials regarding actions taken to stop or prevent human rights violations. First, there is evidence that in accordance with the May 5th Agreement the TNI publicly announced on numerous occasions that it was increasing the capacity of the police force and decreasing the troop numbers in East Timor. Testimony verifies that General Wiranto reported these measures:

“General Wiranto also informed us that he had taken concrete steps to enhance the capacity of the police. He informed us their numbers were being increased and they had been provided with extra vehicles to improve their mobility.”

Later in the same conversation General Wiranto allegedly indicated to the witness that the military was responding to the reports of TNI and Police perpetration in the killing of civilians at Liquica. General Wiranto reportedly said:

“he hoped that Liquica would be the last such incident, and he would take the necessary steps by ‘rearranging’ security in East Timor.”⁴⁷²

However, it is not clear from Wiranto’s reports what concrete steps he took in this regard. Additional supporting evidence from the TNI archives regarding the orders issued to rearrange security after mid-April could help establish the conclusive truth about preventative actions taken by the Indonesian military.

In the post-ballot period, there is one witness testimony that suggests Wiranto sought information about the violence occurring and gave direct orders to stop the violence. One witness statement recounts hearsay evidence:

⁴⁷¹ Witness Statement, #2-13b, pp. 010225-010226.

⁴⁷² Ibid., p. 010227.

“On 10th September I recall that a UN delegation was meeting with General Wiranto in Jakarta. Due to the security situation in Dili at that time the UNAMET compound was being guarded by a cordon of TNI soldiers... someone from amongst the civilian UN employees made a call to Tamrat Samuel who was meeting with Wiranto to inform him that the compound was under siege. Wiranto then immediately called Syahnakri to find out whether the reports were correct. Tamrat Samuel later told me that he had observed Wiranto on the phone telling Syahnakri to sort things out and bring an end to what was happening. When this was happening I could see TNI soldiers and militias breaking the windows of UNAMET vehicles that were parked in the school and removing property from the vehicles.”⁴⁷³

Again, documentation from the TNI of Syahnakri’s response to these orders and Wiranto’s further attempts to control the violence in the post-ballot period can help establish the conclusive truth about the efforts made to act in accord with doctrines of military responsibility.

Regardless of what measures were taken to prevent human rights violations, the evidence from the SCU indictments, the CAVR report as well as Robinson’s report show the widespread commission of human rights violations in both the pre- and post-ballot period, that include both TNI direct perpetration and evidence suggestive of the TNI’s unwillingness to prevent the militias from committing violations. The Indonesian military never issued cantonment orders to its troops, or removed their arms. Although there were some instances of leadership changes that can be interpreted as a measure to prevent or improve the control of troops, these leadership changes never resulted in orders that indicated a tighter control of troops by its commanders. In some instances, those in key leadership positions who failed to prevent violence were promoted.⁴⁷⁴ Thus, a strong, but not closed, case can be made from the testimony of these senior UN officials collected by the SCU for the institutional responsibility of the Indonesian military based on its knowledge of human rights violations, its ability to control the perpetrators and planners of these violations and failure to take the necessary actions to bring perpetrators of these human rights violations under control and punish them when appropriate.

2. A Political Perspective

⁴⁷³ We have another eyewitness report of TNI soldiers and militia looting together in Dili. The witness appears to have been traveling in a convoy evacuating to Atambua. It is not clear from the document why the witness made such a report and to whom, but it was found in the Aitarak headquarters files. See “Laporan Kesaksian Kerusakan Pasca JP/Referendum” in the document index. The witness reports: “*Dan saya melihat dengan mata kepala saya sendiri TNI dan milisi Aitarak datang sekitar pukul 22:20 Witeng dengan membawa sebuah Brankas milik Bank Pembangunan Daerah yang berisi uang sekitar RP500,000,000. Oleh karena mereka tidak tahu cara membuka brankas tersebut lalu mereka berusaha menggunakan linggis dan palu untuk membukanya. Setelah berhasil dibuka mereka membagi-bagikan uang tersebut kepada semua anggota TNI dan milisi yang masih berada di asrama 744 itu dan juga beberapa masyarakat yang kebetulan mengungsi di situ. Saya juga waktu itu ada disana namun saya tidak berniat dan tidak berani untuk menerima uang hasil jarahan tersebut.*”

⁴⁷⁴ CAVR Final Report, “Accountability and Responsibility”, pp. 110-111. Wiranto Brief, pp. 83-84.

[REDACTED]

According to a key witness whose identifying information has been redacted, on 27 November 1998 he attended a meeting at the KOREM, with pro-autonomy leaders at the invitation of Eurico Guterres. The Panglima of Udayana (Adam Damiri), Tono Suratman (Commander of the KOREM), the Panglima's Intelligence assistant (Edy Soenadi) and General Simbolon (currently the Panglima of Irian Jaya Province) also attended the meeting. Other autonomy supporters at the meeting included Eurico Guterres, Joao Tavares, Tomas Goncalves, and three others whose identity is protected. Adam Damiri allegedly facilitated the meeting and began it with a discussion of how to organize a pro-autonomy campaign.⁴⁷⁵

He appointed Eurico Guterres the leader of Gadapaksi at this meeting, but Guterres complained that he had no money. In response Damiri reportedly promised Guterres to support Gada Paksi by giving him 50 billion rupiah.⁴⁷⁶ Tono Suratman also allegedly issued a statement of moral support to the pro-integration leaders: "Tono Suratman said that he was there to support the invited pro-autonomy leaders and said that he, like us, was also a pro-integration fighter."⁴⁷⁷ At this meeting, Damiri did not encourage Joao Tavares' idea to "liquidate all Fretilin supporters" or entertain Guterres' complaints that the Indonesian military and government weren't paying enough attention to pro-integration leaders, such as himself (The original witness testimony contains a condescending tone towards Guterres, and comments that other militia leaders such as Cancio Lopes were more sophisticated and intelligent than Guterres, but also more dangerous). In response to these two pro-integration leaders' contributions to the discussion, Damiri reportedly responded: "That the people present should forget about liquidating FRETILIN and instead concentrate on how to fight for integration by using cleverness instead of weapons."

Three days after this meeting the witness said he attended another meeting called by Suratman and the SGI Commander, Sudrajat, with Tomas Goncalves and Marcal de Almeida where they forced Almeida to resign as the leader of Gadapaksi and formally installed Guterres. Suratman stipulated to Guterres at this meeting that he wanted Gadapaksi to contain multiple sectors in addition to security and politics, such as social and economic programs. Suratman was eager to restructure the entire organization of Gadapaksi, including its name, to make it a non-profit entity ("a yayasan organization")⁴⁷⁸ and explicitly put Guterres in charge. The witness testimony provides his personal analysis of the subsequent restructuring of old and new militia groups from this time, but as none of this information is factual or first-hand, it will not be included in this report. It is clear that in late 1998, key military leaders planned the organization that later changed into Aitarak and controlled both its structure and its leadership. This testimony suggests that these leaders commanded and controlled Guterres. However, what is still unclear is at exactly what point and in what form violence entered into the

⁴⁷⁵ Witness Statement, #2-1b, p. 11.

⁴⁷⁶ Witness Statement, #2-1b, p. 11.

⁴⁷⁷ Witness Statement, #2-1b, p. 11.

⁴⁷⁸ Witness Testimony, #2-1b, p. 12.

organizational plan, and to what extent this aspect of a pro-autonomy plan was coordinated and supplied by senior leadership.

However, this same witness' testimony supplies evidence that at the minimum the military and the civilian government condoned militia group activities by attending their rallies, and that they were aware the militias intended to collaborate with them. In January the witness attended a rally for the militia group Mahidi in Cassa in Ainaro district, led by Cancio Lopes. At this rally Lopes asked those in attendance to support autonomy but also to cooperate with the TNI.⁴⁷⁹ He also encouraged the people to “get guns, either from the TNI directly or by persuading TNI commanders to give them guns.”⁴⁸⁰⁴⁸¹ The witness himself later requested and received a gun from the Head of Intelligence (SGI) in East Timor (Lt. Col. Yayat Sudrajat) without having to sign or register.⁴⁸²

In his interviews with SCU investigators, the witness narrated the video footage he took of the subsequent April 17th pro-autonomy rally. In this video he points out to the investigators that the rally, which was held at the Governor's Palace (*Palacio do Governo*) was patronized not only by the civilian government, but also senior TNI officers. Kiki Syahnakri, Tono Suratman, Edy Soenadi and six other senior TNI officers are visible on the balcony but dressed in civilian clothes.

We have obtained a copy of the military telegram that reported those days' events and the content of the rally through the normal military chain-of-command. From this telegram we can surmise that that “pro-autonomy militias” were referred to by the military as synonymous with Aitarak and that the leadership of this group was clearly identified as Eurico Guterres (lines 2-4, Point 1). We can also surmise that the rally demonstrated to the military the systematic coordination between the different militia groups across East Timor, as indicated by the report's inclusion of the exact number of members (*angotta*) and origins of each militia group at the rally (BMP - 400 people from Liquica, Laksaur - 75 people from Suai, Mahidi - 75 people etc.). Joao Tavares inspected the “troops” and was also clearly identified as the leader of the PPI (Perang Pembela Integrasi). Note that both of these leaders had been personally selected by the military to coordinate and support a pro-autonomy campaign at the meeting in November, and less than six months later were conducting a demonstration in front of military and civilian leaders of the results of their efforts.

Furthermore, it is clear the military understood that these militia leaders were armed and had the intent to threaten and use violent tactics. One section of the military telegram reports the content of Guterres' speech as follows:

⁴⁷⁹ Witness Testimony, #2-1b, p. 7.

⁴⁸⁰ Witness Testimony, #2-1b, p. 8.

⁴⁸¹ There is evidence that Cassa was the location of weapons distribution from TNI. See the Radio Transcript (SCU document index #2558) between a Kopassus and militia member on 29 August 1999, p. 16. The Kopassus says “Regarding our rifles in the area of Kassa, please coordinate with Sakra [Kodim] tomorrow. Morning. You Mr. Ablai will go with a few of our friends [Nangala/secret police] in order to go to Jupiter [Kassa] to get our rifles as said before. So much for now. Selamat malam.”

⁴⁸² Witness Testimony, p. #2-1b, p. 9.

“The Aitarak Force will carry out sweeping operations towards the civil servants who have eaten and used official facilities that have been traitors to the Integration Struggle (stop)

The Aitarak Force will wipe out anyone whether they be official or community figures or business people who have already helped the struggle of the Anti-integration group. (stop)

The Aitarak Force will not hesitate to finish Mario Viegas Carrascalao and his group that are traitors to the Balibo Declaration.”

A copy of the telegram’s first page in the original language appears below. A more clear electronic version is in our index, along with the English Translation. A copy of the original has been turned over to the CTF archives in Bali:

SURAT TELEGRAM

DARI : DOKTER DAN BUNDA DAN BUNDA
 KEPADA : BUNDA BERNAMA
 (NAMA BUNDA)
 TUJUAN : 1. KEPADA BUNDA
 2. BUNDA BERNAMA
 3. BUNDA BERNAMA
 4. BUNDA BERNAMA

NO. SURAT : 100/2000/1999
 TGL. 10 APRIL 1999

MAA TTK REF: TLM DILAKUKAN PENYUKSIAN PASUKAN PERANG KONTRAS PERSEKUTUAN
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

1. BUNDA BERNAMA BUNDA BERNAMA

BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

- AA TTK 100 ORANG ANGG BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA TTK
- BB TTK 75 ORANG ANGG LAKSANA DR BUNDA BERNAMA TTK
- CC TTK 75 ORANG ANGG BUNDA BERNAMA DR AITANAK TTK
- DD TTK 80 ORANG ANGG BUNDA BERNAMA DR BUNDA BERNAMA TTK
- EE TTK 70 ORANG ANGG BUNDA BERNAMA DR BUNDA BERNAMA TTK
- FF TTK 80 ORANG ANGG BUNDA BERNAMA DR BUNDA BERNAMA TTK
- GG TTK 80 ORANG ANGG BUNDA BERNAMA DR BUNDA BERNAMA TTK
- HH TTK 80 ORANG ANGG BUNDA BERNAMA DR BUNDA BERNAMA TTK

TIGA TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

EMPAT TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

AA TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

BB TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

CC TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

DD TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)
 BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

EPAK TTK BUNDA BERNAMA BUNDA BERNAMA BUNDA BERNAMA
 (INTEGRASI PAS OTONOMI AN AITANAK DI LAL. KANTOR BUNDA BERNAMA TTK)

210459

The telegram goes on to report the subsequent disturbances that occurred, including the destruction of the Carrascalao house, and an alleged confrontation between a pro-integration group and the pro-autonomy militias after this attack. The telegram notes “cleaning” was conducted and reports the number of pro-integration members who were killed and injured, and instructs the following of usual procedures via the police forces.

The key element of this telegram that ties it into the SCU witness testimony is it indicates all people who attended the rally, including the military leadership, understood that the pro-autonomy groups were militia, and that these militia intended to persecute and intimidate those who were not pro-autonomy supporters. They also understood that the militia groups were acting in a coordinated and systematic way as part of a larger campaign across the entirety of East Timor. The military’s presence at this rally combined with the additional documentary evidence of their official version of events, shows the TNI should have had no reason to give additional support to these militias following this rally, because they had already been made aware of the dangers the group presented. Furthermore, if they continued to exercise control over these leaders, Guterres and Tavares, as they had a few months earlier, they had the obligation to use their influence to at the minimum prevent future violence. However, it is clear that the military continued to support these militia groups materially and morally after this rally.

3. A Bureaucratic Perspective

The SCU also collected evidence that suggests the civilian government of Indonesia and the TNI incurs institutional responsibility for providing material and financial support to the militias, as well as institutional guidance. The financial support to the militias did not occur randomly, or ad-hoc, but rather was executed as part of a precise, bureaucratic plan.

Key evidence regarding the institutional responsibility of the Indonesian civilian government and at least one military officer, and possibly two additional senior officers, comes from the testimony of a mid-level bureaucrat in the [REDACTED] Ministry. In his technical and rather innocent explanations about how he executed his normal work duties, he is able to show how the government in East Timor provided funding to the militias with the approval of the Central Government in Jakarta, and with the guidance of a military officer.

The means of supplying the militias with money using government funds was the diversion of the Provincial Development Budget to the “Socialization of Autonomy Plan.”⁴⁸³⁴⁸⁴ According to witness testimonies, another bureaucrat - an engineer at [REDACTED] – devised a plan to divert sixty percent of the Regional Development Budget to the “Socialization” fund. Some of the specific areas from which the money was taken were from the budgets to support the creation of small businesses, payments of family supplements to the poor, and repair of housing.⁴⁸⁵ “Socialization of Autonomy”

⁴⁸³ Witness Testimony, #2-12b, p. 3

⁴⁸⁴ The testimony of Witness #2-1b (p.2) confirms that the Development funds were diverted to Pam Swakarsa in a national program and that this was common knowledge.

⁴⁸⁵ Witness Testimony, #2-12b, p. 6.

was a commonly used phrase that was also the name of various education initiatives occurring in the district regarding the referendum. However, this witness makes it clear that these funds were set out for purposes distinct from the voter education projects.⁴⁸⁶ A bureaucratic team was formed within the Provincial Government offices to oversee the implementation of this project called the “Tim Sosialisasi Autonomy.” The team was divided into one section called “Security” which the team leader in meetings explicitly stated was responsible for organizing the militia. A second section was created to coordinate with the FPKD, BRTT and smaller pro-autonomy groups.⁴⁸⁷ This policy implementation team had one additional non-bureaucratic member - the Commander of the Korem, Tono Suratman.⁴⁸⁸

The Korem Commander and another higher-level Indonesian bureaucrat who was appointed to the team were included in part because they wanted to ensure that they were refunded money they had acquired to fund a pro-autonomy event, the April Aitarak rally in Dili, a few days before this first planning meeting was called.⁴⁸⁹ One witness explained:

“Also during this meeting, [name protected] stated he and Tono Suratman had borrowed 250 million rupiah for the pro-autonomy event, which had taken place on the 17th of April in Dili. [Name protected] did not say what the money had been spent on, or from where it had been borrowed. [Name Protected] said that the Governor should seek permission to divert the development funds as soon as possible so that he and Tono could pay back their debt. I remember clearly [name protected] saying this because I was surprised that such a large amount of money had been spent.”

After this meeting, the plan ensued. The team’s bureaucrats composed a budget proposal and forwarded it to the Governor (Abilio Soares) for him to sign within a matter of days, which they expected to be approved quickly.

[THIS SECTION HAS BEEN REDACTED FROM THE PUBLICALLY ACCESSIBLE REPORT TO PROTECT THE WITNESS’ IDENTITY]

One witness saw a letter from the Governor that asked for special permission from the Central Ministry to divert the development funds.⁴⁹⁰ [REDACTED] was able to provide a technical explanation and written documentation (see Annex for a copy of one of these documents) of why this letter was important to the provision of funds. According to Presidential Decree no. 52 and other written government policies, development funds cannot be used for any other purposes without the express permission from the Central Government in Jakarta. In cases where an extremely large sum of money was to be diverted from the development budget for another purpose (in excess of 25 billion

⁴⁸⁶ Witness Testimony, #2-12b, p. 3.

⁴⁸⁷ Witness Testimony, #2-12b, p. 3.

⁴⁸⁸ Witness Testimony, #2-12b, p. 3.

⁴⁸⁹ Witness Testimony, #2-12b, p. 4.

⁴⁹⁰ Witness Testimony, #2-12b, p. 4.

rupiah), Presidential authorization of the proposal was required, and the Minister of Finance had to seek this authorization from the President. The total amount of funds requested for the diversion to the Socialization of Autonomy campaign was 53 billion rupiah. Therefore, both the Minister of Finance and the President of Indonesia had to be notified of the use of these funds and issue written approval. The full amount of funding requested was approved,⁴⁹¹ however one witness' testimony indicates the approval for the funds was issued orally, over the phone from the Central Department of Finance in Jakarta to the Chair of the Provincial Treasury Department. In order to establish the conclusive truth about this aspect of funding, we recommend further investigation into the receipt of this letter by the Finance Ministry and former President Habibie and any supporting documentation they can provide.

We have not yet been able to locate a copy of this letter from the Governor to the Minister of Finance. However, we do have copies and several different versions of his budget proposals and directions issued to the Bupatis in May after the funds were approved. These documents indicate the diversion of funds from development at the local level occurred at the rate of 10-20% to the Pro-Autonomy campaign,⁴⁹² including specific instructions to make payments to the locally stationed Kodim, Police Chief, Special Forces (Tribuana) the Village Chief, the "FPDK", the BRTT and militia groups, such as Ablai. The budget also provides for vehicles, drivers, food and the fixing of houses in support of the Pro-Autonomy campaign. These budget instructions were CC'ed to the following people in Jakarta: the Minister of the Interior, The State Minister for National Development and Planning, Minister of Finance, Minister of Defense (General Wiranto), as well as to the Regional Military Command (Adam Damiri), the Head of the Provincial Assembly in East Timor and local Council members.

See below for copies of Soares' original budget documents:

⁴⁹¹ Witness Testimony, #2-12b, p. 4.

⁴⁹² The witness confirms that he filled out the request for the transfer of 20% of the Total Provincial Development Funds (14 Billion Rupiah) from the Provincial Treasury to the Provincial Cashier, and was issued a payment authorization. He took the payment authorization to the bank and the funds were transferred to the Provincial accounts (p. 5). The remaining percentage of funds (60% of Provincial funds were requested, but the Province only received 20%) are not accounted for in the testimony. The remaining 40% (39 billion rupiah) could have been allocated at the national level and used to pay the debts of Tono Suratman and the other bureaucrat or subsequently re-directed to other areas.



23 (14)

GUBERNUR KEPALA DAERAH TINGKAT I
TIMOR TIMUR

Dit. Mei 1999

Nomor : 100/734/2816/1/1999
Sifat : Penting
Lampiran :
Perihal : Dukungan bagi Upaya
Penustasan Status Timor Timur

Kepada Yth.
Bekas-wakil Dep. Indonesia

d-
DIT

Sebagaimana diketahui bersama bahwa beberapa bulan lagi tepatnya tanggal 8 Agustus 1999 akan dilaksanakan Jajak Pendapat bagi rakyat terhadap hasil Kesepakatan Tripartit mengenai Status Khusus dengan Otonomi Luas bagi Timor Timur.

Dalam kaitan itu, maka semua potensi yang dimiliki di daerah sudah sepatutnya kita kerahkan seoptimal mungkin untuk memsuksekannya. Kepada semua instansi Verikal diharapkan kontribusinya dengan menyalurkan dana 10% s/d 20% dari alokasi anggaran pembangunan untuk t. A 1999/2000 masing-masing instansi demi sosialisasi otonomi yang akan segera dilaksanakan oleh sebuah Tim yang melibatkan seluruh instansi terkait.

Demikian disampaikan dan diharapkan kesungguhan para Kepala Kantor Wilayah untuk menindaklanjutinya. Atas dukungannya diucapkan terima kasih

GUBERNUR KEPALA DAERAH TINGKAT I
TIMOR TIMUR,

ABELIO JOSÉ OSÓRIO SOARES

- LEMBUSAN disampaikan kepada Yth.
1. Menteri Dalam Negeri RI di Jakarta;
 2. Menteri Negara PPN/Kepala BAI PENAS di Jakarta;
 3. Menteri Keuangan RI di Jakarta;
 4. KEPURUHAN/Departemen TMI di Jakarta.

210430

Contes (78)

RENCANA ANGGARAN BIAYA KEGIATAN SOSIALISASI
 PAKET EKONOMI KUDUS DI PERLUAS BAGI PROPINSI DIKORPORASIKAN
 DI KABUPATEN

1. SATGAS SOSIALISASI (150 Orang)

keperluan sehari-hari				
- Pengadaan Pakarab	150	Set	Rp	200,000 - Rp
- Makanan	4,500	Ort	Rp	10,000 - Rp
- Keperluan Harian	4,500	Ort	Rp	2,000 - Rp
latihan				
- Instruktur (8 Orang)	240	Org	Rp	15,000 - Rp
- Alat Tulis	150	Set	Rp	60,000 - Rp
- Transport	1,500	Ort	Rp	1,000 - Rp
- Honor	150	Org	Rp	100,000 - Rp
- Gaji 18 Bulan	1,200	Ort	Rp	200,000 - Rp
				Rp. 356,100,000

2. Biaya KOJAL

- Bupati	1	Org	Rp	100,000,000 - Rp
- Ketua DPRD	1	Org	Rp	50,000,000 - Rp
- Dan Sektor	1	Org	Rp	10,000,000 - Rp
- Dan D.M	1	Org	Rp	50,000,000 - Rp
- Kapolres	1	Org	Rp	50,000,000 - Rp
- Von Ter	1	Org	Rp	25,000,000 - Rp
- Dan Satgas Lainnya	1	Org	Rp	25,000,000 - Rp
- Camat	4	Org	Rp	20,000,000 - Rp
- Kepala Desa	29	Org	Rp	10,000,000 - Rp
				Rp. 400,000,000

3. Bantuan Kepada Organisasi

- BIRU	1	Pkt	Rp	25,000,000 - Rp
- LKDK	1	Pkt	Rp	25,000,000 - Rp
- LKBB	1	Pkt	Rp	25,000,000 - Rp
- MHLA	1	Pkt	Rp	50,000,000 - Rp
				Rp. 125,000,000

4. Kegiatan Adat

- Kegiatan Adat	1	Pkt	Rp	145,000,000 - Rp
				Rp. 145,000,000

5. Perlengkapan

a. Sewa Kendaraan Besar (Truk 4 Btl 5 Bulan)				
- Biaya Sewa	30	Btl	Rp	3,000,000 - Rp
- Uang makan sopir	600	Org	Rp	5,000 - Rp
- Uang makan Jelek	600	Org	Rp	2,500 - Rp
- Bahan Bakar	600	Org	Rp	16,000 - Rp
- Pemeliharaan	1	Btl	US	17,500,000 - Rp
b. Operasional Kamfaran Kecil				
- Stang Pick Up (tenaga seperti kamf)				US
c. Perlengkapan Lainnya				US
				Rp. 50,000,000
				Rp. 180,000,000



inacxua 7

GUBERNUR KEPALA DAERAH TINGKAT I TIMOR TIMUR

Nomor :
Lampiran :
Perihal : Proposal

Diti, Mei 1999.

Kepada Yth;

Sdr. Bupati KDH Tingkat II
di -

Tempai

Menyusul surat kami Nomor 915/712/UBIPRAM/V/1999 tanggal 5 Mei 1999 maka pelaksanaan Proyek Pembangunan Regional dan Daerah, Proyek Dukungan Pengaman Jaringan Sosial (JPS) di masing-masing Daerah Tingkat II diminta perhatian Saudara agar segera menyusun rencana penggunaan dana sesuai proposal dibawah ini :

- Pembentukan Infrastruktur 5 %
- Kodal (Muspida + Tripida + Tripedes) 20 %
- Sosialisasi 20 %
- Pamswakarsa 5 %
- Penggalangan 15 %
- Bantuan Masyarakat 30 %
- Operasional Tim Pengendali 2 %
- Konsultasi 1 %
- Bantuan Organisasi 2 %

Demikian disampaikan untuk menjadi perhatian.

GUBERNUR KEPALA DAERAH TINGKAT I
TIMOR TIMUR

ABILIO JOSE OSORIO SOARES

Dokumentasi ke Sen. Insubkapa. In. Casimira. 10 Juni 2012

We have obtained another letter in two formats, a form letter, and a copy of an original letter issued to the Bupati of Liquica using the form letter template, that confirms the use of government funds to specifically support the militia (listed as Pam Swakarsa in this version) and the Socialization campaign.



38

GUBERNUR KEPALA DAERAH TINGKAT I TIMOR TIMUR

Dili, 21 Mei 1999.

Nomor : 462/B.09/BIPRAM/1999
Lampiran : -
Perihal : Proposal

Kepada Yth;
Sdr. Bupati KDH Tingkat II Idjgaca
di - Tempat .

Menyusul surat kami Nomor : 915/712/II.BIPRAM/V/1999 tanggal 5 Mei 1999 maka pelaksanaan Proyek Pembangunan Regional dan Daerah, Proyek Dukungan Pengaman Jaringan Sosial (JPS) dimasing-masing Daerah Tingkat II diminta perhatian Saudara agar segera menyusun rencana penggunaan dana sesuai proposal dibawah ini :

- Pembentukan Infrastruktur	5 %
- Kudal (Muspida + Tripida + Tripedes)	20 %
- Sosialisasi	20 %
- Parawakarsa	5 %
- Penggalangan	15 %
- Operasional Tim Pengendali	2 %
- Konsultasi	1 %
- Bantuan Organisasi	2 %

Demikian disampaikan untuk menjadi perhatian.

GUBERNUR KEPALA DAERAH TINGKAT I
TIMOR TIMUR

ABILIO JOSE OSORIO SOARES

210444

The witness testimony discussed above is able to confirm and clarify that the term “Pam Swakarsa” used in this document and others must not be interpreted as referring to non-

violent, standard, civil security organizations that would be used purely to provide for civilian security. He also explains that the allocation for “Panggalangan” is a word that is used to mean operations carried out by militia groups.

“This [Panggalangan] is a word used by the military to refer to the operations carried out by the Pam Swakarsa. Pam Swakarsa was the political name used to refer to the militia and was commonly used in government reports to make reference to the militia.”⁴⁹³

Therefore, funds were allocated not only for the militia organizations, but separate funds were provided for their operational costs. Thus, the total percentage of government funds allocated specifically to militias in the area of Liquica was at least 20 percent. These allocations occurred no doubt with the government’s awareness that both militia and military had been observed in participating in attacks on the civilian population that resulted in multiple deaths and injuries at the Liquica Church and the Carrascalao House the month before, in April.

The witness provided additional documentation of payment transfers and other items, which are included in our report’s document index.

One of the most important aspects of his testimony is the pattern of timing of the budget requests and approvals. He was first asked to become involved in diverting monies set aside for development projects to “Socialization of Autonomy” projects a few days AFTER the Aitarak rally in Dili and the attack on the Carrascalao house.⁴⁹⁴ Therefore, it is crucial to understand that the support of the militias was facilitated by the civilian government in a period when there was common knowledge about the violent methods used by the militia in their pro-autonomy campaign. He also reports that after a BBC story ran on television about UNAMET’s discovery of Indonesian provision of funds to the militia, a telegram was sent from Jakarta to the Provincial Treasury that instructed them to stop payments previously set aside for the “Socialization” campaign. The witness was given a copy of this telegram as part of his official duties, which we have obtained.

⁴⁹³ Another witness statement confirms that Pam Swakarsa was a term used by the government that was known to have also indicated Aitarak. See Witness Testimony, #2-1b, p. 2.

⁴⁹⁴ Witness Testimony, #2-12b, p. 3.

DEPARTEMEN KEUANGAN REPUBLIK INDONESIA
DIREKTORAT JENDERAL ANGGARAN
KANTOR PUSAT

Amexan 6

Indragiri, 18 Juni 1999
Jalan Kertajaya No. 10
Jakarta
Telp. 3013
Kodikor 110
Telp. 3013
Faks. 3013

DIREKTORAT JENDERAL ANGGARAN
KANTOR PUSAT

KEPADA: KEPALA KANTOR WILAYAH XIX DIA
KURANG
DUA TTK KEMAJA, KPKN BALAU
DUA TTK KEMAJA, KPKN BALAU
DARI: DIREKTOR JENDERAL ANGGARAN
SIFAT: SANGKUTAN

ISIBERKAITAN

DISTRUKSIKAN KEPADA KEPALA KPN DILI DAN KEPALA KPN
BALAU UNTUK PERSEKUTUAN MELAKUKAN ANGKAL 19 JUNE 1999
MENCANTIKAN 19 PERSEKUTUAN DIA

SATU TTK BANTUAN PEMBANGUNAN DAERAH PROPINSI TIMOR
TIMOR KURDUL PROPINSI NMA KAMPUTEN GARIS MERING KOTA
KMA DAN DESA KURDUL 1999 GARIS MING 1999 TTK KMA

DUA TTK DANA PERSEKUTUAN GARIS MERING 1999 TTK

KEPALA KANTOR WILAYAH XIX DIA KURANG DIMINTA UNTUK MENGAJUKAN
PELAKSANAANNYA TTK

DEMIKIAN UNTUK DILAKSANAKAN DENGAN SEBAIK-BAIKNYA
TTK YBS

KEMAJA KMA 18 JUNI 1999 TTK
DIREKTOR JENDERAL ANGGARAN

DEPUTI VI RAPPHINIS

*Document
by
Kantor
Wilayah
XIX
DIA
Kurang
Dua
Daerah
on 18 June 1999
M. C. C.*

The clearer original English translation from the SCU archives appears below:

Republic of Indonesia Department of Finance
Budget Directorate General
Central Office

Telegram
Number: KWT 31/A/1999

TO: 1. HEAD OF REGIONAL OFFICE XIX KUPANG
2. HEAD OF STATE FINANCE OFFICE DILI
3. HEAD OF STATE FINANCE OFFICE BAUCAU

FROM: BUDGET DIRECTOR GENERAL

NOTE: URGENT

CONTENTS OF REPORT

THE HEAD OF STATE FINANCE DILI AND THE HEAD OF STATE FINANCE BAUCAU ARE INSTRUCTED TO CEASE THE CLEARANCE OF FUNDS STARTING FROM 19 JUNE 1999.

REGIONAL DEVELOPMENT ASSISTANCE FOR THE PROVINCE OF EAST TIMOR KURBUK PROVINCE, REGENCY/MUNICIPALITY, AND VILLAGE KURTUP 1999/2000, LEVEL TWO PDMDKE FUNDS 1998/1999.

HEAD OF REGIONAL OFFICE XIX DJA KUPANG HAS BEEN ASKED TO SUPERVISE THE IMPLEMENTATION.

THUS, THIS SHOULD BE CARRIED OUT TO THE BEST OF YOUR ABILITY.

JAKARTA, 18 JUNE 1999.
BUDGET DIRECTOR GENERAL

CC: DEPUTY IV OF THE NATIONAL DEVELOPMENT AGENCY

However, the witness was called to the Chief of the Treasury's office the same day, and allegedly told that the payments would only be temporarily ceased and had been officially stopped according to the telegram because UNAMET and the UN Headquarters

had found out about the funding mechanism.⁴⁹⁵ Several weeks after this meeting, the witness was orally instructed to resume payments of the funds to the districts:

“Two weeks later [name protected] called me and told me that there had been a verbal request from Jakarta, without saying specifically from whom, to continue the payments but confidentially. We did not receive any written instructions to this effect because there was concern that any documentation would be leaked to UNAMET because there was strong suspicion that East Timorese civil servants were supportive of the independence side.”⁴⁹⁶

The witness was able to confirm that the distribution of the funds to the districts occurred from June to August, and provided documentation of the exact amounts spent by the districts on the pro-autonomy campaign (62,315,781,300 Rupiah). The funds provided by the Central Government in Jakarta were supplemented by a private contribution by an individual affiliated with BPD Bank.⁴⁹⁷ The witness provided several payment slips with his testimony. See one of these slips below⁴⁹⁸:

PEMERINTAH PROPINSI DAERAH TINGKAT I TIMOR TIMUR
SURAT PERINTAH MEMBAYAR UANG

Asli

Surat No. 02 / 1999 / 2600
 Pembayaran: DELEBA No. SKG. 273 Tahun 1999 Tgl. 21-4-1999.-

Pasal (Asistensi)			
Pasal 07	Rp	1.191.060.000,-	
Pasal	Rp	-	
Pasal	Rp	-	
Pasal	Rp	-	
Pasal	Rp	-	
Pasal	Rp	-	
	Rp	-	Rp 1.191.060.000,-
Bantuan ayat	Rp	-	
Bantuan ayat	Rp	-	
Jumlah pengeluaran			Rp 1.191.060.000,-
Bantuan			
ayat	Rp	-	
ayat	Rp	-	
(kontras)			
Pasal	Rp	-	
(kontras)	Rp	-	
Pasal	Rp	-	
Jumlah dibayar			Rp 1.191.060.000,-

Dili,
 Gubernur Kepala Daerah Tingkat I Timor Timur
 Kepala Biro Kerja Umum
 Yang Menjabat Kepala Bagian A

Lunas

Pada tanggal 19

D J A T J C
 NIR 014 000 565

DIBAYAR PADA BANK PEMBANGUNAN NASIONAL TIMOR TIMUR DI DILLI. Telah dibukukan dalam Buku Kas dengan Nomor

04 JUN 1999

⁴⁹⁵ Witness Testimony, #2-12b, p. 7.

⁴⁹⁶ Witness Testimony, #2-12b, p. 8.

⁴⁹⁷ The identity of the person who contributed these funds is known but protected.

⁴⁹⁸ We have not redacted the name of the person signing off/receiving payment on the document, because this Indonesian government official has already testified publicly in the Jakarta trials.

Thus, the timing of the distribution of funds adds additional weight to the institutional responsibility of the Indonesian civilian government, because the evidence clearly shows that the funding mechanism was used secretly and with the knowledge that it was unethical, and contributing to activities that were illegal.

Institutional Responsibility Based on Policy Evidence:

The SCU had a wide variety of documents at its disposal, but several policy documents became the focus of prosecutorial attention and political interest. Geoffrey Robinson's report carefully and credibly analyzes several of these key documents in depth, so we will not analyze them at length. However, the importance of these documents to the SCU in their perception of the violations of human rights committed in East Timor in 1999 requires a brief discussion.

It is our team's interpretation that the existence of these documents as a group, linked temporally and by theme, was perceived by the SCU as key evidence of a widespread and systematic governmental "policy" that would help fulfill the contextual elements of Crimes Against Humanity. Since three of these documents contain contingency preparations for violence related to the referendum ballot and detail logistical plans for mass transport of civilians after the referendum, these documents have been perceived by some activists and journalists as evidence for a plan of Forced Transport and Deportation. The SCU also appears to have considered this possibility seriously. We believe the specific inclusion of the charge of Forced Transport and Deportation as a crime against humanity in the Wiranto Indictment (and few cases otherwise), and the exclusion of other crimes committed on a widespread and systematic scale in the indictment, may be linked to the SCU possession of these documents.

Garnadi Document,⁴⁹⁹ Hanoi Lorosae I and II and Wira Dharma

The Garnadi document was composed by Maj. Gen. (ret.) H.R. Garnadi (Assistant Coordinating Minister, Indonesian Domestic Politics), as a report to the Coordinating Minister for Political and Security Affairs (Lt. Gen. (ret.) Feisal Tanjung) to assess the possible outcomes of the referendum and consider the implications if Option I (Integration with Indonesia) failed. It was submitted to the Minister on 3 July 1999.

One particular passage provided potential evidence for the SCU's contention that the post-ballot institutional "plan" to commit crimes against humanity consisted of a Scorched Earth Policy: "...evacuation routes must be planned and secured, possibly by destroying facilities and other key assets."⁵⁰⁰ However, after examining the original text of this document our research team agrees with Robinson's cautious interpretation, that if this statement was put into full context, it does not indicate an explicit institutional plan to destroy the infrastructure on a widespread or systematic basis. In fact the SCU official

⁴⁹⁹ A copy of the document is included in the Annex.

⁵⁰⁰ Translation as it appears in Geoffrey Robinson's report.

English translation of this document provides a wording that is far less conducive to its reading as a statement of criminal intent. The SCU translation reads: “Plan and secure the withdrawal route, if there is destruction of facilities and objects.”⁵⁰¹ The order is to secure routes, on the CONDITION there is destruction. In our interpretation of this document, there is no explicit order to physically destroy property. The original in Bahasa Indonesia reads “*Merencanakan dan pengamanan rute pengunduran, kalau mungkin merusak fasilitas-fasilitas atau objek vital.*”⁵⁰² There is a degree of ambiguity in the wording of this statement. The word “*mungkin*,” which roughly translates as “probably”, seems to indicate a tone of certainty, whereas “*kalau*” indicates either a purely conditional statement, OR a strong future likelihood. However, given the predictions throughout the document that it will be Indonesians, civil servants and other foreigners who will be the targets of destruction and violence, our team does not interpret the statement to contain an aggressive tone that would suggest the intent to commit violations of human rights. We interpret this statement as a defensive and protective position. Rather than indicating a policy to punish the population through deportation if they chose independence, our team believes this document exhibits fear that Indonesians and pro-integration militias will become targets of violence in response to years of Occupation by the Indonesian military forces (The example Garnadi uses to support his argument is that if Independence is successful the populace will turn on pro-Indonesian supporters, as they did in Aceh in 1998 where the populace stoned ABRI as it withdrew its non-organic forces from the region).

It is true that the Garnadi document reflects the government’s preference for the autonomy option and an interest in offering support to pro-autonomy groups, as indicated by his referral to pro-autonomy supporters as “heroes of integration”⁵⁰³ However, when it is viewed in the context of other contingency plan documents (Hanoi Lorosae I and II and Wira Dharma) that were issued in a series by both the police and military, it is clear that despite Garnadi’s preference for the pro-autonomy option and its supporters, these contingency plans include measures to protect and/or evacuate people regardless of the Popular Consultation’s outcomes and with some degrees of operational balance between pro-autonomy and pro-integration supporters.

Hanoi Lorosae I was a policy document to provide police security, in particular for the UN staff during the pre-referendum period. The plan was technically in activation from 1 May 1999 until 17 August 1999. It includes orders to “Create a safe community situation of security and order, in order to be conducive for the implementation of community activities, government activities and the UN mission activities” and to “implement preventative measures and prohibiting and tackling of every form of disturbance/threat to community security and order.”⁵⁰⁴

This document also offers insight into the ways operational orders instructed its police subordinates to work with the TNI. This Police document defines their view of legitimate

⁵⁰¹ Wiranto Case Files, p. 210381.

⁵⁰² Ibid, p. 210391.

⁵⁰³ Ibid, p.210380

⁵⁰⁴ Operation Hanoi Lorosae, p. 7. English Translation from the SCU Wiranto Case Files, p. 210156.

TNI activity during this period to include: riot control, travel route security, the confiscation and seizure of weapons, provision of security for disarmament movements, and armed assistance in providing security for UN, and community evacuation. But despite these duties, Hanoin Lorosae appears to place the TNI in a subordinate position, in accordance with its international agreements. These orders alone do not give sufficient indication of criminal intent or cooperation between the TNI and Police. In fact, these orders suggest that the police force took adequate policy measures and issued orders for the prevention of violence

In terms of the human rights violation of Forced Transfer, this document makes criminal intent on the part of the police institution seem unlikely. In specific movement orders, the word “evacuation” is used several times, but always refers to the removal of victims (without a specific political identity assigned) from an unsafe area. These orders also urge equitable and public treatment of both pro- and anti-integration groups: “To have a transparent approach to the groups (pro and contra) specifically the leaders of each group so that the implementation can run smoothly.”

The use of violence and mayhem in carrying out these orders is not condoned in this plan. In its “Abilities” section, the plan instructs it is to be “Completed with soft apparatus and technical direction. We are to provide direction for all members in carrying out their duties in the field.” Thus, this document suggests that if the police failed to prevent and investigate human rights violations from May 1999, or used unauthorized force, they were acting with disregard for their official orders from their superiors in the Police force.

Thus, in order to understand the institutional responsibility of the police, and other security organizations, further research needs to be conducted on what other orders were issued, and how these orders were implemented or ignored at the operational level.

The plan Hanoin Lorosae II issued by the police in August took the model of the first plan and extended it to all the districts in East Timor, however it is more suggestive of partisanship than Hanoin Lorosae I and demonstrates possible shifts in perceptions of leadership and coordination with other security forces.

First, although the Korem and its territorial battalions are listed as subordinate organs, Hanoin Lorosae II is stated to be specifically considered in the context of the TNI Operational Orders, called “Withdraw” (Cabut). It also indicates orders were issued on 16 June 1999 that were subsequent to Hanoin Lorosae I. Our team has found no evidence of these orders in the SCU Archives yet, so we can not determine if they followed the same policy line as Hanoin Lorosae I.

Hanoin Lorosae II supplies evidence that in August 1999, the security forces anticipated without a doubt that whether Option I or II wins, there would be refugees and violence in East Timor. The media at times has seized on the section of the document that says if independence wins at the ballot, “Anarchistic/destructive acts will result in a disorderly and tense social situation and atmosphere in East Timor. A situation as this will mean the

evacuation of many people to places considered safe.”⁵⁰⁵ These words have been interpreted at times as “knowledge” by the security forces that the pro-autonomy forces and perhaps others would commit human rights violations and the police would assist in deportations. This phrase does seem to show the institution had insight into the potential for future violence and the mass exodus of parts of the population. However throughout the plan they make provisions based on whether Option I OR II wins, and violence and anarchy were predicted in either case. It is important to note that the provisions do not indicate an operational plan to provide more or less resources for one political entity or the other, but focuses purely on the evacuation of “Indonesian Citizens”, particularly Civil Servants if the Autonomy option fails, and the evacuation of internationals in either case. Of course, citizenship could have been interpreted in terms of a political preference, but no orders to do so appear in this document. The plan appears to be for voluntary evacuation, as opposed to an orchestrated campaign of deportation for the masses, which seem to be of little concern since the target population of this plan seems to be elites.⁵⁰⁶

The duties of the Police in terms of transport of civilians are described as “Coordinate with the security apparatus and related institutions in the framework of implementing integrated security for refugees wishing to leave East Timor.”⁵⁰⁷ It orders the police to “secure state assets” moveable and immovable (regardless of election outcomes), which does not indicate the intent for a Scorched Earth Policy. There are also preventative orders issued, “Deal with all cases which occur to ensure they do not worsen and leave victims or create more victims.” Preventative steps are explicitly ordered to protect UNAMET: [preventative actions include] “Securing vital government projects and objects including UNAMET.”

Thus, Hanoin Lorosae II raises the same questions as the first contingency plan: How and why did human rights violations occur in the presence of the Police despite the existence of these orders that grants them authority and mandates the prevention of all disturbances? Should this plan have included more forceful or all-inclusive measures in order to meet the necessary standard of prevention? Were there supplemental orders that negated this policy, and if so who issued them? Did the Police have sufficient command of their forces to implement these orders as stated? If so, how were they able to command their forces effectively in this instance, and not in others.

Hanoin Lorosae II does occasionally hint at the Police institution’s partisanship by listing international NGOs and federal development institutions including the Carter Center, AusAID, USAID etc. that it suggests “side with the anti-integration group to commit offences against both the pro-integration group and the Indonesian government.”⁵⁰⁸ Our team has never encountered any evidence that shows criminal collaboration between these groups, and the police charge on this point seems unsupported, and hints at a

⁵⁰⁵ “Hanoin Lorosae II,” Wiranto Case Files, p. 210035.

⁵⁰⁶ Indonesian armed forces conducted many campaigns of clear deportation and forced transfer during the Occupation period. An interesting point of comparison would be to obtain one of these documents (for example of the mass forced transport of pro-independence supporters in Same to Atauro) to understand the differences in evacuation and deportation as expressed in institutional policy documents.

⁵⁰⁷ Hanoin Lorosae II, p. 210007.

⁵⁰⁸ Hanoin Lorosae II, p. 210030.

defensive position taken by the institution. However, the plan also displays disdain for both pro-independence and pro-autonomy groups. It calls the pro-autonomy groups, “disorganized”, “spontaneously formed” and depicts their leaders as “ego-centric.” Our evidence suggests the pro-autonomy groups were neither disorganized nor spontaneous, which may help explain why the police were, as they claim, unable to control their activities. Did the Police force simply under-estimate the capabilities of the pro-autonomy militias? Or, does the document reflect a public institutional view that deflects the discovery of a private intent by the Indonesian government to use the militias to secure the success of the Autonomy Option?

There are some changes between Hanoin Lorosae I and Hanoin Lorosae II’s perceptions of abilities to implement these orders that may suggest the potential for security forces to participate in violence. As opposed to soft implementation measures in the first plan, this document includes ambiguous and confusing orders to its subordinates to be “Able to exploit negative government moments through Clandestine methods, or order to create security and order disturbances.”⁵⁰⁹ It also includes the target capability “To be able to influence or hinder the UN/UNAMET team’s ability to implement the wishes of their group.”

The contingency plans Hanoin Lorosae was focused on the Police force’s plans but operated within the context of the military’s plans for Operation Wira Dharma issued in July 1999 and Operation Pull-out (Operation Cabut). Operation Wira Dharma’s partisanship is more explicit. It identifies “enemy forces” as “a group of East Timorese citizens who are anti-integration with Indonesia and reject the special autonomy option offered by the Government of the Republic of Indonesia.”⁵¹⁰ Members of CNRT, the Solidarity Council of East Timorese Students and Youth and the Youth Organization of Timor Leste are identified as “enemies” in addition to “clandestines” and Falintil. However, the estimates of the strength of these groups in this document (less than 100 people total for the political groups) and approximately 500 people with only 300 arms indicates that the full force of the Indonesian military should have been equipped and prepared to prevent security problems associated with this group, if they truly interpreted them to be the cause of the mass violations of human rights, and had they chosen to take sufficient and peaceful measures at prevention.

This plan explicitly limits evacuation to internationals and “Pro-Autonomy” Indonesian citizens.⁵¹¹ Yet, none of these contingency plans lend the supporting evidence to the Garnadi document that would be required to conclusively prove the intent and/or a plan to implement mass deportations of independence supporters, or involuntarily force pro-autonomy supporters to leave in the post-ballot period if Option I failed. It could be used to show that independence supporters were intentionally left behind in East Timor and

⁵⁰⁹ This wording is from the SCU original translation. We prefer to refer to the less ominous but unclear phrasing of the original document: “*Mampu memanfaatkan moment negatif dan Pemerintah dengan cara Clandestine untuk menimbulkan gangguan kamtibmas.*” “Wira Dharma,” Wiranto Case files, p. 210124

⁵¹⁰ Ibid., p. 210335.

⁵¹¹ Ibid., p. 210337.

not enough plans were made to establish security within East Timor, as opposed to simply evacuating, should the situation become unsafe.

Therefore, it is our team's interpretation that none of these documents individually or as a group can be viewed as conclusive proof of an institutional plan to commit Forced Transfer or Deportation that targeted independence supporters. Although the CAVR Report and SCU Witness testimonies in the SCU files indicate that forced transfers and deportations did undoubtedly take place and were used as a means of intimidation and force against civilians, these documents do not provide the best evidence of an institutional plan for these activities. It is also clear from the evidence in the document collections that some people were evacuated voluntarily. Others wished to be evacuated, but were forced to pay for their transfer, and/or experienced other human rights violations in the process of evacuation. Thus, patterns of evacuation/forced transfer/deportation require further investigation to determine their scale, motives, operations and actors. Key evidence, which can help establish the conclusive truth about Forced Transfers in East Timor, includes copies of the operational orders for the other contingency plans such as Operation Cabut, Operation Oleat, Contingency Plan TA 1999/2000.⁵¹² We currently do not have access to these documents, but have requested them from the TNI.

Evidence of Institutional Responsibility for FRETILIN/FALINTIL

The SCU symbolically exercised equity in its prosecution of institutional responsibility early on in the trial process by indicting the case against Julio Fernandes. The Special Panels adjudicated this case of torture and murder in September 1999 in Ermera district as their second case to go to trial. Julio Fernandes, a Falintil Commander, was tried and convicted for the unlawful killing of a former militia member. However, nowhere in the indictment or judgment was there a discussion of the pattern of crimes in this district in this same period of time that we know was at least rumored to have been prevalent from the CAVR files. The limited number of Falintil crimes indicted in the Ermera area indicates either limited credible evidence of the commission of these crimes, or the neglect of serious investigation of these crimes by the SCU. From our cursory review of the files, we lean towards the second option.

The Special Panels also heard the Victor Alves case that concerned the killing of a pro-autonomy supporter on the island of Atauro by Alves, who was a respected community leader with a strong pro-independence political profile. The Court found Alves guilty, but gave him an extremely light sentence using creative and suspect reasoning.⁵¹³ The Serious Crimes archives also contain evidence that they investigated a fight between Falintil and a militia group in the Same district in September that may have harmed civilians. However, these files are incomplete and do not contain any conclusive or dismissive evidence. Other files from Aitarak headquarters and the Same district suggest a significantly greater number of Falintil crimes. However, these crimes may not have

⁵¹² For reference to these orders see, Letter of Order, Sprin/811/VII/1999. Yayasan hak document #60, Wiranto Case Files, p. 210362- 4.

⁵¹³ For a judicial analysis of the Victor Alves case see Cohen, David. "A Legacy of Indifference," East – West Center, 2006.

fallen into the crimes against humanity rubric that concerned SCU after 2003. These crimes' apparent lack of scale and frequency may account for why they were not thoroughly investigated or prosecuted. However, the extent of Falintil crimes committed clearly deserves deeper investigation, at the minimum by its former institutional leaders, in order to take the necessary punitive measures in cases where human rights violations occurred.

Summary of the Strengths and Weaknesses of SCU Evidence

Above we have offered a sampling of the kind of evidence that exists at the SCU that may be useful to the CTF in establishing the conclusive truth about human rights violations in 1999. The SCU Archives contain a rich store of testimonial, audio-visual and documentary evidence, and we have only explored its surface. Much more evidence remains to be reviewed. However, even these initial investigations have revealed patterns of the uses of the evidence by the SCU in its determination of who was most responsible for violations of human rights.

The strengths of the evidence most utilized by the SCU in its investigative and indictment processes relevant to the CTF's mandate include:

- Demonstrated knowledge of the contextual elements of crimes against humanity under international law, and placing evidence of these crimes as they occurred in East Timor in the context of international jurisprudence from Rwanda and the former Yugoslavia.
- Focused, but not always successfully executed, investigations into crimes against humanity.
- District specific investigations that created detailed documentation about how each area of East Timor experienced human rights violations in 1999, which allowed even closer investigation of specific communities.
- Focused investigations and strong evidence to convict many of those responsible for killings in East Timor.
- Detailed description of the knowledge of human rights violations senior institutional leadership in Indonesia was provided with during 1999. This evidence seriously suggests institutional responsibility, particularly at the high levels of TNI command, but also provides evidence that some preventative measures were taken by the TNI in the post-ballot period.
- Detailed information from key, Timorese pro-autonomy supporters regarding the historical, political and economic relationships amongst its leaders and with the Indonesian government.

- Detailed description and documentary evidence regarding the monetary and material support of the militias using Indonesian public funds. This evidence strongly suggests that the Indonesian civilian government bears institutional responsibility for supporting the militias directly, and participated jointly in a plan with at least some TNI officers.
- Attention to the collection of Audio-visual records to support testimonial and documentary evidence.
- Focused but limited investigations into the accountability of the TNI at the Command level as well as at the field level (The lower level evidence appears in the taking of witness statements at the community level and in other documents not effectively used by the Wiranto Case Files).
- Focused investigations and prosecutions of Timorese militia leaders and members who remained in East Timor after 1999, or returned in time to stand trial before the Special Panels.

The weaknesses of the SCU approach to the interpretation of its evidence that has the most bearing on the CTF mandate include:

- Failure to fully articulate the evidence that proves the elements of crimes against humanity.
- Negligence in fully investigating and prosecuting the entire range of crimes against humanity committed in East Timor in 1999.
- Limited investigation and evidence to show the institutional responsibility of the Police. The SCU again focused their case against the police on Wiranto as a figurehead, who simultaneously held the highest command position for both the TNI and the police force. The SCU built a case for the indicted Timbul Silaen, which deserves to be examined in depth in future research. However, more evidence needs to be collected that concentrates on the actions of the Police Forces on the ground and how their leadership directed and punished them.
- Limited investigation and prosecutions to show the individual responsibility of FALINTIL/FRETILIN leaders and members.
- Over-reliance on testimonial evidence, and an under-utilization of the documentary evidence they had collected.
- Over-reliance on the method of articulating both individual and institutional responsibility by establishing the actions of superiors at the very top of the chain of command, particularly in the forms of direct responsibility. An under-utilization of the evidence that was available, and a lack of investigations, to

show how the operational levels interacted with commanders, and what preventative measures were taken at all levels.

The SCU compiled and chose to highlight valuable evidence that strongly indicates knowledge, the failure to prevent and indirect responsibility for the commission of violations of human rights through acts of encouraging, aiding and abetting by high levels of command in the military and at least mid-level command of the civil service for the commission of violations of human rights. They acknowledge and offer brief summations to meet the contextual requirements for Crimes Against Humanity in these cases, but do not offer conclusive proof.

However, the Wiranto Case Files also include witness statements from every district that reveal in more explicit and conclusive ways incidents where TNI, police, militia and government officials at all levels jointly participated and perpetrated crimes, and/or condoned crimes in a systematic and widespread manner against a civilian population. Documentary evidence that provides both suggestive and conclusive evidence for institutional responsibility also exists that was not included in the Wiranto Case files, but rather was filed with the material for the indictment of Eurico Guterres or under the more general category of National Investigative files. These documents were not adequately reviewed, translated or used in the Wiranto indictment, briefing paper or its case file summaries. Unfortunately, the SCU's institutional limitations and concern with establishing the TNI responsibility at the highest levels of leadership in the form of orders, or direct control did not allow this other evidence to be highlighted in a way that more effectively shows both direct and indirect institutional responsibility. In parts III and IV of this report we will use some of this supplementary evidence from the SCU case files to reconstruct their cases for institutional responsibility.

The Robinson Report

The report submitted by Geoffrey Robinson to the UN High Commissioner of Human Rights offers the most comprehensive portrait and explanation of the grave violations of human rights committed in East Timor in 1999. Perhaps because of the high quality of his research and writing, both the CAVR and the SCU relied on his report during their research and productive phases of their mandates that resulted in reports and indictments. However, neither of these institutions explains why or how Robinson's research supports their work, and they offer no independent evaluation of his report. In order to assess the conclusions they draw from Robinson, we will briefly explain his sources, methods and conclusions and why it offers the best published analysis relevant to the CTF's mandate, and how it contributed to the work of the CAVR and SCU.

A. The Mandate of the Robinson Report and its Variations

The UN High Commissioner of Human Rights as their contribution to the CAVR and SCU investigation efforts commissioned the Robinson Report. Robinson was charged

with the task of providing an independent analysis of the nature and causes of grave violations of human rights in East Timor in 1999. Robinson was selected for this job based on his extensive qualifications as a scholar and theorist of causes of violence in the Indonesian archipelago. He worked previously with Amnesty International and thus, acquired extensive human rights experience and knowledge. He also served as a Political Affairs Officer in East Timor in 1999. Professor Robinson's Phd is from Cornell University's Political Science Department, and he is a faculty member of the History Department of the University of California – Los Angeles.

There are multiple versions of this report. The initial report was issued in 2003, but subsequently Professor Robinson continued his research, made minor changes and corrections, as well as added new information to a version that was published later in both Bahasa Indonesia and English. Although Professor Robinson prefers and defers to the new edition as the authoritative version, the CAVR report and the SCU chose to use the 2003 version. In accordance with our mandate we will use the version the CAVR and SCU referred to in their files, but recommend the newer edition for those who wish to consult Robinson's report for knowledge about the events in East Timor in 1999.

B. Methods and sources

Robinson's report is the most comprehensive published report about 1999 in its analysis of a variety of original sources, including witness testimony (not from the CAVR or SCU, but from NGO and UN recorded testimony), the SCU indictments and at least one judgment, internal and external UN documents (which the CTF does NOT have access to), other credible investigations into the violence, including those issued by three UN Special Rapporteurs (December 1999), by the International Commission of Inquiry on East Timor (January 2000), and by Indonesia's Commission on Human Rights Violations in East Timor and a host of secondary sources including scholarly analyses and media reports.

Robinson shines in his analysis of documentary evidence. First, he was able to access an incredible volume of original documents, some of which it is unlikely the CTF will ever be able to access. These rare documents come from the Yayasan Hak collection and the collection of the UNTAET Human Rights Unit, some of which neither CAVR nor the SCU seem to have acquired. In addition he conducted some original investigation that produced new documentary evidence. Second, he exercises balance and caution in his analysis of the implications of each document.

There is a great deal of overlap in Robinson's, the CAVR's and SCU's evidence and interpretations. However, it is valuable to note Robinson's arguments and evidence that exercised the most influence over the CAVR and SCU, and his unique contributions to our knowledge about East Timor in 1999.

C. Perspectives on Grave Violations of Human Rights

Robinson's report uses a broad interpretation of the actions that constitute grave violations of human rights and he states these violations and the rights offended directly in his report. He highlights the crimes of extra-judicial killing, torture and ill-treatment, sexual violence, forcible transfer of population, and destruction of property and their violations of the right to life, the right to personal security, the right to physical integrity, freedom of thought, freedom of association, and the right to own or hold property. He describes the characteristic elements of these crimes as they occurred in East Timor (i.e. killings by machete) as well as how they often occurred in certain patterns and conjunctions (i.e. illegal detention and torture leading to killing). By describing patterns within certain categories of crimes, he is able to create a link between behavior and policy, in a way that was not as well stated in the SCU indictments or CAVR Final Report.

For example, as we have seen earlier, the policy documentation for the crime of Forcible Transfer and Deportation provides weak evidence. Robinson is better able to show how the patterns of the operations of Deportation in some cases distinguish them from "evacuation", and suggest an implicit policy of forced transfer. Robinson first describes the general mechanisms at work in a particular kind of crime, then uses case studies (that often overlap with the SCU "priority cases") to highlight the way a specific type of violation was executed in a coordinated manner that suggests leadership and planning. In the case of Forced Transfer, he uses the case study of "Forcible Relocation and Murder of Refugees in Dili" that occurred from September 5-6, 1999, which is more commonly referred to as the Attack on the Dili Diocese and Bishop Belo's house. This case study explains how TNI, militia, and police participated jointly to intimidate those who had already fled their homes to come down from the hills and become refugees stationed in certain key areas in Dili. Refugees, who had fled to the Dili Diocese as a result of the aggression by the various armed militants, were then later attacked. The attack included their forced movement across the street to the Dili Harbor where the civilians were separated into groups: families were separated as men were put in a different line from the women and children, and suspected independence activists were separated into another category for beatings. Robinson's case study goes on in detail about all the violations included in the attacks on this refugee population, but the particular dynamics of forcing people to move to detention centers or camps in East Timor or West Timor and separating them into lines for further intimidation or persecution suggests the crime of Forced Transfer and Deportation, and not evacuation. The fact that these events occurred in the proximity of the military and police suggest an implicit approval or plan to forcibly transfer or deport the civilian population with criminal intent.

If the mandate of this research team is extended we will be able to further test Robinson's conclusions to determine how often this pattern of events occurred throughout East Timor and if the choreography and perpetrators of this crime were standard. Such an analysis can be done for all the highlighted violations in his report, by using Robinson's descriptions as a base, and comparing CAVR and SCU witness testimonies to quantify and nuance his pattern.

D. Perspectives on Crimes Against Humanity

Shared identities, timing and choreography of events are Robinson's favored indicators of an attack that constitutes grave violations of human rights on the scale of Crimes Against Humanity. These characteristics of attacks all indicate the systematic nature of the human rights violations.

1. Victims and Perpetrators Argument

Robinson suggests that the pattern of victim and perpetrator identities across East Timor constitute evidence of a systematic attack in the manner of Crimes Against Humanity. He argues the perception of whether a person was an "independence" supporter was the primary means of selecting targets of attack. He then defines what traits or affiliations labeled an individual's political identity. CNRT membership and publicly aligned political leaders are obvious examples. Students, women, children, residence in particular areas, Catholic clergy and staff of UNAMET and internationals were also targeted irrespective of their attacker's knowledge of their political convictions. The assumption was certain "types" of people supported independence, and the grave violations of human rights were executed on these grounds of political persecution.

To balance his account, Robinson acknowledges attacks on pro-integration supporters by pro-independence groups.⁵¹⁴ As neither of the other two document collections we are reviewing considers this argument seriously, his conclusions are worth quoting:

A small number of the victims of violence were members of pro-autonomy groups, or known supporters of Indonesia. The total number of pro-autonomy supporters killed in 1999 was not more than 20 out of a total death toll of at least 1,200. This disparity belies claims by Indonesian authorities that pro-autonomy forces were the chief victims of violence, and that the mobilization of militias was a matter of self-defense. Taken together, these patterns make it clear that the violence in 1999 was not random, but targeted, and that it was designed to achieve a particular political purpose: victory for the pro-autonomy option in the Popular Consultation.⁵¹⁵

Robinson names the militias as the primary perpetrators, but he notes that TNI and police were frequently present at the commission of crimes, which implies indirect perpetration at a minimum. He documents patterns of TNI perpetration in depth in his chapters devoted to the leadership, funding and recruitment of militias.

To summarize Robinson's view of how identity shows the systematic nature of violations of attacks, he concludes that victims of attacks were based on a loose perception of political identity. Perpetrators of attacks were based on specific indicators of institutional identity (i.e. Military, police, militia). It is important to note that in the case of

⁵¹⁴ Robinson, p. 54.

⁵¹⁵ Robinson, p. 51.

perpetrators at the lowest levels who were forced into militias the institution determines the political identity absolutely, and private political identity is not likely to be a determining factor in the commission of crimes.

2. The Faucet Argument

Robinson divides the temporal aspect of violations committed in 1999 into three distinct time periods: pre-UNAMET, UNAMET, and post-ballot. This division of time reflects his use of UN sources, placement within the UN structure in 1999 and his international perspective, as much as it does the actual flow of human rights events.

However, the more important aspect of his interpretation of the timing of violations is the way he accounts for the peaks and ebbs of violence. It is not clear if Robinson created the faucet analogy to describe the temporal elements of systematic attacks, or whether he extracted it from witness testimony. He worked with some of the key figures that explain his argument in testimony our team has encountered in the archives, so it is likely that this argument circulated among UNTAET's political analysts and other staff.

Human rights violations occurred in a steady flow throughout 1999, but there were sudden bursts in April and September, and at moments when international observers or another important political events occurred that required the presentation of a good public image, the violence would stop. The consensus between Robinson and the SCU witness statements is this pattern indicates the regulation of the supply of violence for specific political objectives by a leadership that was capable of coordinating and commanding the militias.

One witness statement located in the SCU that supports Robinson's "faucet" argument explains,

"Interestingly we were assured of peaceful periods whenever Wiranto or Alatas visited East Timor. Everything would go quiet for the duration of these visits. Clearly the word got out, no trouble this week. The other thing that occurred during such visits was that all the phones would go off. You knew with some predictability that the orchestration was in full force when this happened. Wiranto appeared to have the ability to turn the militia on and off."⁵¹⁶

This argument is convincing in its theory, but cannot be used as the sole determinant of pattern or responsibility. It is possible the "tap" was controlled by senior military leadership, but it is also possible that it was turned on and off at lower levels of the command chain, or by different factions of the military, so that certain high level commanders would not have a picture of the situation on the ground. It is also possible that militia leaders controlled the tap especially in their locales, or the cessation of violence and peaks were determined by the consensus of a group of leaders, or even influenced by environmental factors outside of the political realm. In other words, there are a variety of factors and actors that could have controlled the flow of violence at

⁵¹⁶ Witness Testimony, #2-14b.

different times, and without concrete evidence of how orders were issued/implemented, we suggest this argument is useful as an interpretative lens, but not conclusive in itself.

3. The Choreography Argument

Robinson also suggests that attacks occurred with a similar style, sequence, repertoire of violence and alignment of perpetrators in enough cases that the evidence suggests the militias were trained and/or led in criminal activities in a systematic way. He calls this their “modus operandi.” Robinson describes this pattern to include the forward advance of the militias in an “amok style” to give the appearance of spontaneity, with a predictable pause before TNI officers appeared in the rear with more sophisticated weaponry used sparingly, and police standing in the background demonstrating indifference and inaction.

The standards in the militia repertoire included roadblocks, house burnings, public death threats, display and firing of weapons, and sexual violence. Corpse display and mutilation of bodies (i.e. cutting off ears or fingers) were favorite dramatic moves used to get public attention and to communicate intimidation and fear on a deep psychological level to civilians. Police inaction or complicity is delineated separate from this argument in an earlier section of his report, but is also described as part of the standard pattern of militia operations.

Our cursory review of indictments and witness testimony at the SCU indicates significant evidence to support Robinson’s argument. However, we would more conservatively suggest that the militias followed a “choreography” closely in joint operations, but also acted independently at times. These patterns of violence were most likely learned from the TNI, but could have been followed at least in part as a replication of the culture of violence that the militia had lived under and observed in East Timor for at least the duration of the Indonesian Occupation. The “choreography” did not have to be orchestrated, necessarily, at all times, or specifically for a policy unique to 1999.

The temporal elements of Robinson’s arguments are complemented by his attention to the geographic distribution and variations in the pattern of violations. In his district summaries section he further encapsulates the major institutional leaders, events and impacts of human rights violations into concise district-specific analyses. By showing the existence of grave human rights violations in every district in East Timor over the entire period of time of 1999, he convincingly demonstrates the widespread element of Crimes Against Humanity. It is these perspectives on Crimes Against Humanity that the SCU and CAVR seem to have relied on in making their cases for the widespread and systematic commission of grave violations of human rights.

E. Perspectives on Institutional Responsibility

Robinson’s approach is an intermediary between the SCU’s top-down analysis and an analysis that concentrates on providing the nuts and bolts for the construction of a bottom-up case for institutional and individual responsibility. Robinson holds the militias

responsible for the crimes committed in East Timor in 1999, and spends a lot of time describing their characteristics, history and formation. He also collects information on the membership of these militias and the different ways common people became involved in the criminal activities of the militias. However, Robinson distinguishes between the responsibility of the militias and the responsibility of what he terms their “authorities.” In this manner he is able to avoid a purely superlative consideration of individual responsibility (i.e. who is “most” and “least “ accountable) that was used most often by the SCU but also by the CAVR, and instead directs thought towards how individual responsibility determines institutional responsibility. To make this link between individuals and their institutions he uses the concept of direct and indirect forms of individual responsibility. Robinson explains these distinctions in the levels and types of perpetration and coinciding responsibility, by using the non-legal terms “trigger pullers”, “managers” and “planners.”

The “trigger pullers” are the perpetrators who were physically responsible for committing the crime, in terms of executing or delivering the physical force that caused the violation, such as shooting, raping, kidnapping or torturing. Robinson cites evidence that militia, low-level TNI and Police were all “trigger pullers” in 1999, and accrue direct responsibility as individuals. He notes that many members of the trigger-puller category who are in East Timor have been held responsible through the Serious Crimes Process, but as his report was written in 2003, he did not have information as to the number of convictions, and only cited the number of indictments filed by the SCU.

It is important to note that although the Special Panels did convict a number of perpetrators who were militia leaders or participants, a large number of the indicted cases never went to trial before the Serious Crimes Process was completed and a number of investigations remain incomplete. Other evidence in this report also notes that a number of investigations were never even launched into a range of crimes committed in 1999 in East Timor. We have yet to find detailed information about what steps were taken by the military or police in 1999 to investigate and punish TNI members who committed crimes. Further investigation into these institutions’ process of holding its low-level members accountable is needed to establish the conclusive truth about the institutional responsibility of the police and military.

“Managers” most often aided and abetted crimes, and could also order them. Robinson includes in this category for East Timor militia leaders, Governor Abilio Soares, most of the commanders at posts below the Korem, and most Bupatis. Some managers were held accountable either by the Special Panels court in East Timor (mainly militia leaders such as Jhoni Franca) or the Ad-hoc Human Rights Court in Jakarta (Eurico Guterres). However, a number of these individuals, particularly commanders of the military posts, need further investigation in order to determine their responsibility. Furthermore, it is important to investigate why some managers at this level were willing or able to commit crimes, or prevent crimes, and others were not. What factors determined whether a “manager” became a perpetrator? What degree of control did he or she exercise over “trigger-pullers” and who managed the managers? How often could a “manager” act independently? The answers to these questions are likely to be somewhat different for

each institution that a manager participates in, so the exact patterns of perpetration must be varied among this group.

Robinson assigns the label of “Planners” to the highest levels of leadership of the TNI and Indonesian Cabinet members, which he describes as being roughly a dozen people. These people allegedly created, directed and were responsible for revising and participating in a common plan for a criminal purpose. Without their planning, the other two categories and bearers of responsibility would not exist, so although these are the people farthest away from the proximity of the crime, they are the most seriously responsible. His determination of who fits into this category of planners is worth citing, because it is not identical to those indicted by the SCU, or focused on by the CAVR:

The evidence presented in this report suggests that, minimally, the key ‘planners’ included:

- the Coordinating Minister for Political and Security Affairs, Lt. Gen. (ret.) Feisal Tanjung;
- the Minister of Transmigration and Resettlement, Lt. Gen. (ret.) Hendropriyono;
- the Territorial Assistant to the Armed Forces Chief of General Staff, Maj. Gen. Sjafrie Sjamsuddin;
- the Assistant for Operations to the Army Chief of Staff, and Martial Law Commander in East Timor, Maj. Gen. Kiki Syahnakri;
- the Senior TNI member on the Task Force for the Implementation of the Popular Consultation in East Timor, Maj. Gen. Zacky Anwar Makarim;
- the Minister of Information, Maj. Gen. (ret.) Yunus Yosfiah;
- the Commander of Regional Military Command IX, Maj. Gen. Adam Damiri;
- the Chief of Staff of Regional Military Command IX, Brig. Gen. Mahidin Simbolon;
- the Director A of BAIS, Brig. Gen. Arifuddin;
- the Commander of Sub-Regional Military Command 164/WD (to August 13), Col. Tono Suratman;
- the Commander of Sub-Regional Military Command 164/WD (from August 13) Col. Noer Muis; and
- the Commander of (Kopassus) Satgas Tribuana-VIII, Lt. Col. Yayat Sudrajat,

Further investigations, including the examination of internal TNI documents, would likely

show that several other high-ranking military officers were also involved. Possible suspects

include:

- the Armed Forces Commander, Gen. Wiranto;
- the Army Chief of Staff, Gen. Subagyo Hadisiswoyo;
- the Armed Forces Chief of General Staff, Lt. Gen. Sugiono;
- the Commander of Kostrad, Lt. Gen. Djamari Chaniago;
- the Head of BAIS, Lt. Gen. Tyasno Sudarto;

- the Commander of Kopassus, Maj. Gen. Syahrir; and
- the Assistant for Operations to the Armed Forces Chief of General Staff, Maj. Gen. Endriartono Sutarto.

He notes that the high numbers of people in this grouping who are or were engaged as Kopassus lead him to the conclusion that institutionally, Kopassus, is most likely to play the “Planner” role, and that assigning “institutional responsibility” to the TNI alone is not sufficient. The dominance of this particular sector within the Indonesian military in terms of planning violations of human rights leads Robinson to the conclusion that future investigations should concentrate on the Kopassus, and solutions to the prevention of future human rights abuses must also address this sector of the military and its structural role more directly.

There is a slight flaw in Robinson’s writing in this section because he collapses different categories of individual responsibility into these neat rubrics, especially the “trigger pullers” category. Our interpretation of his argument is that he is trying to say that one does not have to “pull the trigger” in order to accrue individual responsibility for a crime. Those who order, induce, solicit, aid, abet or assist in the commission of crimes are also directly responsible. Robinson then goes on to list the senior military leadership indicted by the SCU and provides an additional table (Table 1) of what he notes are the “dozens” of TNI who are responsible as “trigger pullers” even though they never actually held a smoking gun. This list and discussion includes some of the “planners.” There is a problem with explaining types of responsibility by using these categories and specific individuals as examples in the same section as the low-level perpetrators. This grouping creates confusion between ideas of indirect and direct responsibility, and individual versus command responsibility.

To clarify this issue, both indirect and direct responsibility occur as types of individual responsibility, regardless of a person’s rank or social status. Trigger pullers, managers and planners can all be held individually responsible. These categories are also not fixed throughout time. A “manager” can be responsible for inducing a crime, or soliciting aid. An example would be Eurico Guterres when he gives orders to attack the Carrascalao house, or writes a budget to obtain weapons for the militia to commit the crime. He is not actually a “trigger puller” in this instance, so he is indirectly responsible, but still responsible as an individual. Managers and planners are more often indirectly responsible because they are likely to give assistance and guidance rather than committing the crime themselves. However, managers can also directly commit crimes. For example a SGI member can give guidance or weapons to the militia, and also shoot or rape a person. In these instances the same person is both a trigger puller and a manager. The point is that a single person can accrue multiple degrees and types of responsibility and play multiple roles in the commission of a single human rights violation. Nonetheless, Robinson’s categories are useful because they can identify at what level of institutions certain types of crimes are committed and in what way. Thus, this model can be helpful in identifying structural patterns that lead to the commission of human rights violations. However, they do not give a great deal of insight into why some individuals in the same institutions do not commit crimes and others do. In other words, there is not a lot of room to factor in an

individual's initiative in the commission of crimes by using these categories. For the CTF's purposes of identifying institutional responsibility, this model may be the most useful, but one must be aware of its limitations in revealing the complete truth about WHY crimes are committed. It is more useful in determining HOW.

The "How" of linking the Planners, the Managers and the Trigger Pullers

Robinson gives many examples of how top - level leadership likely interacted with militia leaders and their institutional subordinates to set up the structures for low-level perpetrators to commit the crimes. The most important steps in linking the top to the bottom are militia formation, funding, weapons supply, training, and moral support. Much of this type of evidence Robinson presents in these cases I have already discussed in the section about the SCU, or will be presented as part of our document analysis in Part III. Nearly every document our team has obtained that is cited by Robinson has confirmed his analysis in these sections. We have not yet had the capability of verifying his footnotes of secondary sources, and experienced SCU investigators report that evidence based on Masters of Terror in his report requires serious follow-up. Future research efforts should continue the process of verifying Robinson's analysis by comparing the original documents to his report.

Robinson notes that doctrines of Command Responsibility can be useful in ascertaining with precision the links where managers or planners become accountable for their subordinate trigger pullers. However, it is important to note that the elements required for command responsibility are different from individual responsibility. Robinson discusses the doctrines of Command Responsibility at length and following the same lines of explanation as the SCU and CAVR, so we will not highlight that discussion here. What is important to note is that most of the people cited by him as individually responsible in the planners and some in the managers category, could also be held responsible under the doctrines of command responsibility. The doctrine of Joint Criminal Enterprise could also be employed as a means of prosecuting many of these individuals, but it does not play a part in Robinson's discussion. However, there is one special category of analysis where Robinson makes especially fresh contributions to our knowledge in the systems of linkage between the different categories of perpetrators that is worthy of more discussion below.

Conferring Legal Status on Militias

The official status of the militias is the issue that creates the most confusion and ambiguity about institutional responsibility for violations committed in East Timor in 1999. Armed auxiliary groups to the military are an intrinsic part of the Indonesian military and government structure in all its provinces. These groups in East Timor included those referred to variously as RATIH, WANRA and HANSIP. Because these auxiliary groups were legal and a normal part of the TNI's operational structure, some people have interpreted the evidence used to show the recruitment, arming and funding of militias in East Timor also to be a legitimate process.⁵¹⁷ According to Indonesian law and

⁵¹⁷ Robinson, p. 98.

cultural norms training or funding groups such as Ratih was not illegal, and therefore it is difficult to accept institutional responsibility for the Indonesian military on the basis of supporting militia groups that are members of these particular type of groups. Pinning down institutional responsibility for militia groups is further complicated by the way documentary evidence and witness testimony often use the term “militia” without specifying what kind of “militia.” There are multiple possibilities: a legal auxiliary group (i.e. Wanra, Ratih, Hansip), or what has sometimes been referred to as 1999 militia that were formed solely for the purpose of supporting the autonomy movement in 1999, or militia that were revived out of previous armed civilian groups, such as Makikit. Under this system, the military can be held accountable for actions of Ratih or Wanra forces, but can divorce themselves from the actions of militias excluded from what they consider official recognition, such as the specially named groups like BMP or Mahidi, if there is no evidence of official links to the military or civilian government. Therefore, in some ways the legal status of militias in Indonesia obscures institutional responsibility.

However, Robinson is able to explain in depth the process of conferring official status to militia groups in a way that clarifies institutional responsibility. He convincingly concludes that official status for militias was used as a mechanism to both control and support criminal acts. Although legal status for militias can sometimes deflect charges of institutional responsibility by legitimizing activities such as training or possession of weapons at certain times, in many other ways official status makes institutional responsibility more explicit. Robinson shows that the process of conferring legal status to many of the militia groups created the most important institutional links between the planners, the managers and the lowest level of perpetrators, and determines both the military’s and the State’s legal and political responsibility for their actions.

The process of granting official status to militias occurred both formally and informally. Informally, the attendance of many of the militia’s rallies by military officers (see earlier discussion in SCU section) can be interpreted as a form of granting official recognition and/or moral support. In addition to the Aitarak and Cassa rallies previously discussed in the SCU evidence, TNI officers (usually the Dandim) and at times police attended inaugural rallies in Same (March 11, 1999), Viqueque (March 11, 1999), Dili (April 17, 1999), Maliana (April 1999), Suai (mid-April, 1999), Oecussi (May 1, 1999), Manatuto (May 8, 1999), Lolotoe (May 10, 1999), Laclubar (May 18, 1999) and Gleno (April or May 1999). Bupatis also attended these ceremonies without fail, which implies the civilian government was also engaged in the process of granting official status to the militias and accordingly bear responsibility.

We have supporting evidence that concurs with Robinson’s interpretation that rallies were a method of conferring official status on militia groups. These documents demonstrate the formality and degree of support conveyed to the militias from the “official” military command structure through the mechanism of rallies – either for inauguration or for the disbanding of the political organization of CNRT.⁵¹⁸ These two types of “celebrations” were often held concurrently at the same rally, so that the christening of a militia represented the funeral of a CNRT organization.

⁵¹⁸ CNRT is a pro-independence political organization.

First, the TNI helped plan and prepare militias for rallies in addition to recruiting attendees for them. One military daily report from the Danramil 1627-04 dated 4 May 1999 mentions in the section routinely devoted to territorial management: “ The Babinsa and assistants together motivated the community to participate in a drill and military protocol regulation training at the SDN 1 field Metinaro in preparation for the inauguration and break-up of CNRT in the Metinaro region.”⁵¹⁹ A Secret telegram from the same post on the 11 May 1999 reports the recruitment of these approximately 300 militia members from the community occurred on 1 May 1999 and was done with the specific purpose of joining with the Aitarak force. Koramil forces conducted an 8-hour training session for these community forces two days later. Another training session the following day was led by Koramil members along with a member of Aitarak to prepare them for the rally, or ceremony. The telegram appears below:

⁵¹⁹ Yayasan Hak document 25, Telegram #TR/51/V/1999. Wiranto case files p. 210449.

KOMANDO DISTRIK MILITER 1627
D I L I
KOMANDO RAYON MILITER 2704

T E L E G R A M

D A R I : DAN RAMIL 1627-04/MTR
KEPADA : DAN DIM 1627/DILI
TEMBUSAN : 1. PASI INTEL DIM 1627/DILI ✓
2. PASI OPS DIM 1627/DILI
3. PASI SOSPOL DIM 1627/DILI

KLASIFIKASI : RKS TGL, 11 MEI 1999
NOMOR : TR/ 04 /1999

AAA TTK DASAR LAPORAN PENDAHULUAN DAN RAMIL 1627-04/MTR NOMOR 4 TR/04/-
1999 TGL, 28 APRIL 1999 TIG RENCANA PEMBEKUTUKAN PASUKAN KOMPI
BANTUAN UTK BERGABUNG DGN PSK AITARAK YG ADA DI DILI TTK

BBB TTK SESUAI DASAR TSB DIATAS KMA DILAPORKAN SEB TTK DUA

SATU TTK PD-011000 MEI 1999 TELAH MELAKSANAKAN PENDATAAN MA-
SYARAKAT YG HADIR DI LAP KECAKATAN MTR YG MENDAFTAR
KAN DIRI SBG PSK KI BANTUAN DI KEC METINARO SEBA -
BYAK 300 ORG UTK BERGABUNG DGN PSK AITARAK YANG ADA
DI DILI TTK

DUA TTK PD-030700 MEI 1999 SELAMA 8 JAM MELAKSANAKAN LATIHAN
PBB DI LAPANGAN SDN I MTR YG DI PINJIN OLEH 5 ORANG
ANGGOTA KORAMIL 1627-04/MTR DLM KEADAAN AMAN TTK

TIGA TTK PD-040700 MEI 1999 SELAMA 5 JAM MELAKSANAKAN PBB DAN
3 JAM MELAKS GLADI KOTOR DI LAP SDN I MTR KMA DIPIM-
PIN OLEH 5 ORG ANGG KORAMIL DAF BEKERJA SAMA DGN BPK
MATEBUS SELAKU DAN KI-D PSK AITARAK KMA BERJALAN TER-
TIB DAN AMAN TTK

BMPAT TTK PD-050730 MEI 1999 DI LAPANGAN SDN I MTR MELAKS GLA
DI KOTOR DAN GLADI BERSIH DLM RANGKA PERSIAPAN UPA -
CARA PENGUKUHAN KOMPI BANTUAN YG ADA DI KEC MTR OLEH
KOMANDAN AITARAK DAN DEP OLEH 5 ORG ANGG KORAMIL- 04
METINARO KMA BERJALAN TIB DAN AMAN TTK

LIMA TTK PD-060930 MEI 1999 DI LAP SDN I METINARO MELAKSANA -
KAN UP PENGUKUHAN PSK KOMPI BANTUAN OLEH KOMANDAN
AITARAK YG DI HADIRI OLEH APARAT MUSPIDA TK II DAN
APARAT INSTANSI TERKAIT SERGA PARA TOKOH MASY SEKE -
CAMATAN MTR YG DISERTAI DGN PEMBACAAN PERNYATAAN SI
KAP PRO OTONOMI OLEH PERWAKILAN DARI TOKOH MASY KMA
PEMBACAAN DAN PENANDATANGANAN PERNYATAAN SIKAP PEM -
BERARAN ORGANISASI CMRT OLEH KETUANYA ATAS NAMA LUIS
FILOMENO H. DE ALMEIDA YG DISAKSIKAN OLEH KETUA MUS-
PIDA KMA YG DI WAKILI OLEH BPK WANIKOTA DAN APARAT
TRIPIKA KEC MTR KMA BERJALAN TIB DAN AMAN TTK

ENAM TTK PD-061130 MEI 1999 DI LAPANGAN SDN I MTR TELAH DI SO
SIALISASI PAKET OTONOMI YG DEP OLEH BPK WANIKOTA KMA
DILANJUTKAN MAKAM SIANG BERSAMA DGN SELURUH MASYARA
KAT KECAKATAN MTR BERJALAN TIB DAN AMAN TTK

A few days later a weekly report from the Kodim 1631 just up the road from Metinaro in the adjoining district of Manatuto confirms the military's participation in these rallies. The telegram reads:

“ At 9am on 8 May 1999 the Dandim 1631/Manatuto attended a ceremony of inauguration of the Pam Swakarsa, Integration group and statement of dispersion of CNRT group in the district of Manatuto with the Bupati KDH Level II Manatuto Parade Officer attended the Deputy Commander Korem 164/WD, Muspida elements, pro-integration community of the districts of Manatuto, Baucau, Dili and Los Palos (+/- 5000) people along with other invites at the Regional Government Oval Level II Manatuto. Finished orderly and Safely.”⁵²⁰

⁵²⁰ Yayasan Hak document #32, Letter #R/77/LH/V/1999, Wiranto case files p. 210273.

SECRET

32

MILITARY RESORT COMMAND 164
WIRA DHARMA
MILITARY DISTRICT COMMAND 1631

Number : R/77/TH/V/1999

DAILY REPORT
PERIOD FROM THE 08 TO 11 MAY 1999

No.	Event	Notes
I.	<u>IDEOLOGY</u> Nil	
II.	<u>POLITICS</u> Nil	
III.	<u>ECONOMY</u> The price of staple goods around the district of Manatuto is not yet stable still terjangkau by the buying power of the community.	
IV.	<u>SOCIAL CULTURAL</u> 1. At 0900 on the 08 May 99 the Dandim 1631/Manatuto attended a ceremony of inauguration of the Pam Swakarsa, Integration group and statement of dispersion of CNRT group in the district of Manatuto with the Bupati KDH Level II Manatuto Parade Officer attended by the Deputy Commander Korem 164/WI, Muspida elements, pro integration group community of the districts of Manatuto, Baucau, Dili and Laupalos (+/- 5000 people) along with other invites at the Regional Government Oval Level II Manatuto, finished orderly and safely. 2. At 0730 on 10 May 99 there was a flag raising ceremony on Monday with the Parade Officer Kasdim 1631/Manatuto at the UPC Makodim 1631 Oval/Manatuto followed by Jam Dan (Java and Madura) at the meeting hall of Makodim 1631/manatuto. Completed orderly and safely.	
V.	<u>RELIGION</u> Nil	
VI.	<u>LAW AND ORDER</u> 1. Personnel Security. NIL 2. Material Security. NIL 3. Security News/ACTIVITIES NIL 4. Military Campaign AND OTHER ACTIONS.	
	<u>COMMAND ACTIVITIES</u> 1. At 1530 on 10 May 999 Dan Dim 1631/Manatuto gave instruction to the community of Baru Sub Village Aiteas Village Manatuto City Sub district regarding special autonomy and situation development in East Timor lately, attended by +/- 130 people. Completed and returned orderly and safely. 2. At 0700 on the 08 to the 11 May 999 Makodim 1631/Manatuto members carried out awiping activities in front of Makodim 1631/Manatuto, Led by Serra Silvano Luis to anticipate the anti integration and clandestine group activities to aid the Security Disturbance Group in the jungle. Completed orderly and safely.	

Distributed: Manatuto, 12 May 1999
Authenticated: INTELLIGENCE STAFF KODIM 1631/MANATUTO
SECRET

210000

From the text of this telegram one can conclude that participating in militia events is viewed as a legitimate part of the military's routine duties, and did not reflect a particular leader's personal decision or political will. A similar event was reported in a Daily Report from the Kodim 1631 that also occurred in Manatuto on 17th of May in the town of Laclubar which the Dandim of 1631, the Muspida, TNI Battalion 301 and Brimob all

attended in support of Pam Swakarsa and to disband the CNRT in the area. From these documents one can observe that militia rallies were absorbed into the institutional command and culture of the district military posts in East Timor.

The awareness that different militia groups were being formed and trained to join in events, such as the April Rally in Dili or the one mentioned here with Aitarak, underlines the structural nature of militia “trigger pullers” and their managers and planners. Even if some of these militias began as community security groups they became part of a separate and integrated structure of militias united in a campaign for the pro-autonomy option. This integrated structure was called the PPI, which was led by Joao Taveres (as officially confirmed in the April military rally telegram) and his second-in-command was Eurico Guterres. Each of these men ran their individual militias, but also played a coordinating role of the other smaller militia groups in districts across East Timor. These men were managers, and sometimes planners. These telegrams that acknowledge the military recruited civilians to participate in local militias and join with Aitarak, and these recruits were then likely ones who became trigger pullers. The telegrams also show assistance was conducted by “managers” and coordination by the military institution acting in the capacity of “planners” to create a unified militia group which it exerted control over at the bottom. Koramils were training and recruiting as managers and at the top the military leaders with whom figures such as Guterres and Tavares meet with are senior military leadership such as Suratman and Damiri, acting in the capacity of key planners.

In another military telegram we can observe the conferral of the official name and status of “Ratih” onto Baucau militias known for their violent acts that were formerly referred to in the pre-99 years (and continued to be popularly referred to) as Team Saka, Sera and Alfa.

TRIBUANA TASK FORCE
A FIELD UNIT

NUMBER : B/02/III/1999
CLASSIFICATION : NORMAL
ATTACHMENT : PAGE
RE : REQUEST FOR MONTHLY MEDICATION SUPPORT AT MEDICAL
COMMAND POST FIELD UNIT - A

TO
RESPECTED CHIEF OF HEALTH SERVICE
LEVEL II DISTRICT BAUCAU

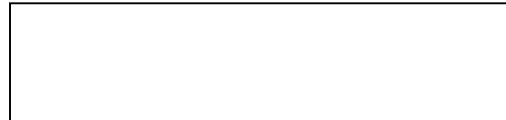
In

Baucau

1. BASIS
 - a. Tasking in the operational area of East Timor by the name of Infantry Captain ALFI SAHRI LUBIS and others (authorization letter to follow) to the amount of 23 people.
 - b. Rafih members (SAKA, SERA and ALPA groups) +/- 600 people as operational support.
 - c. Family and citizens who come to get medication at the A Field Unit Post.
2. In relation with the above, with this we submit a request for medical supplies to fulfill our services and prevention towards/of community also increasing the moral of the members and sympathizers.
3. Thus our request that we submit to be examined and decided on further.

Made in : Baucan
On the : _ March 1999

On behalf of: COMMANDER OF FIELD UNIT - A
MEDICAL SECTION



Copies to:

1. Kodim Commander 1628 Baucan
2. Head of Pharmacy warehouse District Baucan

210372

This telegram not only confers a legally legitimate status on the militias, it does so in order to funnel supplies to them. This telegram is a request for medical supplies for the militia members. According to Robinson, the person making this request on behalf of the militia is a Kopassus officer. As Robinson astutely points out, "There was no immediate medical rationale for the request. Rather, the explicit intention was to reward them for

supporting TNI operations, and to improve their morale.”⁵²¹ Thus, nominal status granted militias access to institutional material resources and moral encouragement, as well as the military’s specialized and professional human resources in the form of trainings and recruitment.

In some of the official documents above the militia are labeled “Pam Swakarsa.” In the telegram discussed earlier about the April rally, we have noted the telegram specifically describes the Aitarak forces, along with the other attendees as synonymous with “Pam Swakarsa.” Robinson explains how militias fell under this euphemism of Pam Swakarsa:

Starting in April 1999, key militia groups were formally designated as voluntary civil security organizations, or Pam Swakarsa. That term had been used to legitimize the gangs of youths mobilized to provide ‘security’ in other parts of Indonesia in preceding years. In discussions with UNAMET, and in public statements, government officials insisted that the groups in East Timor were not militias but Pam Swakarsa, and that their activities were entirely within the law.

The formal status of the militias as Pam Swakarsa is confirmed by two documents.

The first is an order from the Governor, Abílio Osório Soares, and the East Timor Commander, Col. Tono Suratman, dated April 23, 1999 calling for the creation of Pam Swakarsa throughout the territory. § The second is an instruction from the District government of Dili, also from April 1999, formally incorporating the Aitarak militia as integral elements of Pam Swakarsa, and listing a range of civilian and military officials as its leaders.⁵²²

We have not been able to obtain copies of Robinson’s supporting evidence cited in this excerpt yet. However, if his analysis here proves to be true, it links up with the SCU evidence we have provided about the financial distribution of funds to militias under the guise of “Pam Swakarsa.” Therefore, militias were named “Pam Swakarsa” and received official status in order to receive government funding.

Robinson also explains that meetings between military and civilian leaders and militia leaders were a way of conferring official status on the militias and providing them with logistical support and coordination. Because we do not have access to the evidence Robinson has cited in this regard yet, we cannot confirm or dispute his conclusions.

However, we have obtained documents that support Robinson’s argument that co-signing was also a form of granting official status to militias by both the military and civilian government.

⁵²¹ Robinson, p. 97.

⁵²² Robinson, pp. 94-95.

The best example of the official government and military participation and approval of militia is one of the many Aitarak membership lists seized at their Headquarters at the Tropical Hotel. This document is a list of Aitarak members from a village that are listed as comprising part of the Aitarak Sector B unit. To protect identities, our research team has removed names and personnel numbers.⁵²³ This list was notarized on the 22 August 1999, just before the Referendum. The telling part of this document is the final page which is notarized, and contains the official signatures and government seals of Police, a Village Head, a SGI commander, a FPKD leader and the Danramil for the area.

⁵²³ The original document with names is held by the Serious Crimes Unit Archives.

26	th	lk	tani	Malabe	Atudame
19	th	lk	tani	Malabe	Atudame
38	th	lk	tani	Malabe	Atudame
27	th	lk	tani	Batuigi	Atudame
19	th	lk	tani	Bobolata	Atudame
25	th	lk	tani	Bobolata	Atudame
35	th	lk	tani	Ilatkora	Atudame
25	th	lk	tani	Parasin	Parasin
18	th	lk	tani	Ilatkora	Atudame
19	th	lk	Swasta	Ilatkora	Atudame
25	th	lk	tani	Malabe	Atudame
18	th	lk	tani	Malabe	Atudame
18	th	lk	tani	Bobolata	Atudame
20	th	lk	tani	Malabe	Atudame
19	Th	lk	TANI	MALABE	ATUDAME
17	Th	lk	TANI	IAT KORA	ATUDAME
18	Th	lk	TANI	IAT KORA	ATUDAME

1406

Atudame, 22 Agustus 1979

M. R. H. S. D. S. D. I
Kepala Desa Atudame



Desa Rendil 08 Atsabe

[Handwritten signature]
[Redacted box]



Desa Rendil 08 Atsabe

Desa Rendil 08 Atsabe

Desa Rendil 08 Atsabe

[Handwritten signature]
[Redacted box]

[Handwritten signature]
[Redacted box]

SARSI

[Handwritten signature]

The need for these government officials to “sign off” on this list, from the lowest rung of village administration up to the elite SGI commander, shows that all levels of Indonesia government officialdom were engaged in legitimating and recruiting for the militia. In this case the evidence is particularly strong because these militia members are specified as Aitarak members, even though they are from an area outside of Dili, far away from Guterres’ central base in Dili. This geographic element shows that Aitarak (or PPI) structures exercised control far beyond their bases, which prevents them from being interpreted as a category of militia preserved for local community patrols or security. Furthermore, Aitarak was already well-known to have committed violent acts and issued threats by August, so this document shows that the military and government continued to support Aitarak and absorb it into its official structures even at the latest states of the pre-ballot period. Lastly, there is not even an attempt to attach a euphemistic, or already legal label to these forces such as Pam Swakarsa or Ratih. This document proves the militias were able to receive official status for its activities, even when the militia did not fall into the neat “labels” that would constitute the standard Indonesian security arrangements.

Another compelling document that shows the conferment of official status on Aitarak through the practice of co-signing and notarizing documents are a series of travel permits which Geoffrey Robinson mentions. The SCU Archives contain stacks of these permits. The signature sheet of one of these travel permits is shown below to demonstrate the way that Eurico Guterres, as Deputy Commander of the PPI (the unified group of militias around the country) is able to authorize and control the movements of a group of civil servants. Our team has removed the names of the recipients of these permits from our copy to protect their identities. The unaltered original remains in the SCU archives.

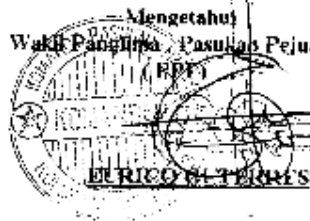
Daftar nama-nama pegawai Kantor Tata Usaha Anggaran Dili Kloter terakhir ke Kantor
Wilayah
XIX DMA Kupang

Hari : Sabtu
Tanggal : 04 September 1999
Kendaraan : Bus DAMRI

#135

Dikeluarkan di Dili
pada tanggal 03 September 1999

Mengetahui
Wakil Panglima Pasukan Pejuang Integrasi
(PPI)



ELRICO M. TERRES

Kepala Kantor



DRS. JOHANNIS HARISI
NIK: 060027065

Here, Guterres exerts the same authority as a bona fide member of the Indonesian civil service over government employees. Allowing a militia leader to “sign off” on the travel of government employees offers clear evidence of the official “status” granted to militia groups. It is interesting to note that Guterres chose to sign off at different times using

different militia titles. Sometimes he signs as the head of Aitarak and at others he signs travel permits as the Deputy in command of PPI. His varied use of titles demonstrates the interchangeable nature of the militia names that indicated no real distinctions in terms of actual authority, power or status. The different names were merely surface identities.

Finally, we have documentation that shows official status of militias created a system where the TNI could do more than just positively support and organize the militia groups by absorbing them into official structures and images when necessary. Official status meant that the TNI exercised control over these groups, whatever their names, which included the ability to provide and seize weapons.

The best documentary example of evidence that shows the military's capability to prevent violations committed by militia groups is a secret telegram dated 28 January 1999 from the Danrem (Tono Suratman) to his superior the Udayana in Bali (Damiri), horizontal colleagues (commanders of the non-organic troops in Timor, such as the Tribuana Task Force) and all his direct subordinates (the Dandims). This telegram reports official militia group violations in several different areas of East Timor in the same time frame.

TELEGRAM

D A R I : DAN REM 164/ND
KEPADA : DAN REM 1627 S/D 1639
TEKST : 1. PANGKAM IX/UDY
2. DAN REM 164/ND (SEBAGAI LAPORAN)
3. IRDAM IX/UDY
4. ADINTEL, ESOPS DAN ASITER KASDAM IX/UDY
5. DAN SAKTOR A DAN I
6. DAN SATNAS TRIBUANA
7. PARA KASB K. REM 164/ND

KLASIFIKASI: RHUSIA
NO. OK : TR/41/1999
MUL , 28 JANUARI 99

DAA TTK RSE TTK DUA

SATU TTK PERINTAH OPERASI TITOLI IV KOREM 164/ND TTK
DUA TTK REKANA KUNDUNGAN KOMNAS HAM FBS KB TIES TANGGAL 9
SEPTUAK 1999 TTK
TIGA TTK PARTISIPANSI KOMANDO DAN STAF KOREM 164/ND DALAM
RANGKA MENERAM PELANGGARAN HAM YANG AKTIF INI TER-
JADI DI WILAYAH TIES TTK

BBB TTK DI INFORMASIKAN BEBAPKA KASUS YANG TERJADI DI WILAYAH TIES
YANG MELIBATKAN WANRA YANG MENYERIKABATKAN KORBAN JIWA ANTARA
LAIN BBB TTK DUA

SATU TTK PADA TANGGAL 3 DESEMBER 1998 PUKUL 02.40 WITA DI BA
LAI DS DESPADASI KEC BAOGLIA KAB BANGGAI RV.4547 TELAH
TERJADI PENGHAMPAK YANG DI LAKUKAN OLEH ANGGOTA SUR
WAN NAKA AN NOMBENLO LOPES TERHADAP RAKYAT AN JULI-
AO GONSALES SAGIETO UMUR 27 TH KKA PENGHAJIAN TANI
KKA AGAMA KATOLIK KKA ALAMAT KP WARI DESPADASI KEC
BAOGLIA KAB BANGGAI YANG MENYERIKABATKAN KORBAN MENING-
GAL TTK

DUA TTK PADA TANGGAL 3 JANUARI 1999 DI DS MANUTASI KAB AJWA
RO TELAH TERJADI BENTROKAN FISIK AN ARA POK MAHIDI
DAN POK PEMUDA ANTI INTEGRASI YANG MENYERIKABATKAN 5
ORANG POK PEMUDA ANTI INTEGRASI MENGALAMAI LUKA TEK
BAK DAN 2 ORANG MENINGGAL. DUA TTK

TIGA TTK PADA TANGGAL 23 JANUARI 1999 PUKUL 1545 WITA DI KP
OLEBA DS BAIKAM KEC SUMALAI KAB KOVALIMA TELAH TER-
JADI PENEMBAKAN YANG DI LAKUKAN OLEH ANGGOTA RAPHI
AN ALERDO TERHADAP PEMUDA AN FERNANDO CARDOSO YANG
MENYERIKABATKAN KORBAN MENINGGAL DUA TTK

CCC TTK SEDIKUNGAN DG RSE DI ATAS KKA KEPADA PERSEKUTU ALAMAT AGAR
TTK DUA

SATU TTK MELAKS PERHARUKAN SENJATA YANG DI PEGANG OLEH ANGGO-
TA WANRA RUAU RAPHI SELAMA TIDAK MELAKS TUGAS KNU -
SUS ATAU OPS PUR DI WILAYAH KODIM KABINGS TTK

DUA TTK MENYERIKABATKAN KEMBALI SENJATA API MUNISI BAHAN
POMPAK YANG ADA DI BAWAANNYA DAN MENGAMBIL LANGKAH
LANGKAH PERSEKUTUAN TERHADAP PERSEKUTU/PERSEKUTUANNYA
TTK

On the one hand, this telegram can be viewed favorably and be used as evidence to negate or diminish military institutional responsibility. In this instance when militia members under the official sponsorship of the TNI participated in fights with pro-independence groups, or used military weapons to commit criminal acts towards individuals, immediate action was taken unilaterally across all official militia, or legal auxillary, groups (Ratih and Wanra). The response on the commander's part to these

illegitimate acts was the immediate removal of their weapons, tighter restrictions placed on weapons access and punishment of individuals who behaved inappropriately. This was an appropriate response for a command and negates this commander from being held liable for these particular acts using the doctrines of command responsibility

On the other hand, this telegram reveals the trap of embedding militia into the military command structures. The first violation committed was by a Saka member in Baucau. Team Saka was one of the groups that the commander called a “Ratih” in his telegram that requested medical supplies discussed previously. This telegram indicates the Danrem and his Dandims have the ability to seize their weapons and punish them. Therefore, this telegram establishes at a minimum a strong argument that Team Saka was controlled by the military institution, and implies the military institution’s responsibility for all of their violations when they did not adequately control them, including by such measures as cantonment. This telegram indicates that as early as January 1999, the entire group of commanders had warning that this particular group may commit crimes, which should have caused them to exert extra caution and limited support for them. Yet, the medical supplies telegram shows support was not withdrawn for Team Saka.

The third violation committed was specifically by a Ratih member in the Covalima district, which also means that commanders in that area should have exerted particularly tight control of militias in that area. Yet, Covalima was the sight of some of the worst human rights events in East Timor.

I will end the discussion of Robinson’s interpretations of institutional responsibility by quoting a section of his report, since it is this passage that seems to have exercised a great deal of influence over the SCU and CAVR’s conceptualization of the role of militias and their ties to institutional responsibility.

In short, the evidence [...] offers strong support for the conclusion that the militias were not independent bodies acting outside the purview of the Indonesian state, but were in fact created, supported and directed by Indonesian authorities. It demonstrates, moreover, that support for the militias was not provided simply by a handful of ‘rogue elements’ in the TNI, but constituted official policy, and had the backing of some of the highest ranking and most powerful officials in the country. These conclusions are based on three main findings.

First, the militias that wreaked havoc in 1999 were not new. On the contrary, they were the continuation of a well-established military and political strategy that had been employed by the Indonesian army in East Timor since the invasion in 1975. In fact, some of the militia forces active in 1999 had been mobilized by Indonesian forces at the time of the invasion, while others had been set up by Army officers in the 1980s and

1990s. Throughout the 24-year occupation of East Timor, such groups were trained, supplied and directed by the Indonesian Army, and used tactics virtually identical to those seen in 1999. This historical pattern provides powerful grounds to doubt the Indonesian claim that the militias emerged spontaneously and acted independently in 1999.

Second, high ranking military officers, in Dili, Denpasar, and Jakarta, were actively involved in forming the new militia groups, and in coordinating their activities, from mid-1998 through 1999. The evidence of continued official involvement comes from the testimony of former pro-Indonesian East Timorese leaders, and from the secret communications between Indonesian civilian and military officials in 1998 and 1999.

This evidence points the finger at particular high-ranking officials, including: Gen. Wiranto, Lt. Gen. (ret.) Feisal Tanjung, Maj. Gen. Zacky Anwar Makarim, Maj. Gen. Damiri, Col. Tono Suratman, and Maj. Bambang Wisnumurty.

Finally, there is unequivocal evidence that the militias were granted formal political and legal standing by Indonesian government and military authorities. Public statements in support of the militias, made by numerous officials, constituted expressions of formal state recognition and support for those groups. They may also be viewed as having encouraged, and even incited, militia groups to commit grave human rights violations. On those grounds, the case can be made that the militias were a formal arm of the Indonesian political and security apparatus, and that their actions were thereby the direct responsibility of Indonesian authorities. The militia's legal standing, moreover, was not merely theoretical, but was confirmed by the routine inclusion of militia leaders in the security and political deliberations and decisions of Indonesian officials at all levels. Thus, both in law and in practice, the militias acted with the full sanction of Indonesian authorities.

Robinson's text provides this eloquent link between what too often sounds like an assumption in the CAVR and SCU indictments that the military and civil institutions are directly responsible for the actions of militia members. The articulation of both structural forms of responsibility and the widespread and systematic nature of crimes committed through the compelling use of evidence are the Robinson's reports greatest contributions to our knowledge about human rights violations committed in East Timor in 1999.

Overall Strengths of Robinson's Report

- A careful tone in approach to document analysis and strong analytical methods
- Historical discussion of history and formation of 1999 militias

- Brief discussion of structural violence in Indonesia that gives 1999 a broader historical and political context
- Document analysis: volume and access.
- Variety and volume of sources that are properly cited, translated and documented.
- Sound argumentation that offers theories backed with evidence of the WHY and HOW the perpetration of human rights violations occurred in East Timor in 1999.
- Detailed discussion of evidence related to funding, and other means of support to the militia, such as granting special status.
- Detailed discussion of different types of perpetration and their shades of accountability
- Detailed discussion of how theories of individual and command responsibility relate to the cultural and command structures relevant to East Timor.

Weaknesses

- Accepts findings in SCU indictments without being able to probe fully the value of their evidence.
- Evidence is document heavy but sometimes witness weak
- Doesn't fully acknowledge the limitations that accompany using tightly defined categories or models as a methodology. At times there are inadequate explanations or allowances for randomness or exceptions.
- Footnotes no longer easy to trace or verify because of changes in indexing systems at SCU. Other documents are not publicly available, such as the ones cited that only the author possesses, or others that only the UN Human Rights Unit can supply.

Chapter 8

Additional Documentary Analysis of Evidence from SCU Archives

Because of the large volume of evidence in the SCU Archives we can only offer a rough sketch of the evidence available in this report. Chapter VII gives a sample of the types of evidence in the archives and the conclusions that can be drawn from them, and how the SCU approached the interpretation of the evidence from a prosecutorial perspective, that is, individual responsibility. Our alternative approach in this section is to show how the conclusive truth can be pieced together with SCU evidence without focusing on a particular individual's responsibility, and without starting at the top of an institution and working down the chain-of-command. The goal is to assess the value of the documentary evidence in the SCU Archives and of a methodology for evaluating that evidence from the standpoint of institutional responsibility.

In this part of our report, we will piece together several chains of evidence not yet discussed in the previous analysis of the core documents to show how various pieces of documentary evidence can provide crucial information for conclusions regarding the commission of Crimes Against Humanity in East Timor in 1999 and institutional responsibility for these crimes.

We have featured copies of the most important documents in the text whenever possible to allow the reader to assess the document for themselves quickly and independently. All documents discussed in the report will be available in electronic form as an annex, and have also been provided to the CTF archives in Bali.

This section demonstrates only a small sampling of the documents available and ways to apply this method. With more time and access to documents from a variety of institutions, including the TNI, this kind of method can contribute significantly to the CTF's mandate to establish the conclusive truth about the events of 1999 in East Timor. As noted in our Recommendations below we believe it should be a priority of the CTF to commission further research to collect and analyze these documents.

I. Evidence Chain – Widespread and Systematic Nature of Militia Attacks

A series of three press releases written and distributed by the East Timor Pro-Integration Center appears in the Archives that demonstrates what kind of information was publicly accessible about the activities of the Aitarak militia prior to the Dili Rally in April and the attack on the Carrascalao house. These press releases were collected by political officers in embassies in Jakarta and later turned over to the SCU.

The occasion for the first press release was upcoming "Days of Action" that span 17 April – 21 April 1999. The purpose of this press release seems to be to get media

coverage of the events, encourage attendance at these events and to use news about the event to advocate for the pro-autonomy political position.

The content of the events described in the press releases include on 17 April 1999, the Dili Rally which is billed as “10,000 Besi Merah Putih to Invade Dili” to join Aitarak under the coordination of Eurico Guterres.” On the following day, the release says Bishop Belo will (tentatively) conduct a public mass with the BMP at Tasi Tolu. On the 19th of April, Kamra forces (the word Kamra is used for regular community militias similar to Ratih) will hold an “official” rally in front of the Governor’s office. On the 21st of April the Sakunar militia will “act” in Oecussi.

These events aren’t billed with either peaceful intent, but there also are not any direct threats to commit crimes. The aggressive nature of the forces is communicated in terms such as “invade” and “to act.” State sanction of the event is communicated by the 19 April event to be held at the most “public” venue in Dili, the Governor’s office (Palacio do Governo) and its status as the “official” rally.

The press release communicates a systematic organization of militias for a common purpose in multiple ways. First, the individual actions of different militia groups (BMP, Kamra, Aitarak, Sakunar) are linked together as purposefully united in response to distinct political events (the alleged killings by Falintil of Manuel Gama and Belamino Lopez da Cruz and Xanana’s “declaration of war”). All of these militias are working towards a common purpose (“to provide to the pro-integration people the proper security and protection they deserve”) at designated times (“Days of Action”) in multiple locations. The display of militias spans multiple districts (Dili, Liquica and Oecussi) and is “coordinated” (the term used for Eurico Guterres).

Another press release was distributed in what appears to be the same time frame from the “East Timor Pro-Integration Forces Headquarters” in Maliana, which provides context to the document above. This group is acting on behalf of the PPI, and the press release is sanctioned jointly by Joao Tavares, Eurico Guterres and Cancio Carvalho. The document announces a series of rallies and events called “Dates of Action” that leave no doubt about the systematic coordination of militias across East Timor. The document says:

“[...] the East Timor Pro-Integration Forces is {sic} going to convene a public meeting involving all the East Timor Pro-integration Forces from East to West or from Los Palos to Covalima to reorganize and consolidate the strength and power preparing all steps and measures to undertake to face the war put forward by Xanana [...]”

The implementation of this declaration includes a militia rally in Maliana on 8 April 1999 including militias from Los Palos (Alfa), Baucau (Saka and Sera), Junior (Viqueque), Ablai (Manufahi), Aitarak (Dili), Mahidi (Ainaro), Ahi (Aileu), BMP (Liquica), PPPI (Ermera), Laksaur (Covalima) and Haliantar (Bobonaro). In other words, every district was included except Oecussi, which comes to participate in the

Dili rally instead. This is a national rally coordinated by a single office for a common purpose. This rally in Bobonaro was coupled with the announcements of subsequent rallies in Viqueque on 10 April 1999, and in Zumalai on 11 April 1999.

This document shows the Dili Rally, that has received so much scholarly and legal attention, is part of a nationwide series of rallies and events deliberately executed and coordinated for a common purpose. Therefore, it seems unlikely that each or any of these militias committed crimes in 1999 without being aware that their acts were part of a larger campaign of violence for a political purpose. One page of the document appears below, and the remainder is included in the document annex.

**EAST TIMOR PRO-INTEGRATION
 FORCES
 HEAD QUARTERS
 Maliana**

PRESS RELEASE

As a response and reaction to the statement of War made by Xanana on the 5th of April 1999 appealing the population of East Timor to undertake a general popular insurrection against the Indonesian ARMY by repeating the same mistake committed by Fretilin in leading the people of East Timor to enter into a fratricide war in 1975, the East Timor Pro-integration Forces is going to convene a public meeting involving all the East Timor Pro-integration Forces from East to West or from Lospalos to Covalima to reorganize and consolidate the strength and power preparing all steps and measures to undertake to face the offer of war put forward by Xanana in order to prevent a second bloodshed to happen again on the soil of East Timor or to reduce at the minimum possible casualties of war which might be suffered by the poor and innocent population of East Timor.

DATES OF ACTION

8 April 1999, place Maliana (\pm 138 Km West of Dili, \pm 3 hours drive from Dili). Estimate number of presence of the population: 20.000. Estimate presence of Pro-Integration Forces: 2.000. Names of groups of Pro-Integration Forces to participate: Alfa (Lospalos), Saka and Sara (Baucau), Tim 59/75 Junior (Viqueque), ABLAI (Manufahi), Aitarak (Dili), Mahidi (Ainaro) AHI (Aileu), Besi Merah Putih (Liquica), PPPI (Ermera), Laksaur Merah Putih (Covalima) and Halilintar (Maliana, Bobonaro). Time : 10.00 am East Timor Time. Venue: Lapangan Umum Maliana. Organized by Halilintar.

10 April 1999, place Viqueque (\pm 197 Km East of Dili, \pm 4 hours drive from Dili). Estimate number of presence of population: 10.000. Numbers and names of Pro-integration forces to participate: idem. Venue: Viqueque. Time: 10.00 am EIT. Organized by Tim 59/75.

11 April 1999, place Zumalai (\pm 150 Km South of Dili, \pm 4 hours drive from Dili via Ainaro or 3 hours via Atambua, Suai). Estimate numbers of presence of population: 20.000. Gathering of three Districts of South Coast, namely: Manufahi, Ainaro and Covalima. Numbers and names of Pro-

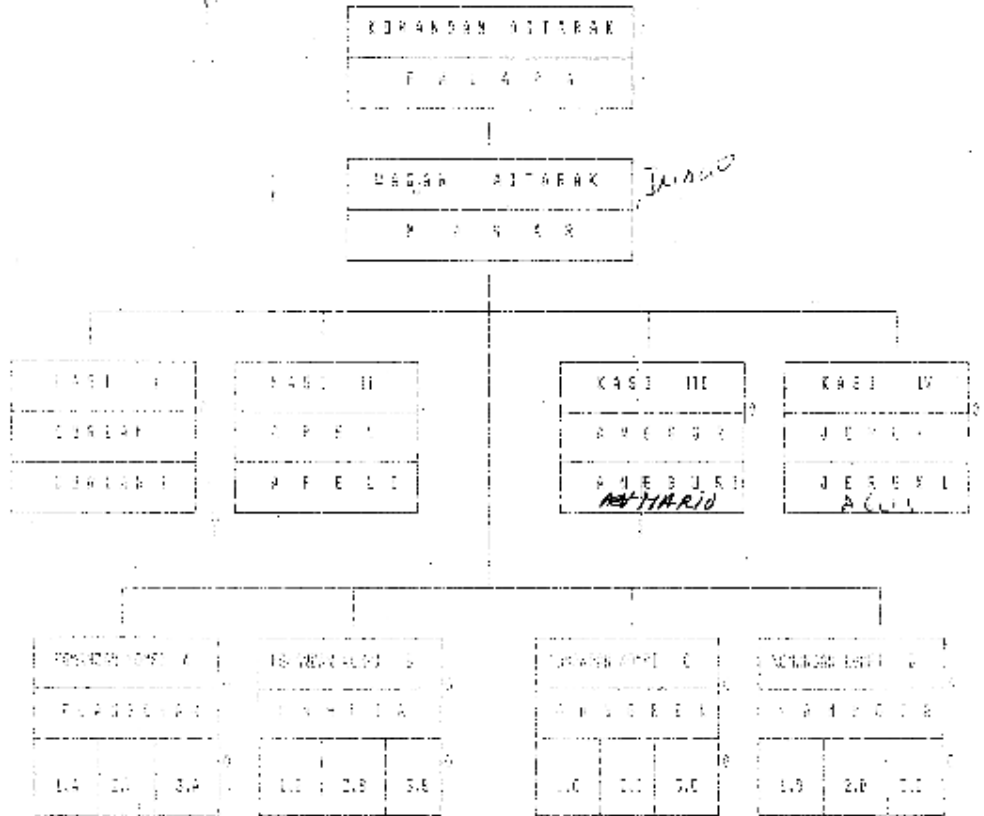
II. Evidence Chain - Systematic Internal Operations of Militia

The “systematic” nature of the operations of militias with each other in the previous document chain can be expanded on by showing how systematically and bureaucratically the militia organizations acted individually. This document chain addresses the argument that violence in 1999 occurred as “spontaneous clashes” between pro-integration and pro-independence groups. It is clear from this series of documents that militias were systemic bureaucracies with regular procedures, hierarchical authority and leadership structures, timelines and schedules. The actions of the militia do not appear to be spontaneous, because of this evidence that there were multiple mechanisms in place that indicate planning and control. These documents show militias planned, acted purposefully and monitored their organizations to make improvements.

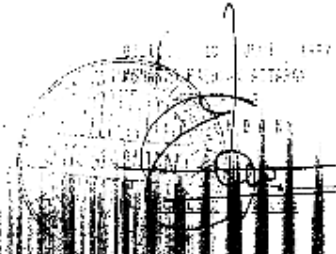
The most obvious example of how a militia acted in a systematic way internally is an Aitarak Organizational Chart seized from its office headquarters by Interfet forces in September 1999.

**ABALAN SOLOK TERBAIK BAGI PEMBANGUNAN
DAN MASA DEPAN BUMI LORO SAE**

M E L A T I



- LEGENDA:**
- GARIS KOMANDO DAN KOORDINASI
 - = RANGKAIAN I
 - = RANGKAIAN II
 - = GARIS TELEFON DAN PEGAWAI
DEPARTEMEN PLAMBONGAN
DI LINTASJAWA.



There were clearly strict procedures for the flow of communication and information within Aitarak, and people assigned to certain tasks and locations (note the names by certain organizational boxes). The pattern of the lines connecting the boxes is supposed to show the chain of “command” and “coordination” (see the key on the left hand side of the diagram that calls these lines “Garis Komando dan Koordinasi”).

Therefore, members of Aitarak in different sectors were clearly given orders from a central command, and therefore could not act in a spontaneous manner without violating its institution's norms. There were few incentives for low-level officers to violate the wishes of their superiors since they were paid and the supply of militia members was plentiful (over 1400 members were in Aitarak).⁵²⁴ Examples of one of Aitarak's many membership lists has already been discussed in Part I of the report.

Additionally, we know that Eurico Guterres used this structural system to communicate orders to all levels of his membership because we have copies of several orders he issued. The first order is to four Aitarak Company commanders (Level 4, or the bottom boxes, in the chart above) to make them issue weekly reports. Not only is this an "order" which shows Guterres' authority over his troops, but the content of this order shows that Guterres is trying to monitor and control his members closely, frequently and systematically.⁵²⁵

The second order is to a "Deputy Battalion Commander" in Sector B to carry out a joint operation with the BMP militia. First, the assigning of ranks to different members shows formal chains-of-command within the organization. Second, this order shows that Guterres is able to coordinate his "troops" to act jointly with another militia group. The actual exercise is to detain Falintil/CNRT and to not do anything else "until further orders are sent." This statement shows that members of Aitarak waited for the word and sanction of their superiors before acting, particularly before committing acts that could constitute violations of human rights (such as illegal detention). Finally, the structure and tone of this order bear great similarities to military orders and a military culture, which shows once again how systematically the militias operated. Note that the letter is numbered, and the final line says " Carry out these orders with the full feeling of responsibility" just like the wording of orders issued by the TNI and most militaries.

⁵²⁴ See "Partial list of 1462 Aitarak members" SCU Document index #: EDCB-5JMUA7.

⁵²⁵ Our copy of the original of this document does not scan clearly into a presentable file in this format. We have included a copy in the document index and a paper copy is on file at the CTF archives. See SCU index #: RNCO-5JPVKW



MARKAS BESAR
KOMANDO PASUKAN AITARAK
SEKTOR - B

Jl. Dr. Antonio de Carvalho (Tropical) Dili - Timor Timur

Fax / Telp. (0390) 312061

SURAT PERINTAH TUGAS
Nomor : 139 /SPT/MK-AT/IX/1999

Pertimbangan : Bahwa demi kelancaran pelaksanaan tugas pada Komando Pasukan Pejuang Integrasi Sektor B; Maka Perlu mengeluarkan Surat Perintah Tugas Komando Pasukan Aitarak Sektor B Dili.

M E M E R I N T A H K A N :

K e p a d a :

1. Nama Lengkap :
Jabatan : WAKIL Komandan Batalyon Aitarak
Kesatuan : Komando Pasukan Aitarak Sektor B Dili

2. Sepuluh Anggota Komando Pasukan Aitarak nama terlampir

U n t u k :

1. Setelah menerima Surat Perintah Tugas ini supaya segera mempersiapkan diri untuk melaksanakan tugas-tugas Pemeriksaan Komandan Pasukan Aitarak bersama Pasukan Besi Merah Putih di Pos-Pos Pasukan Pejuang Integrasi di Wilayah Liquica (Maubara) kepada Masyarakat yang akan mengungsi ke perbatasan;
2. Hal-hal yang prinsipil dan yang menyangkut pada Elit - elit Politik dan Kelompok Anti Integrasi (pengurus CNRT-Falintil) supaya ditahan dan diamankan sambil menunggu perintah dari Komandan Komando Pasukan Aitarak.
3. Melakukan koordinasi dengan Aparat keamanan dan Pasukan Pejuang Integrasi pada setiap pos di wilayah Tugas.
4. Melaporkan hasilnya kepada Komandan Pasukan Aitarak.
5. Melaksanakan Surat Perintah ini dengan penuh rasa tanggung jawab.

Demikian Surat Perintah Tugas ini dikeluarkan untuk diperhatikan dan dilaksanakan.

Aside from discrete operations, Guterres was also able to coordinate his members for large events, such as ceremonies.⁵²⁶ This included a weapons hand-over ceremony to UNAMET. A copy of Guterres' signed schedule for the ceremony is included below.

⁵²⁶ Another similar example can be seen in a "Schedule of Celebrations" for Indonesian Independence Day. See SCU index #: AKPA-5JPQNS.



MARKAS BESAR
KOMANDO PASUKAN AITARAK
SEKTOR - B

Jl. Dr. Antonio de Carvalho (Tropical) Dili - Timor Timur

Fax / Telp. (0390) 312061

S U S U N A N A C A R A

UPACARA PELETAKAN SENJATA KOMANDO SEKTOR B
TANGGAL 19 AGUSTUS 1999

1. Acara Pokok

1. Persiapan Pasukan
2. Pasukan Upacara memasuki lapangan Upacara.
3. Komandan Upacara memasuki Lapangan Upacara, Pasukan disiapkan
4. Inspektur Upacara Tiba pasukan di siapkan
5. Penghormatan Pasukan
6. Laporan Komandan Upacara, dilanjutkan dengan pemeriksaan Pasukan Upacara
7. Mengheningkan Cipta
8. Peletakan Senjata Komando Sektor B oleh Wakil Panglima Pejuang Integrasi Timor Timur
9. A. Amanat Inspektur Upacara;
B. Sambutan Ketua Unamet;
C. Sambutan Ketua KPS Timor Timur
10. Pembacaan Doa
11. Laporan Komandan Upacara
12. Penghormatan Pasukan
13. Inspektur Upacara Meninggikan lapangan Upacara
14. Pasukan Upacara diistirahatkan

2. Acara Tambahan

Pengumuman - Pengumuman

CATATAN :

- a. Pasukan Upacara menempatkan diri di lapangan upacara 15 menit sebelum upacara di mulai
- b. Acara Gladi bersih di laksanakan 30 Menit
- c. setelah upacara pasukan Komando Aitarak kembali ke Markas

Ditetapkan di: Dili
Pada tanggal : 19 Agustus 1999

KOMANDAN PASUKAN AITARAK

This document demonstrates foremost the ability Guterres had to seize arms from his members in a systematic way. He is able to line them up, parade them, inspect them and motivate them by giving a speech. This document paints the portrait of an organization that acts in a highly restricted and militaristic manner in deference to their leader, which lends little support to the argument that violence by militias occurred “spontaneously.”

A portrait of the leadership roles in militia (Guterres is our example) further emphasizes the bureaucratic and systematic nature of the organizations. A primary duty of the leadership of the militia, which included a Treasurer, was to ensure the organization was sufficiently funded and resourced for daily operations. Guterres left abundant evidence of his role as fund-raiser, logistical coordinator and bureaucrat in the series of budget proposals that he makes to a chain of military and civilian government leaders. An excerpt from one of his proposals addressed to the Governor of West Timor and CC’ed to Adam Damiri (Udayana), Wiranto (Commander and Chief of the Armed Forces), Minister of Finance, Minister of Taxation and the Minister for Home Affairs is below. The full text and a second proposal appear in our document index.

MARKAS BESAR KOMANDO PASUKAN PEJUANG INTEGRASI
TIMOR TIMOR
Jalan Dr. Antonio de Carvalho (Tropical) Dili
Telephone: 0330-312051, Fax: 0330-312051

=====

N o m o r : JJ /SP/NK-AT/VI/1999
Lampiran : 1 (satu) Bundel
Perihal : Surat Pengantar.

Kepada Yth:
Bapak Gubernur Kdh TK. I Nusa Tenggara Timur
di
Kupang.

Bersama ini kami mengajukan proposal dana Kegiatan Operasional Pasukan Pejuang Integrasi Timor Timur ke hadapan Bapak Gubernur, agar kiranya dapat memperhatikan Proposal dimaksud.

Demikian pengantar ini kami sampaikan kepada Bapak Gubernur, atas perhatian dan kebijaksanaan Bapak diucapkan terima kasih.

Dili, 30 Juni 1999.-

KOMANDO PASUKAN PEJUANG INTEGRASI
WAKIL PANGlima


EURICO SOARES

TERBUKAU:

1. BAPAK MENTERI DALAM NEGERI DI JAKARTA;
2. BAPAK MENTERI NEGARA PPN / KETUA BAPPENAS DI JAKARTA;
3. BAPAK MENTERI KEUANGAN REPUBLIK INDONESIA DI JAKARTA;
4. BAPAK MENTERI / PANGAB RI DI JAKARTA;
5. BAPAK PANGKAM IX UYAYUA DI LENDASAN;
6. E. R. R. T. I. N. G. G. A. L. L.

Disamping itu percepatan roda Pembangunan Timor Timur dalam kerangka Integrasi dengan Negara Kesatuan Republik Indonesia belum sepenuhnya mendapat penghargaan layak oleh banyak pihak baik itu dari dalam maupun dari luar Negeri. Pada hal Integrasi Timor Timur adalah puncak dari segala perjuangan rakyat Timor Timur menuju kemerdekaan dan kebangkitan Nasionalisme sebagai bagian dari bangsa Indonesia.

Menyadari kondisi dan perubahan strategis tersebut, dalam rangka mendukung pendayagunaan seluruh potensi Rakyat Timor Timur sebagai sumber daya yang efektif dalam mengisi nilai-nilai esensial Integrasi yang telah dicapai pada tahun 1976, maka sebagai bagian dari Rakyat Timor Timur para Laskar Pemuda Pro Integrasi, bertekad dan telah sepakat membentuk suatu Barisan kekuatan yang terdiri dari Sektor A, B dan C. sebagai kekuatan masyarakat Pro Integrasi.

5. MAKSUD DAN TUJUAN MENDIRIKAN 4 SEKTOR TERSEBUT :

1. Ikut memberikan bekal pengetahuan, keterampilan Idealisme, kepribadian dan budi pekerti luhur yang Pragmatis dan futuristik kepada Rakyat Timor Timur.
2. Memberikan arahan kepada masyarakat untuk menciptakan ketenangan di lingkungan masing-masing.
3. Mempertahankan Sang - Saka Merah Putih untuk tetap berkibar di bumi Ioro Sae.
4. Ikut mensosialisasikan Paket Otonomi yang di sepakati oleh Indonesia, Portugal dan PBB.
5. Memenangkan Jajak Pendapat pada tanggal 8 Agustus 1999 dalam Negara Kesatuan Republik Indonesia.
6. Menyediakan Informasi mengenai hasil Pembangunan sebelum, sesudah dan selama Integrasi.

C. ORGANISASI

Organisasi Pasukan Pejuang Integrasi di Timor Timur di bagi dalam tiga Regiao yang terdiri dari:

- 1. Sektor A. Membawahi wilayah bagian Timur:
 - : Kab. TK. II Baucau
 - : Kab. TK. II Viqueque
 - : Kab. TK. II Lospalos
 - : Kab. TK. II Manatuto
- 2. Sektor B. Membawahi Wilayah bagian Tengah:
 - : Kab. TK. II Dili
 - : Kab. TK. II Liquica
 - : Kab. TK. II Ermera
 - : Kab. TK. II Aleu
- 3. Sektor C. Membawahi Wilayah bagian Barat :
 - : Kab. TK. II Ainaro
 - : Kab. TK. II Maliana
 - : Kab. TK. II Suai
 - : Kab. TK. II Oekusi

D. RINCIAN ANGGARAN

Anggaran yang dibutuhkan oleh masing-masing Sektor adalah sebagai berikut :

1. KEBUTUHAN OPERASIONAL :

- a. 4 buah Kendaraan Roda 4 (empat)
@. Rp.30.000.000 X 4 = Rp. 120.000.000.-
 - b. 20 buah sepeda Motor
@. Rp.10.700.000 X 20 = Rp. 214.000.000.-
 - c. Sosialisasi Otonomi = Rp. 100.000.000.-
- J u m l a h -----
Rp. 434.000.000.-

In his budget proposals on behalf of the PPI or Aitarak he sounds more like a *yayasan* grant writer or civilian bureaucrat than a militia leader. He lays out the philosophy of the Aitarak organization and their political objectives. He justifies and promotes the positive contributions that Aitarak can make to society. Then, he explains in great detail what materials and funds they need to do these tasks. His budget for one year includes items such as motorcycles, electricity, staff desks and computers and transport. This budget was submitted at the end of June.

As a follow up to his request we have obtained another document that shows the Korem agreed to pay for at least some of the expenses. Letter logs from Aitarak show they communicated with the Korem about donated computers,⁵²⁷ and that electricity bills for two houses used as militia offices were asked to be forwarded directly to the Korem for payment on 12 August 1999.

⁵²⁷ See letter books in our document index.

MARKAS BESAR KOMANDO PASUKAN AITARAK
SEKOR B
Jalan : Dr. Antonio de Carvalho (tropikal) Dili
Telephone : (0399) 312061, Faxsimile : (0399) 312061

N o m o r : 147 /SP/MK-AT/VIII/1999
Lampiran :
Perihal : Pemberitahuan.

Kepada Yth :
Bapak Kepala PLN Wilayah IX Cabang Dili Tim- Tim
di
D. i. l. i

Dengan hormat,
Bersama ini kami sampaikan kepada Bapak Kepala PLN Wilayah IX Cabang Dili Timor Timur, bahwa Aliran Listrik yang masuk dirumah Bapak Dra. Marcus Djadur, Sahk di Comoro/Fomento dipakai sebagai Pos 1? Komando Pasukan Aitarak dan Rumah John Duka yang terletak di Desa Vila Verde juga dipakai sebagai Pos IX Komando Pasukan Aitarak.

Untuk itu kami sampaikan kepada pihak PLN bahwa proses pembayarannya dialihkan ke Korem 164/WD Timor Timur .

Demikian surat pemberitahuan ini kami sampaikan, atas perhatian dan kerja sama yang baik diucapkan terima kasih.

Dili, 14 Agustus 1999

KOMANDO PASUKAN AITARAK
SEKTOR B
K O M A N D A N


BERTINO GUTERRES

TEMBUSAN :

1. Bapak Gubernur TK. I Timor Timur;
2. Bapak Danren/WD Timor Timur;
3. Bapak Kapolda Timor Timur;
5. Bapak Ketua Umum DPP FPDK Timor Timur;
6. Bapak Dra. Marcus Djadur, Sahk untuk diketahui;
7. Bapak John Duka;
8. P a r t i n g g a l.

In another document we have a record of Guterres being informed by his Treasurer of a shortage in the budget to pay some militia members and other affiliates including the military:

**HEADQUARTERS
AITARAK TROOP COMMAND
SECTOR – B**

Dr Antonio de Carvalho Street (Tropical) Dili – East Timor fax/ph: (0390) 312061

Number : 03/MK-AT/VIII/1999
Attachments : 2 pages
Subject : Report of Honorary payments to Dili City Self-initiated Security Force members, from 20-8-1999 to 23-8-1999.

To the Honourable;

Commander of the Aitarak Troop Command
Sector B
In Dili

Based on: Work Order Number :05/SPT/MK-AT/VII/1999 dated 5 July 1999, regarding the assistance to facilitate the implementation of the payments to Self-initiated Security Force members, especially Aitarak Troop Command.

With this we submit the outcome of receipts and payments as well as the treasury balance up to 23 August 1999 as follows:

1. Receipts:

a. PNS/ABRI x 96 @ Rp120,000 = Rp 11,520,000
b. Public Security x 76 @ Rp 120,000 = Rp9,120,000
c. PRIVATE x 1119 @ Rp 300,000=Rp335,700,000
Total 1,291 people == →Rp356,340,000

2. Payments/outgoings:

a. PNS/ABRI x 96 @ Rp120,000 = Rp 11,520,000
b. Public Security x 76 @ Rp 120,000 = Rp9,120,000
c. PRIVATE x 668 @ Rp 300,000=Rp200,400,000
Total 840 people ==→Rp21,104,000

3. Treasury balance up to 23 August 1999:

a. PNS/ABRI -----Nil-----
b. KAMRA -----Nil-----
c. PRIVATE x 451 @ Rp 300,000 Rp 135,300,000
Total 840 people == →Rp 135,300,000

Clarification: 1. Company A,B,C -- 141 people
2. *Hera-Metinaro* = 310 people

Treasury balance until 23 August 1999 is Rp 135,300,000 (one hundred and thirty five million, three hundred thousand).

As an example, of how Guterres followed up on budgetary reports, we have another letter from him informing the Dandim of Dili of the shortage in funds. Presumably this indicates Guterres felt an obligation to report on Aitarak's financial matters to the local military command, which shows a degree of the military's financial and logistical control over the militias. Needless to say this also presents significant

evidence of joint perpetration since payments to the military are documented above, and reports about lack of payments are reported to the military below.

MARKAS BESAR KOMANDO PASUKAN AITARAK
SEKTOR B
Jalan: Dr. Antonio de Carvalho (Tropikal) Dili
Telephone: 0390-312061, Facsimile: 3090-312061

N o m o r : 148 SL/ME-AT/VIII/1999
Lampiran : -
Perihal : Laporan Mengenai Nasib Anggota Aitarak

Kepada Yth :
Bapak Komandan Kodim 1627 Dili
di - Dili

Dengan hormat,

Kami selaku Pimpinan Komando Pasukan Aitarak, sudah tidak bisa menahan lagi keluhan-keluhan dari Anggota sehingga pada kesempatan ini perlu kami sampaikan kasus-kasus yang dialami oleh Komando Pasukan Aitarak sebagai berikut :

1. Anggota Aitarak Pada mulanya berjumlah(1.521) orang yang di SK kan oleh Walikota Administratif Dili dan ditanda tangani oleh Bupati KDH.TK.II Dili.
2. Ternyata menurut Walikota Administratif Dili,hanya 1.445 orang yang bisa dibayar sedangkan-sisa tidak bisa dibayar alahannya Uang tidak cukup.
3. Ke 1.445 orang yang sudah di SPMU kan ini juga 12 orang sampai saat ini belum di bayar.

Demikian laporan ini kami sampaikan,
atas perhatian Bapak diucapkan terima kasih.

Dili, 16 Agustus 1998

KOMANDO PASUKAN AITARAK
SEKTOR B
K O M A N D A N


EURIQO ESPERRES

However, Guterres reveals himself to be most bureaucratic and institutional in a report he files with the FPDK Chairman about his organization's work. In this report which seems to be addressed to someone Guterres perceives as a "funder" or superior, he explains all the work that he has coordinated his organization to do for the pro-autonomy campaign – his achievements and failures. His writing style is uniform throughout, business-like, formal and highly structured with outlines and bullet points. Several pages of the document appear below, and the full text is available in the index:



MARKAS BESAR
KOMANDO PASUKAN AITARAK
SEKTOR - B

JL. Dr. Antonio de Carvalho (Tropical) Dili - Timor Timur

Fax / Telp. (0390) 312061

N o m o r : /RHS/MK-AT/VIII/1999
Lampiran :
Perihal : Laporan Hasil Pantauan kampanye

Kepada Yth :

Bapak Ketua Umum DPP FFDK Timor Timur
di -
Dj.l.i

Dengan hormat,

Sehubungan pelaksanaan Kampanye Jajak Pendapat tentang Masa Depan Masyarakat Timor Timur, di mana Pasukan Penjuang Integrasi (PPI) khususnya Komando Sektor B Dili mempunyai Wilayah terdiri atas Kabupaten Dili, Kabupaten Ermera dan Kabupaten Liquica sesuai Garis Komando PPI serta Kota Dili adalah Ibukota Propinsi Timor Timur yang menjadi Juru kunci / Barometer kota Kabupaten lainnya, dalam mengamankan pelaksanaan Kampanye di maksud kami telah menjaga keamanan dan memantau situasi pada setiap pelaksanaan kegiatan di lapangan sesuai tugas dan kemampuan yang dimiliki.

Maka kami laporkan kegiatan dimaksud sebagai berikut:

1. Tanggal 14 Agustus 1999 Kegiatan Kampanye di pusatkan di Lapangan Kampung Merdeka Dili Barat:
 - a. Keberhasilan
Kegiatan persiapan penggalangan massa(masyarakat pendukung Otonomi) dan pelaksanaan Kampanye berjalan dengan baik dan lancar sesuai rencana tanpa gangguan.
 - b. kekurangan
 1. Susunan Acara dan pembicara tidak terencana dengan baik dari Panitia.
 2. Para Artis kurang bermutu/Populer
 3. Pembagian kaos/Atribut otonomi tidak merata kepada Masyarakat.
 4. Masyarakat tidak semuanya hadir karena kesalahan informasi jadwal Kampanye.
 5. Aparat Tripika dan Tripedes serta para RT / RW kurang informasi dari Pengurus FFDK Cahang Dili serta DPP FFDK Timor Timur/ seksi kampanye.

3. Gangguan / penghadangan dan penganiayaan yang mengakibatkan jatuhnya korban dari Pro Otonomi yang dilakukan oleh kelompok anti Otonomi/ Pro Kemerdekaan (CNRT-Palantik) di wilayah Audian-Ruluhun, Becora dan Bidau (pelemparan, pemarahan dan adanya tembakan secara membabi buta dari kerumunan Masyarakat) serta penghadangan, pengrusakan, penganiayaan dan pembunuhan secara sadis terhadap masa Pro Otonomi serta penculikan pada malam hari di wilayah tersebut, dengan korban data sementara ini 3 orang meninggal Dunia, 5 orang hilang, 8 orang luka berat, puluhan luka ringan, 1 kijang dan 4 motor di bakar, 4 mobil dan 6 motor mengalami kerusakan berat.

d. Adanya ketakutan dan kekhawatiran dari Masyarakat tentang keamanan sehingga ada yang mengungsi ke tempat yang lebih aman, terjadinya pengungsian di maksud karena di sebarakan isu secara tidak bertanggung jawab oleh pihak CNRT bahwa akan adanya penyerangan dari Pasukan Pejuang Integritas (PPI), khususnya dari Besi Merah Putih, Saka-sera, Mahidi dan Aiterak.

KESIMPULAN :

1. Dari semua kegiatan kampanye dan pengamanan yang dilaksanakan pada umumnya berjalan dengan lancar dan baik sesuai rencana tanpa gangguan yang berarti.
2. Di sampaikan bahwa ada pengurus FPDK, BRIT, Aliansi Orsospol dan UNIF tidak bekerja sesuai tugas dan tanggung jawab yang di berikan.
3. Pendistribusian bahan/peralatan Otonomi sangat terlambat, karena penanggung jawab kurang serius bekerja.
4. Ada Pengurus organisasi Pro Otonomi yang tidak mahir di lapangan.
5. Ada pembicara/Jurkam yang tidak menguasai materi kampanye.
6. Ada pembicara / Jurkam saat menyampaikan materi terlalu emosi terbawa arus emosi Massa-Masyarakat.
7. Ada indikasi bahwa ada oknum yang ber - KKN di dalam tubuh organisasi Pro Otonomi.

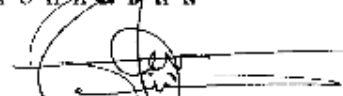
SARAN-SARAN/Hal 7

SARAN-SARAN :

1. Di sarankan sesuai hasil evaluasi dari pantauan sebelum, sedang dan sesudah kampanye di maksud agar supaya pembentukan panitia pada kegiatan berikutnya dapat melibatkan Anggota PPI dalam seksi-seksi operasional di lapangan lebih banyak lagi;
2. Para Pengurus Organisasi yang tidak mahir di lapangan supaya di beri tugas pada posisi administrasi di kantor saja;
3. Ada pembicara/Jurkam yang tidak menguasai materi kampanye berikutnya (setelah Otonomi menang-saat kampanye partai) supaya diberi orientasi dengan cukup baik materi dan hari diklat;
4. Ada pembicara/Jurkam saat menyampaikan materi terlalu emosi terbawa arus emosi Massa-Masyarakat supaya didiklat secara khusus potensi yang di miliki.
5. Kegiatan yang berkaitan dengan Masyarakat/rakyat kecil-masa pendukung hal utama yang perlu di perhatikan adalah pola pendekatan menjadi juru kunci.
6. DPP FPOK segera adakan pendekatan kepada Pers dalam negeri (TVRI, SCTV dan RCTI-Jawa Pos Kompas dan Jawa Pos) mengenai data/Dokumentasi tentang kendaraan plat merah milik pemerintah RI dan para PNS RI yang membelot ke CNRT dan menggunakan fasilitas Pemerintah RI pada kegiatan Kampanye Pro kemerdekaan/CNRT.
7. Bila ada oknum Pengurus Organisasi Pro Otonomi yang terlibat KKN pada kegiatan berikutnya supaya diperhatikan dalam hal tidak boleh di libatkan dalam panitia, ingat kita sekarang berada pada Era Reformasi karena musuh dalam selimut sangat berbahaya.

Demikian Laporan ini kami sampaikan untuk ditindak lanjut.

Ditl. Agustus 1999
KOMANDO PASUKAN AIRARAK
SEKTOR B
K O M A N D A N


EURICO GUTERRES

This letter shows that Guterres was executing a plan through the instrument of the militias. This plan was highly coordinated with other militias, and Guterres was clearly both a manager and a commander for his members. This document linked with the others above show that Aitarak, its members and affiliated political and militia groups did not act in a spontaneous matter. Rather they operated as modern, bureaucratic structures to fulfill specific objectives within coordinated and designated timelines.

III. Evidence Chain – Jakarta Central Government Coordination with Militias

One of the most interesting documents in the SCU Archives is a set of hand-written notes seized at the Aitarak Headquarters from an Aitarak member's attendance at a meeting in Bali on 15 May 1999. The notes are scribbled on the hotel stationery from the Plaza Beach Hotel in Sanur and the title of the meeting is "Pertemuan Bali Ke- II" (Second Bali Meeting).

The notes appear to be at an introductory session of the meetings where the attendees are being briefed about the content and implications for the May 5th Agreement on the pro-autonomy campaign. The attendees are clearly told that leaders of the pro-integration movement will be appearing and all 13 districts of East Timor were represented. Leaders that will attend this meeting in Bali include the "Menlu" (Minister of Foreign Affairs), the Orjen Pol, and the Sekjend. The participant who took these notes doesn't bother to list the rest, or the meeting didn't refer to specific individuals. The problem the organizers of the meeting (clearly the Indonesian government) want to address is the disunity between the different groups supporting pro-autonomy within East Timor. In particular the organizers want to address the split between the FPKD and BRTT (these organizations are both political groups but have been characterized as being the "new school" and "old school" of autonomy supporters, respectively), and want to address ways to consolidate the pro-autonomy forces. The attendees are told that under the May 5th Agreement the police force will be increased, and ABRI's presence will decrease. In short, they are told that the political fight relies more than ever on them. The last words written on the notes are "We have to win so there will not be a war!" These words indicate a prediction that pro-autonomy's failure at the ballots would start a war. As pro-independence groups would have no need to fight if they won with a majority, logic says that the perception of leaders at this official meeting was that violent activities could ensue, in the event the pro-autonomy option did not win at the ballot boxes.

The notes from this meeting and the appearance at the meeting of senior civilian government officials indicate support and coordination with the militias for a plan to win the pro-autonomy option. After the May 5th Agreements, the only reason the Minister of Foreign Affairs would have to meet with the militias would be to say all official support for their activities as "security" agencies had to be withdrawn, and there could be no further coordination or contact with them. There should have been information given about the cessation of the militia activities, preventative measures for violence and pro-independence leaders should have been present for the same meetings as well, so both

sides received the same treatment and information.⁵²⁸ Furthermore, there is no reason to go to the expense of bringing all the pro-Autonomy leaders to Bali for such a meeting, unless it was to provide them with privacy, and/or moral support. Communication about their cessation of their activities could have occurred within East Timor.

One witness recounted information in a statement without having any knowledge of these notes in the SCU Archives (I found these documents un-translated and in a file of miscellaneous documents).

“I would also like to mention that according to my brother in law [REDACTED] and [REDACTED] told me probably in May 1999 that they had been invited by General Wiranto to meet him in Bali. They had been together with the Governor Abilio Soares and Francisco Xavier Lopes Da Cruz...and Joao Tavares. When [REDACTED] and [REDACTED] returned to East Timor they both told us that the objective of the meeting had been that Wiranto wanted FPKD, BRTT and the pro-integration militia organizations (PPI) to be united as the central government, wanted to support them financially. Before receiving financial support they had to be united in only one front, which would be named United Front. Wiranto had after that given each of the East Timorese 30 million rupiah. I asked [REDACTED] why he personally received 30 million rupiah from Wiranto and he said that the monies they had received were for their personal needs...Wiranto had said that Indonesia would never abandon East Timor whatever the result of the Popular Consultation may be. He said that TNI would never leave East Timor.”⁵²⁹

Thus, there is independent confirmation that a meeting between pro-autonomy leaders and senior Indonesian institutional leadership occurred in Bali in May 1999 to address the organization of FPKD and BRTT, including active militia groups (such as Aitarak) and how to support these organization’s goals. Such a meeting is a violation of the neutral stance required by the May 5th Agreement and also provides evidence that would support a finding that the military and civilian institutions have responsibilities for the actions of the militia as aiders and abettors. It also demonstrates the planning role that senior Indonesian government leaders played in the militias, and the management role of the leaders of militias.

Another witness statement provides support for the likelihood of this meeting and its reported outcomes:

“General Wiranto in his letter to the Coordinating Minister for Politics and Security on 15 June 1999 wrote:

One of the development efforts with regard to the pro-integration groups that also needs to gain support from all of the Relevant Department/Agencies is to watch that they remain united and do not split, {...] continue to stress efforts for dialogue and discussion

⁵²⁸ There are indications that pro-independence leaders may have been also present at the conference but they were addressed and met separately from the pro-autonomy leaders.

⁵²⁹ Witness Testimony, #2-1b, p.103413.

and avoid physical activities aimed at intimidation that will simply be very counter-productive in the struggle for respective aspirations. In this connection two Pro-Integration factions joined in the FPDK and the BRTT have been successfully united in one fighting forum, the Joint Pro-Autonomy of East Timor (FBPOTT) with collective leadership from those two factions.”

Geoffrey Robinson’s report also suggests that Wiranto could have engaged in the funding of militias directly as described by the first witness testimony:

“There is some evidence too that General Wiranto may have authorized the diversion of real state funds in order to pay for the pro-autonomy campaign. During a Court Hearing on a corruption case in late 2001, the Head of the State Logistics Board (BULOG) Rahardi Ramelau, said that he had taken Rp. 10 billion from Bulog’s funds and ‘loaned’ it to Gen. Wiranto. He said he was told that the funds were to be used to pay for the pro-autonomy groups in East Timor.”

Other witness testimony reveals that meetings between pro-autonomy leaders and senior Indonesian government officials may have occurred on multiple occasions in 1999 outside of East Timor, either in Jakarta or Bali, and that other leaders promised support to the militias.

“ A couple of days later the working party for BRTT met with Kiki Syankari at ABRI Headquarters in Jakarta. Kiki was an Operation Assistant to the Panglima of ABRI who was General Wiranto. We approached Kiki Syahnakri because... we were seeking high level support from ABRI in relation to BRTT...Kiki told us that ABRI would support BRTT and that Zacky Anwar was responsible for everything that happened in East Timor in relation to the activities leading up to the referendum”⁵³⁰

This meeting was likely to have occurred in February.

Official meetings between pro-autonomy supporters and senior leadership of the Indonesian government strongly shows institutional responsibility for the actions of militia groups. By providing political advice, guidance on objectives and organization, funding for the meetings, in addition to the alleged additional funding distributed at the meetings are all forms of aiding and supporting the militias commission of grave violations of human rights. This documentation of a meeting with pro-autonomy leaders in Bali in May 1999 suggests institutional responsibility.

The document is below:

⁵³⁰ Witness Testimony, #2-22b.

15/5 99

PERTEMUAN BALI KE - I
DI
PLAZA BEACH HOTEL

> Menunjukkan penjelasan tentang atonasi yang telah disepakati oleh pemerintah Indonesia, Portugal dan PBB apakah menarima atau tidak menerima.

> Dalam pertemuan Bali ke - I di hadiri oleh tokoh-tokoh pro-integrasi, pro-pemisahan, pro-integrasi dari seluruh 13 kabupaten So Ma-on-Timor dengan:

- Maslu
- Orjan pal
- Sekjand



> Apabila rakyat Timor menerima atonasi maka berakhir masalah Timor III dan yang tidak menerima PBB tidak menarima lagi.

> RI tidak berharap jika masyarakat Timor kembali lagi bangsa bisa menerima kembali tetapi harap MPR.

// FPKK - BRTT //

Amirudin

Usul / Saran :

> 2 (dua) organisasi yang sedang bersaing berusaha utk saling mengalahkan ini akan menjadi faktor penghambat yang luar biasa dalam pelaksanaan jajak pendapat.

> Kami atas nama para sajak militer mohon pengertian dan kesederhanaan dari Timah 2i pro integrasi utk tidak menghabiskan waktu yang banyak dan biaya ini dengan saling berbantahan

> Putra daerah Timah 2i ABRI 5.000 orang

> Di Timah 2i boleh menitikberatkan pada politik sendiri

> Penambahan polisi di Timah 2i

> TNI akan dikurangi

⇒ Menolak atau
⇒ Menunggu } Timah 2i penutupi
penutup Timah 2i

Tugas :
Konsolidasi.

⇒ 200 Registrasi di Tim-Tim

⇒ 200 TPS

⇒ Kita harus membayar untuk tidak
ada perang

IV. Evidence Chain - Regular Communication between Aitarak and Military and Civilian Officials

Eurico Guterres was a prolific letter writer. In the SCU files we have located two of the letter log books from the office of his secretary at the Aitarak Headquarters at the Tropical Hotel. This letter book shows frequent communication between the militia commander, and the military and civilian government's senior leadership present in East Timor. We can also observe the systematic way Aitarak operated as an organization that formally recorded and sent correspondence in an official capacity.

No Surat	Tgl Surat	ALAMAT * 2074 ZKAM	PELUAL
01	24-4-1999	Bpk. Gab. KDH. TK. I Sta sekitar TK. I.	Ijin menempati Pos Pengajar gedung Negara Labanc.
02	28-4-1999	Bpk. Kadis Sosial Dati I Tim-Tim	Bantuan Biaya Pembinaan Generasi Muda Pro Integrasi
03	28-4-1999	Bpk. Ka. Kowil Dep Sosial Tim-Tim	- " -
04	29-4-1999	Instansi Terkait	Permohonan Dispensasi
05	29-4-1999	Pimp. Instansi, Vertikal, - Horizontal maupun Perusahaan- Perusahaan masing-masing di tempat.	Permohonan Bantuan Dana.
06	29-4-1999	Bpk Gubernur KDH. TK. I Tim-Tim.	Usulan Penekatan Perumahan P.R.S. Anti R.I.
07	29-4-1999	Bpk Gubernur KDH. TK. I Tim-Tim.	Mohon Bantuan Dana Sosial - sasi OTOMOM.
08	6-5-1999	Komandan Kodim se Tim-Tim	Mohon Bantuan
09	- - -	Bapak Gubernur KDH. TK. I	Laporan.
10	- " -	Bapak Kepala Sospol TK. II Dili	Permohonan Dispensasi
11	8-5-1999	Bapak Kabudat Prof. Tim-Tim	Mohon Bantuan Logistik.
12	- " -	Bapak Direktur Pimp. Pertanian Tim-Tim	Mohon Dukungan Bantuan Bahan Bahan.
13	11-5-1999	Bapak Dan - Densusbang 4/IX	Permohonan Dispensasi -
14	12-5-1999	Bapak Pimp. R.R.I & STT.	Menyebarluaskan hibahan.
15	17-5-1999	Kepala BPO cabang Matiana	Surat Pengantar.

The chart below provides a summary of these letter books' contents. This is only a sampling of correspondence sent during a two month period by one of Guterres' office staff.

No	Name of Institution	Number of letters sent	Type of Request
1	Governor of East Timor	9	Ask permission to use security post in state house in Lahane, Request for dismissal of civil servants who are anti-Indonesia, request for funding support for Pro-Autonomy, Report, Recommendation letter, dispensation request, Recommendation letter, Request for logistic support, funding request for a Pamswakarsa activity
2	Korem 164	7	Request of support, Clarification of incident, respond, Request for using the cooking utensils, Request for rice support, Request for providing one unit computer, Request for dispensation
3	Kodim 1627	6	Request of support, Request for dispensation, Request for dispensation, request for dispensation, Report regarding the fate/life of members of Aitarak, permission request
4	Governor of West Timor	1	Proposal letter
5	Dili District head	5	Recommendation letter, salary payment request for a civil servant, request for stipend payment, request for vehicle to use for operation, request salary payment for a civil servant
6	Kadis Sosial Dati I Timor-Timur	2	Funding request for training of pro-integration youths, Dispensation request, Dispensation request
7	Ka-Kanwil Dep. Sosial Timor-Timur	1	Funding request for training of pro-integration youths
8	Bapak Kakan Sospol TK.II Dili	1	Dispensation request
9	Bapak Kabulog propinsi Timor-Timur	1	Request for logistic support
10	Bapak Direktur Pimp. Pertamina Timor-Timur	1	Request for fuel support
11	Bapak Dan-Densibang 4/IX	1	Dispensation request
12	Kepala BPD Cabang	1	Recommendation letter

	Maliana		
13	Ossu Sub district coordinator	1	Salary Payment request for a civil servant
14	Head of Lospalos district police	1	Recommendation letter
15	Kanwil Dep. Penerangan Propinsi Timor-Timur	1	Request for support
16	Head of East Timor Police	1	Request to solve a problem
17	Kepala Biro-humas Pemda TK.I Propinsi Timor-Timur	1	Dispensation request
18	Head of Dili district Police	1	Incident report on what happened in post XIV
19	Kepala Sekwilda TK.I Timor-Timur	2	Funding request for a Pamswakarsa activity, Dispensation request
20	Head of Comoro Airport	1	Dispensation request
21	Kepala Kadis LLAJ TK.I Timor-Timur	2	Dispensation request, Response
22	Head of Ermera District	1	Ask for his attention
23	Kepala Dinas Peternakan TK.I Timor-Timur	2	Information letter, Dispensation request
24	Kepala Dinas Pendidikan dan kebudayaan TK.II Baucau		Attorney letter
25	KaKanwil DEPDIBUD TK.I Timor-Timur	1	Permission request to use their place
26	Head of Lequisa District	2	Salary payment request for civil servant, Salary payment request for civil servant
27	Head of Dili Dsitric police	1	Information letter regarding conducting of a ceremony
28	Ketua BAPPEDATK.I Timor-Timur	1	Request for Computer
29	KaKanwil Pertanian TK.I Timor-Timur	1	Request for computer
30	KaKanwil PU TK.I Timor-Timur	3	Request for Computer, Information letter, Dispensation request
31	KaKanwil Transmigrasi TK.I Timor-Timur	1	Request for Computer

32	Walikota Administratif Dili	1	Request for fuel support
33	Ketua Biro Perlengkapan Propinsi Timor-Timur	1	Request to borrow chairs
34	Kepala PLN Wilayah IX Cabang Dili Tuimor-Timur	2	Information letter, dispensation request
35	Ketua Persidium UMP Timor-Timur	1	Request for financial support
36	Kepala BPS Propinsi Timor-Timur	1	Dispensation request
37	Head of Bobonaro District	1	Salary payment request for civil servant
38	Kakan Dephop TK.II Liquisa	1	Salary payment request for civil servant
39	All Company Commanders A, B, C and D	3	Report regarding the situation in the area, order, Information letter,

CHAPTER 9

Trials before the Special Panels for Serious Crimes

The Special Panels for Serious Crimes completed 55 trials from 2000- 2005 when their mandate was terminated by the UN Security Council. Various aspects of these trials, including their jurisprudence and their failure in many cases to meet basic international standards have been fully explored elsewhere.⁵³¹ The aim of this chapter is far more limited. Here we examine the 55 cases in regard to a discrete set of questions: What were the allegations made by prosecution and defense in those cases regarding the occurrence of crimes against humanity in East Timor in 1999? What were the allegations made by prosecution and defense regarding institutional responsibility for those crimes? What findings were made by the Court in regard to those allegations? What was the evidence relied on to support those findings? Did that evidentiary base in fact support the findings? What gaps were there in the evidence in regard to the questions of the existence of crimes against humanity and institutional responsibility? How might those gaps be filled?

To analyze fully all 55 trials would be a massive undertaking. The method employed here is to analyze in depth the two major crimes against humanities cases brought before the SPSC: the Los Palos and Lolotoe Cases, as they are commonly called. The latter case is in three parts because two guilty pleas resulted in three distinct proceedings. These cases were selected because only there did the prosecution seek to independently establish the general context in which the specific crimes charged allegedly took place. This contextual dimension, or in legal terms, contextual or “chapeau” elements, is necessary to establish the existence of a “widespread or systematic attack against a civilian population” required for the proof of a charge of crimes against humanity. Further, these were by far the longest trials with the greatest amount of testimony and evidence provided to the Court. Also, the Court’s Judgments are by far the longest amongst all the SPSC decisions. It is not the length that matters, but rather that the Court attempts to fully summarize and analyze prosecution and defense cases, and to consider the testimony of all witnesses relied on by the Prosecution and Defense. Building upon this analysis the Court makes specific factual and legal findings on all of the central allegations of the Defense and Prosecution cases. While this may seem like a “normal” way of writing a judgment, it was in fact fairly unusual at the Special Panels. As a result, it is these two cases that afford the best opportunity for evaluating the way in which the Court reaches its conclusions.

In addition to the in-depth analysis of these cases, this chapter also provides a briefer, schematic evaluation of the Judgments in xxx other cases. This evaluation addresses the same questions noted above, but in a more abbreviated form.

A. The Three Lolotoe Cases:

⁵³¹ See David Cohen, *Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor* (Honolulu: East-West Center, 2006).

1. Trial of Joao Franca Da Silva, Case No, 4a/2001, Judgment of 5 December 2002.

1. The Indictment

Joao Franca Da Silva alias Jhoni Franca, Jose Cardoso Ferreira alias Mouzinho, and Sabino Gouveia Leite were indicted jointly for crimes against humanity, including murder, torture, rape, and persecution, committed in the Lolotoe sub-district. The indictment charged them on both theories of individual responsibility and superior responsibility for these crimes. Jhoni Franca was the commander of the KMP militia in Lolotoe, Jose Ferreira was his deputy-commander, and Sabino Leite was a village chief (Kepala Desa) in Lolotoe. After the beginning of the trial Jhoni Franca and Sabino Leite pleaded guilty and their cases were severed. Individual judgments were rendered in each of these cases after hearings at which the prosecution introduced evidence to satisfy the Court that the guilty plea was in fact supported by evidentiary facts (as required by UNTAET 2000/30 Sec. 29a). The trial of Jose Ferreira proceeded and resulted in a guilty verdict. We will first set out the allegations of the indictment and then inquire as to what findings the court made on them and whether those findings were supported by the evidence before the court.

The indictment alleged the following general facts:

- That widespread and systematic attacks against the civilian population occurred in East Timor from January to October 1999.
- That “the widespread and systematic attacks were part of an orchestrated campaign of violence ... carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces ... and members of the Indonesian Police Forces (POLRI) with the acquiescence and active participation of Civilian and Military authorities.” (para.2)
- That more than 25 such organized pro-autonomy militias were operating in East Timor. These groups had the backing of the TNI and Civil Administration and were called upon to intimidate independence supporters and those associated with them. (para. 3)
- That in Lolotoe the three accused worked closely with Lt. Bambang Indra, the TNI commander in Lolotoe. (para. 13)
- That in Lolotoe the TNI provided KMP militia with logistic support. (para. 17)
- That many members of the KMP received compensation from the Indonesian Government for “their actions against the civilian population of Lolotoe...” (para. 18)
- That between “April and October 1999, both the TNI in Lolotoe sub-district and the KMP militia conducted acts of violence” against pro-independence supporters and others associated with them, including unlawful arrest and detention, murder, arson, rape, torture, and persecution.

The indictment then alleged a series of facts comprising specific criminal actions in which the accused participated. As noted above, Jhoni Franca and Sabino Leite pleaded guilty. As part of their guilty plea they specifically admitted the factual allegations of

many paragraphs of the indictment. These specific admissions of facts will be noted below. The factual allegations against the accused included:

- Deprivation of liberty and torture of Benedito Da Costa, Amelio Belo and family because their son Mario was suspected of being a member of Falintil. During a KMP operation aimed at pro-independence supporters in their village, Benedito Da Costa was tortured. Amelio Belo, Benedito Da Costa, and their two children were forcibly brought to the KORAMIL by Jhoni Franca, Jose Cardoso, and other KMP militia and detained there for approximately 3 months. (paras. 28-30, specifically admitted by Jhoni Franca [hereafter JF] and Sabino Leite [hereafter SL]).
- Illegal detention, beating, torture, and mutilation of Adao Manuel, suspected of being a pro-independence supporter. Adao Manuel was brought to the KORAMIL by Jose Cardoso, Jhoni Franca, and other KMP militia. At the KORAMIL he was tortured, detained, and repeatedly beaten by Cardoso and Franca while being interrogated by them. (paras. 31-33, specifically admitted by JF and SL).
- Illegal detention, beating, torture, and mutilation of Mario Goncalves, suspected of being a pro-independence supporter. All three accused were alleged to have ordered and participated in the beating and torture of Mario Goncalves after militia troops acting under their orders and incitement took him away from the Lolotoe church where he had sought shelter. He was then detained by them at the KORAMIL. (paras.34-37, specifically admitted by JF and SL)
- Illegal detention and beating of Jose Leite, suspected of being a pro-independence supporter. All three accused are alleged to have ordered and participated in the beating of Jose Leite and to have detained and beaten him at the KORAMIL. (paras.38-42, specifically admitted by JF and SL).
- Illegal arrest and detention under inhumane conditions of Aurea Cardoso and her children because her husband was suspected of being a pro-independence supporter. Jhoni Franca and Jose Cardoso were alleged to have arrested, detained, and interrogated her at the KORAMIL over approximately three months. After accepting a bribe Sabino Leite, Jose Cardoso, and TNI commander Lt. Bambang Indra prepared and signed a release order from the KORAMIL for her. (paras. 43-48, specifically admitted by JF and SL. Para.49 also admitted by SL only, specifying that she was detained under inhumane conditions).
- Illegal detention and torture of Herminio Da Graca, a CNRT member, for making speeches in favor of independence. The indictment alleges that the TNI and Sabino Leite received Herminio's name from the militia. Militia members apprehended him and he was detained and interrogated by Franca and Cardoso. He was subsequently detained at the KORAMIL and interrogated and tortured by a TNI Sgt. (paras. 50-52, specifically admitted by JF and SL).
- Illegal detention of Mariana Da Cunha because she was suspected of having a relationship with a pro-independence supporter. KMP militia and TNI soldiers searched a village for pro-independence supporters. Jose Cardoso read out the names of Mariana Da Cunha and Victims A, B, and C and their village accused them of having relationships with Falintil members. Mariana Da Cunha was subsequently taken and detained against her will for six nights at the house of

Sabino Leite. She was then released by Jhoni Franca (paras. 53-58, specifically admitted by JF and SL).

- Illegal detention, abduction, deprivation of liberty, and repeated rape of Victims A, B, and C, because they were suspected of having a relationship with pro-independence supporters. KMP militia, led by Jhoni Franca and Jose Cardoso, all armed with automatic rifles and other weapons, went to the residence of the victims. “Cardoso was wearing a TNI uniform.” The victims were forcibly taken and detained at the houses of Sabino Leite and Jhoni Franca, and at the PKK building in Lolotoe. The accused and other KMP militia members forced them to go to militia parties. On June 26 Jose Cardoso took the three victims to Atambua. On June 28 Jose Cardoso and TNI Lt. Mambang Indra took them back to Lolotoe to Jhoni Franca’s house, where their forcible detention continued until they were later released (paras. 60-68, specifically admitted by JF and SL).
- Rape of Victims A, B, and C. While in Atambua (June 26-28) the three women were repeatedly raped by TNI Lt. Bambang Indra, TNI intelligence officer Francisco Noronha, and Jose Cardoso. They were threatened with death if they resisted (paras. 69-75).
- Murder of Mariana Da Costa and Carlito Freitas, unarmed civilians. The victims were murdered during an attack by KMP militia and TNI. Jose Cardoso “led and commanded the joint TNI/KMP militia attack.” He threatened those campaigning for independence with death. The body of Mariana Da Costa, “was thereafter brutally mutilated by the TNI and members of the KMP militia.” (paras. 76-81)
- Murder of Augusto Noronha, a member of CNRT. The victim was dragged from his house and murdered during a KMP operation under the command of Jose Cardoso, directed against pro-independence supporters in his village (paras. 82-83).
- Murder of Antonio Franca. The victim was murdered during a joint TNI/KMP militia attack on his village, under the command of Jose Cardoso. (paras. 84-85)
- Crimes of persecution directed against the civilian population of Lolotoe, perpetrated through intimidation, threats, deprivation of liberty, unlawful arrests and detention, inhumane and humiliating acts, rape, and murder. All of the accused, “together with other militia and TNI officers, committed, procured, incited, aided and abetted, or otherwise assisted in these acts of persecution. (paras. 86-89)

2. The Judgment on the Guilty Plea of Jhoni Franca

Under a plea bargain Jhoni Franca pleaded guilty to all the counts of imprisonment and deprivation of liberty as crimes against humanity noted above, as well as to the torture of Benedito Da Costa, Adao Manuel, Mario Gonsalves, and Jose Leite as a crime against humanity. In arriving at its findings the Special Panel relied on the admissions of the accused as well as evidence introduced by the Prosecution in the form of witness testimony. In addition to the admissions to specific paragraphs of the indictment noted above (paras. 20-48, 50-52, 53-59, 60-68) he also specifically admitted that the crimes he

committed were “part of a widespread and systematic attack against a civilian population with knowledge of the attack.” (Judgment para. 57)

General Findings (Contextual Elements of Crimes Against Humanity)

In reaching its findings, the Court relied on the admission of the Accused, the testimony of Amelio Belo, Aurea Cardoso, Rosa De Jesus, Adao Manuel, Herminio Da Graca, Mariana Da Cunha, Victim A, victim B, and Victim C, as well as the KPP HAM and UN Secretary General’s reports on East Timor.

The findings include a series of findings on the contextual elements of crimes against humanity. These findings endorse the general allegations of the indictment about a widespread and systematic attack against the civilian population as “part of an orchestrated campaign of violence ... carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces ... and members of the Indonesian Police Forces (POLRI) with the acquiescence and active participation of Civilian and Military authorities.” (Para. 96) The court further finds the militias operated throughout East Timor under the umbrella organization of the PPI, with the support of the TNI and Civil administration. (and Para. 97) These operations targeted civilians of all age groups who were perceived to support independence and employed physical violence, mass destruction of property, and the forcible transfer and deportation of the civilian population to West Timor. (Paras. 99-101) Finally, the TNI and POLRI failed to meet their obligations under the May 5th Agreement and allowed the militia “to act with impunity.” (Para. 102)

None of these general findings refer to specific evidence. However, because the testimony heard by the court focused on Lolotoe it may be surmised that the findings as to the larger context of the violence across East Timor are based upon the two reports cited by the court. As in most other crimes against humanity cases, these reports are simply referred to and are not discussed or analyzed by the Court. The Court also does not refer to or cite any part of either report in its findings. What evidence it is relying on in reaching these findings is not clear.

In regard to a general attack against the civilian population across East Timor, the evidentiary basis of the court’s findings is untested. The prosecution relied upon the two reports to establish the contextual elements of crimes against humanity but the court gives no indication of what evidence in those reports proves those elements beyond a reasonable doubt. This, of course, is a shortcoming common to most of the judgments of the Special Panels in crimes against humanity cases. It should be noted, however, that in this case Jhoni Franca specifically admitted the contextual elements and stated that he was aware that the crimes to which he admitted were part of a widespread or systematic attack against the civilian population.

There was, however, evidence before the Court which it could have used to support its findings on the contextual elements of crimes against humanity. This evidence may be found in the multiplicity of attacks alleged in the indictment in the Lolotoe sub-district.

Those allegations, if proved, could support findings that attacks were directed against the civilian population in that the indictment alleges that civilians, including unarmed women and children, were specifically targeted and were in fact attacked. The indictment also alleges a multiplicity of attacks more than sufficient, if proved, to support a finding that the attacks were widespread. Because the attacks were also alleged to have systematically targeted suspected supporters of independence, or individuals associated with those supporters (family members, wives, domestic partners), and because of the similarity in the pattern of the attacks as alleged in the indictment, these allegations could, if proved, have also supported a finding that the attacks were systematic. There was also conduct (speeches for example) alleged in the indictment from which it could be inferred that the accused were aware that their conduct in individual instances was part of the larger attack against the civilian population. In examining the court's findings on specific charges below, we will also consider the way in which those factual findings do or do not support the contextual allegations of the indictment as indicated in this paragraph.

*The Judgment's Factual Findings and their Evidentiary Basis:
Elements of Specific Offenses*

Turning to the events in Lolotoe charged in the indictment, the Court makes the following findings:

- The TNI in Lolotoe under the command of Lt. Bambang Indra “worked in close cooperation with two of the principal armed militia groups,” the KMP and DMP.
- The TNI in Lolotoe under the command of Lt. Bambang Indra provided the militias with logistical support and compensation for their participation in actions against civilian supporters of independence.
- Between April and October 1999 the TNI and KMP militia in Lolotoe carried out acts of violence against civilians considered to be pro-independence or linked to pro-independence supporters. These attacks included illegal arrest and detention, arson, murder, torture, and persecution. Further, “many acts were directed in particular against women whose husbands were presumed to be Falintil ... or supporters of independence.”
- These attacks included the torture and illegal arrest and detention of Benedito Da Costa and his wife and children by the KMP. The KMP were looking for their son, Mario, who was believed to be a member of Falintil. They were taken by the KMP to the KORAMIL in Lolotoe where they were illegally detained for almost three months.
- Aldo Manuel was targeted as a supporter of independence. He was illegally detained after being forcibly removed by KMP members from the church in Lolotoe. He was detained, tortured, and interrogated by the KMP at the KORAMIL.
- Mario Goncalves was also targeted during a KMP operation against Guda Village because he gave speeches in support of independence. Approximately 100 KMP members led by Jhoni Franca beat him, cut him with machetes, cut off his ear, and forced him to eat it. He was then held with the other detainees at the KORAMIL.

- Jose Leite was the vice-secretary for CNRT in Lolotoe. He was targeted by the KMP and was repeatedly beaten by them, under the orders of Jhoni Franca, at various locations in Lolotie including outside the CNRT office. He was taken to a POLRI office “where they met an Indonesian officer, Martin.” He was further interrogated and beaten at the KORAMIL, where he was then detained for approximately three months.
- Aurea Cardoso was targeted with her children because she and her husband were supporters of independence. She was told by KMP “that she and her two children were to be arrested by the militia because they could not locate her husband...” She was interrogated by Jhoni Franca as to the whereabouts of her husband and he threatened her children. She and her children were detained at KORAMIL until July 1999.
- Herminio De Graca was targeted by KMP because of his affiliation with CNRT. He was detained by KMP and taken to the house of Jhoni Franca who questioned him about FALINTIL. The next day he was interrogated at FALINTIL by a TNI sergeant. He was subsequently detained at the house of Manuel Da Costa, a TNI member, until July 1999.
- On 20 May 1999 about 50 KMP and “a few TNI” went to Guda village. “They gave a speech to the villagers present telling them that there is information that the villagers were supporting FALINTIL with food and that some of the female villagers were having relationships with FALINTIL members.” The names of Maria Da Cunha and Victims A, B, and C were read out from a list. They took Maria Da Cunha to Lolotoe where she was forcibly held for six nights until she was released by Jhoni Franca.
- In May 1999 KMP Militia and TNI went to the houses of Victims A, B, and C. “Some of them were wearing TNI uniform.” They were taken to Lolotoe where they were held for one week by Jhoni Franca and other KMP. They were also moved to other locations where they were forced to stay and to cook for Jhoni Franca and others.

All of these findings are supported by the admissions of the Accused to specific factual allegations as indicated above where these admissions were enumerated. The court does not specifically indicate where witness testimony supports these findings and this is a serious shortcoming in assessing its reasoning. The list of witnesses heard indicates that most of the victims of the acts on which findings were made testified. It also appears that testimony relevant to the findings was introduced because the court finds on specific facts that are not mentioned in the indictment. Because there was a guilty plea in this case there was also little need for the court to engage in a specific analysis of the testimony and its credibility.

In addition to the admissions on specific allegations of the indictment noted above, the accused also made a statement to the Court. In that statement he said that he was forced by Indonesian intelligence commander Sutrisno to join the KMP because he feared he would otherwise be killed. He further stated that, “the militia and TNI started to carry out operations searching for pro-independence youths.” He also stated that he received his orders from the TNI: “I ... was told what to do by the TNI. After I became a militia I had

to satisfy the hearts of the TNI who ordered me to tell the youth to join the pro-autonomy.” He reiterated this point at some length.

What conclusions can be reached from this case? There was evidence before the court which supported its specific findings as to the allegations of criminal conduct in Lolotoe. This evidence was furnished by the guilty plea, specific admissions, and statements of the accused. These support the accusations of illegal arrest and detention specifically targeted against civilians believed to support pro-independence. They also support findings of beatings and torture similarly targeted against pro-independence supporters. The extent to which the witness testimony given in court supports these conclusions is not clear because their testimony is not discussed in the Judgment.

In addition to these specific conclusions there is also evidence which supports the findings that the criminal conduct did not consist of random, isolated acts but rather constituted gross human rights violations and crimes against humanity. This evidence, as noted above, was not analyzed by the court to support its findings on the contextual elements of crimes against humanity. Nonetheless, the findings reviewed above indicate a multiplicity of attacks against the civilian population of Lolotoe. Further, these attacks followed a pattern: KMP groups, under the command of Jhoni Franca or Jose Cardoso obtained information about independence supporters and their families. They used these lists and information in operations directed against unarmed civilians, including women and children, because they were suspected of pro-independence activities. The operations followed a similar pattern: Villages were entered by organized groups of KMP, specific individuals were detained and were then taken to KORAMIL in Lolotoe for interrogation. The men were subjected to repeated beatings. CNRT members were typically beaten in public places. Some of the victims were subjected to torture. All of the detainees were held in KORAMIL, or, in a few cases, other locations associated with the TNI. They were all released at the same time in July 1999. These conclusions are supported by the specific admissions of Jhoni Franca. No evidence was introduced in Court to the contrary because of the guilty plea. In terms of institutional responsibility, the uncontroverted evidence points to the close integration and coordination of TNI and militia activities at the local operational level in Lolotoe. The use of the KORAMIL as a detention facility for individuals forcibly removed from their homes by the militia, the joint participation in interrogations, the moving of individuals back and forth from militia to TNI facilities, and the presence of TNI officers and personnel during operations and other activities was clearly indicated by the evidence given both by witnesses and by the Accused themselves. In addition, the admissions of guilt made by the Accused suggests an overall control by the TNI of the operations and membership of this militia group. While that contention may have been made in part to shift responsibility away from the Accused, it is nonetheless corroborated by the other evidence presented in the case, as well, as we shall see, by evidence presented in the other Lolotoe cases as well.

Further steps:

In order to determine definitively what other evidence in this case might have supported or contradicted the findings of the court and the conclusions indicated above two further

steps are necessary. First, one would have to examine the transcript and analyze the testimony given by witnesses in court as well as all the statements of the Accused. Second, the case file must be examined so as to (a) analyze the pre-trial statements of the witnesses who appeared in Court and compare these statements to their in-court testimony (b) analyze all of the witness statements and evidence in the case file so as the only way to provide a comprehensive assessment of the evidence available in this case.

2. Trial of Sabino Gouveia Leite, Case No. 4b/2001, Judgment of 7 December 2002

1. *The Indictment*

The indictment for Sabino Leite was the same as for Jhoni Franca. Sabino Leite as an individual was charged with six counts of crimes against humanity:

- Imprisonment and deprivation of liberty of Benedito Da Costa, Amelia Belo, Adao Manuel, Mario Goncalves, Jose Gouveia Leite and Aurelia Cardoso and her two children (Count 22)
- Imprisonment and deprivation of liberty of Herminio Da Graca (count 23)
- Imprisonment and deprivation of liberty of Victim A, Victim B and Victim C (count 24)
- Torture of Benedito Da Costa, Adao Manuel, Mario Goncalves and Jose Gouveia Leite (count 25)
- Other inhumane acts causing great suffering or serious injury to civilians (count 26)
- Persecution of supporters of independence (count 27)

Joao Franca Da Silva alias Jhoni Franca, Jose Cardoso Ferreira alias Mouzinho, and Sabino Gouveia Leite were indicted jointly for crimes against humanity, including murder, torture, rape, and persecution, committed in the Lolotoe sub-district. The indictment charged them on both theories of individual responsibility and superior responsibility for these crimes. Jhoni Franca was the commander of the KMP militia in Lolotoe, Jose Ferreira was his deputy-commander, and Sabino Leite was a village chief (*kepala desa*) in Lolotoe. After the beginning of the trial Jhoni Franca and Sabino Leite pleaded guilty and their cases were severed. Individual judgments were rendered in each of these cases after hearings at which the prosecution introduced evidence to satisfy the Court that the guilty plea was in fact supported by evidentiary facts (as required by UNTAET 2000/30 Sec. 29a). The trial of Jose Ferreira proceeded and resulted in a guilty verdict. We will first set out the allegations of the indictment and then inquire as to what findings the court made on them and whether those findings were supported by the evidence before the court.

The indictment alleged the following general facts:

- That widespread and systematic attacks against the civilian population occurred in East Timor from January to October 1999.
- That “the widespread and systematic attacks were part of an orchestrated campaign of violence ... carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces ... and members of the Indonesian

Police Forces (POLRI) with the acquiescence and active participation of Civilian and Military authorities.” (para.2)

- That more than 25 such organized pro-autonomy militias were operating in East Timor. These groups had the backing of the TNI and Civil Administration and were called upon to intimidate independence supporters and those associated with them. (para. 3)
- That in Lolotoe the three accused worked closely with Lt. Bambang Indra, the TNI commander in Lolotoe. (para. 13)
- That in Lolotoe the TNI provided KMP militia with logistical support. (para. 17)
- That many members of the KMP received compensation from the Indonesian Government for “their actions against the civilian population of Lolotoe...” (para. 18)
- That between “April and October 1999, both the TNI in Lolotoe sub-district and the KMP militia conducted acts of violence” against pro-independence supporters and others associated with them, including unlawful arrest and detention, murder, arson, rape, torture, and persecution.

The indictment then alleged a series of facts comprising specific criminal actions in which the accused participated. As noted above, Jhoni Franca and Sabino Leite pleaded guilty. As part of their guilty plea they specifically admitted the factual allegations of many paragraphs of the indictment. These specific admissions of facts will be noted below. The factual allegations against the accused included:

- Deprivation of liberty and torture of Benedito Da Costa, Amelio Belo and family because their son Mario was suspected of being a member of Falintil. During a KMP operation aimed at pro-independence supporters in their village, Benedito Da Costa was tortured. Amelio Belo, Benedito Da Costa, and their two children were forcibly brought to the KORAMIL by Jhoni Franca, Jose Cardoso, and other KMP militia and detained there for approximately three months. (paras. 28-30, specifically admitted by Jhoni Franca [hereafter JF] and Sabino Leite [hereafter SL]).
- Illegal detention, beating, torture, and mutilation of Adao Manuel, suspected of being a pro-independence supporter. Adao Manuel was brought to the KORAMIL by Jose Cardoso, Jhoni Franca, and other KMP militia. At the KORAMIL he was tortured, detained, and repeatedly beaten by Cardoso and Franca while being interrogated by them (paras. 31-33, specifically admitted by JF and SL).
- Illegal detention, beating, torture, and mutilation of Mario Goncalves, suspected of being a pro-independence supporter. All three Accused were alleged to have ordered and participated in the beating and torture of Mario Goncalves after militia troops acting under their orders and incitement took him away from the Lolotoe church where he had sought shelter. He was then detained by them at the KORAMIL. (paras.34-37, specifically admitted by JF and SL)
- Illegal detention and beating of Jose Leite, suspected of being a pro-independence supporter. All three Accused are alleged to have ordered and participated in the beating of Jose Leite and to have detained and beaten him at the KORAMIL (paras.38-42, specifically admitted by JF and SL).

- Illegal arrest and detention under inhumane conditions of Aurea Cardoso and her children because her husband was suspected of being a pro-independence supporter. Jhoni Franca and Jose Cardoso were alleged to have arrested, detained, and interrogated her at the KORAMIL over approximately three months. After accepting a bribe, Sabino Leite, Jose Cardoso, and TNI commander Lt. Bambang Indra prepared and signed a release order from the KORAMIL for her (paras. 43-48, specifically admitted by JF and SL. Para. 49 also admitted by SL only, specifying that she was detained under inhumane conditions).
- Illegal detention and torture of Herminio Da Graca, a CNRT member, for making speeches in favor of independence. The indictment alleges that the TNI and Sabino Leite received Herminio's name from the militia. Militia members apprehended him and he was detained and interrogated by Franca and Cardoso. He was subsequently detained at the KORAMIL and interrogated and tortured by a TNI Sgt. (paras. 50-52, specifically admitted by JF and SL).
- Illegal detention of Mariana Da Cunha because she was suspected of having a relationship with a pro-independence supporter. KMP militia and TNI soldiers searched a village for pro-independence supporters. Jose Cardoso read out the names of Mariana Da Cunha and Victims A, B, and C. Their village accused them of having relationships with Falintil members. Mariana Da Cunha was subsequently taken and detained against her will for six nights at the house of Sabino Leite. She was then released by Jhoni Franca (paras. 53-58, specifically admitted by JF and SL).
- Illegal detention, abduction, deprivation of liberty, and repeated rape of Victims A, B, and C, because they were suspected of having a relationship with pro-independence supporters. KMP militia, led by Jhoni Franca and Jose Cardoso, all armed with automatic rifles and other weapons went to the residence of the victims. "Cardoso was wearing a TNI uniform." The victims were forcibly taken and detained at the houses of Sabino Leite and Jhoni Franca, and at the PKK building in Lolotoe. The Accused and other KMP militia members forced them to go to militia parties. On June 26 Jose Cardoso took the three victims to Atambua. On June 28 Jose Cardoso and TNI Lt. Bambang Indra took them back to Lolotoe to Jhoni Franca's house, where their forcible detention continued until they were later released (paras. 60-68, specifically admitted by JF and SL).
- Rape of Victims A, B, and C. While in Atambua (June 26-28) the three women were repeatedly raped by TNI Lt. Bambang Indra, TNI intelligence officer Francisco Noronha, and Jose Cardoso. They were threatened with death if they resisted (paras. 69-75).
- Murder of Mariana Da Costa and Carlito Freitas, unarmed civilians. The victims were murdered during an attack by KMP militia and TNI. Jose Cardoso "led and commanded the joint TNI/KMP militia attack." Their bodies were mutilated after they were killed. (paras. 76-81)
- Murder of Augusto Noronha, a member of CNRT. The victim was dragged from his house and murdered during a KMP operation under the command of Jose Cardoso, directed against pro-independence supporters in his village. (paras. 82-83).

- Murder of Antonio Franca. The victim was murdered during a joint TNI/KMP militia attack on his village, under the command of Jose Cardoso. (paras. 84-85)
- Crimes of persecution directed against the civilian population of Lolotoe, perpetrated through intimidation, threats, deprivation of liberty, unlawful arrests and detention, inhumane and humiliating acts, rape, and murder. All of the accused, “together with other militia and TNI officers, committed, procured, incited, aided and abetted, or otherwise assisted in these acts of persecution.”

2. The Judgment

After the trial had been underway for some months and after the prosecution had presented many of its witnesses, on 11 November 2002, Sabino Leite changed his plea to guilty to the three charges of imprisonment and deprivation of liberty, the charge of torture, and the charge of “other inhumane acts.” The Prosecution agreed to withdraw the charge of persecution. In the Judgment, the Court examines the evidence to determine, as required by UNTAET 2001/25 29A.1, if it is sufficient to support the plea of guilty. In its formal Findings (section F of the Judgment, p. 21), the Court reaches a series of conclusions as to the facts of the case. The first findings have to do with the existence of a widespread and systematic attack on a civilian population, as is necessary to support the conviction for crimes against humanity. It is significant that the Court here specifically cites the testimony of 13 witnesses as the basis of its findings, in addition to the KPP HAM and UN reports. What is unfortunate, however, is that in the individual findings on the context they do not refer to which of these testimonies supports specific points. But they do at least indicate that the evidentiary basis of their findings on the context is drawn from the testimony and statements of the witnesses in the case.

The Court’s Findings:

- In regard to the situation in Lolotoe itself, the Court finds that the TNI, “under the command and control of 2nd Lt. Bambang Indra, worked in close cooperation with two of the principal armed militia groups, namely Kaer Metin Merah Putih and the Dadurus Merah Putih (Red and White Typhoon). (para 91).
- The TNI in Lolotoe under the command of Lt. Bambang Indra provided the militias with logistical support and compensation for their participation in actions against civilian supporters of independence. (para 93)
- The TNI and POLRI allowed the militias “to act with impunity.” (para. 92)
- Between April and October 1999 the TNI and KMP militia in Lolotoe carried out acts of violence against civilians considered to be pro-independence or linked to pro-independence supporters. These attacks included illegal arrest and detention, arson, murder, torture, and persecution. Further, “many acts were directed in particular against women whose husbands were presumed to be FALINTIL ... or supporters of independence.” (para 94)
- Sabino Leite, the Accused, was the chief (Kepala Desa) of Guda village in Lolotoe Sub-District. He provided information to the KMP as to the identities of

- civilians who were independence supporters or had relations with FALINTIL, so that they could be targeted by the KMP militia (paras 95-96).
- When Mario Goncalves, a supporter of CNRT who gave speeches supporting independence in Guda village, was detained by KMP militia, Sabino Leite ordered KMP members to beat him in front of the CNRT office. Sabino Leite incited the militia members to cut off Goncalves' ear. Sabino Leite and militia members then forced the victim to eat his ear under threat of death. He was then taken to the KORAMIL, where he was detained for approximately three months. (para 99)
 - Sabino Leite participated in the apprehension and detention of Jose Gouveia Leite, the vice-secretary for CNRT in Guda. After being encouraged by Sabino Leite (who was the victim's godson) to come to Lolotoe, he was there beaten by KMP outside of the CNRT office. He was then taken by the KMP to the Sub-District Police Office and questioned by an Indonesian officer named Martin. He was then taken to KORAMIL, where he was beaten and detained.
 - Sabino Leite participated in the interrogation of Herminio Da Graca and ordered him to go to the KORAMIL where he was detained and interrogated. (para 104)⁵³²
 - Sabino Leite provided information to the KMP about Victims A, B, and C that led to their detention for supporting members of FALINTIL with food. They were detained in an operation jointly conducted by the KMP and TNI, armed with automatic weapons. Victims A, B, and C were taken to the house of Sabino Leite where they were held for approximately one week. During that time they were forced to cook for the militia and Sabino Leite's family. They were moved several times after this, but spent another month detained in the home of Sabino Leite where they were again forced to cook. During the entire time of their detention they were guarded and lived under the threat of death if they did not obey (para 105).
 - When Benedito Da Costa and others were detained at the KORAMIL and were released in July 1999, Sabino Leite typed the letter of release. (para 102)
 - Sabino Leite admitted that during their detention Benedito da Costa, Amelio Belo, Adao Manuel, Mario Goncalves, Jose Gouveia Leite, Aurea Cardoso and her two children, were locked in a small room with proper sanitation facilities. The detainees were subjected to extremely unhygienic conditions and were not given food and water regularly. (para 161)
 - Members of the civilian population of East Timor, like those enumerated in the previous paragraph, were subjected to "orchestrated inhumane conditions because of their opinion in the future political status of East Timor ..." Sabino Leite admitted to the Court that "he was aware of the context in which his actions of submitting people to inhumane conditions were committed. He knew that he was participating in a widespread and systematic attack against a civilian population." (para 162)

⁵³² Many other findings relate to other crimes in which Sabino Leite is not found to have directly participated. These findings were already enumerated above in the Jhoni Franca case, so they are not repeated here even though they do bear upon the complicity of Sabino Leite in the crimes with which he is charged. This section, for the sake of convenience, thus only enumerates the findings that concern his direct participation and the issues of institutional responsibility.

Sabino Leite made a statement to the Court about the context in which he found himself as a village chief in 1999. The statement was made as part of his admission of guilt. It undoubtedly aims to shift some of the responsibility from himself, but it is nonetheless instructive in terms of the way it portrays the cooperation of Indonesian civilian and military authorities with pro-autonomy militias. Sabino Leite notes that he was the lowest level public servant. As such, he says, he was ultimately subject to the authority of the TNI and Militia, because “at that time all the rights and civil authority were taken over TNI and Militia under their regime.” (para 168) He defends his participation in that “regime” by saying that he would have placed himself and family at risk if he did not “obey the orders of TNI and Militia.” (para 168) He states that his authority was merely symbolic “because all authority were under TNI and Militia So I considered TNI, SGI, and the Militia as the Second God. I’m speaking now based on the reality, but the situation which I experienced in the past, was very dangerous within [sic] brutal acts of TNI and Militia against civilians and me.” (para 168) Sabino Leite goes on at some length about the pressure of the circumstances and his concern for his family. What is striking, however, is the way in which he consistently portrays the TNI and Militia as a pair of institutions that is acting together as one, that is wielding power in Lolotoe. This is consistent with his other testimony and with the testimony of all the other witnesses. It is also consistent with the testimony of Joao Franca Da Silva, who, in the companion case above, portrayed the situation in much the same way even though he was in fact the KMP Commander. The way in which both militia and TNI use the KORAMIL as their base and conduct their operations from there indicates the same close connection, The testimony of both the perpetrators and the victims is unanimous and undisputed in portraying the way in which the KMP integrated their activities with those of the KORAMIL. Detainees were moved around by KMP from the KORAMIL to their houses (or the house of Sabino Leite) and back again. Interrogations and beatings began outside the KORAMIL by KMP and then continued when they brought individuals back there for detention. This is, as we should see, the same pattern as found in the Los Palos case. It must be emphasized that there is no evidence in these two Lolotoe cases that shows links between these TNI/Militia/civilian authorities operations and higher levels of military command. The focus in the evidence presented is entirely on the local level. But at that level the evidence is consistent and undisputed by Defense or Prosecution. The evidence before the Court was clearly sufficient to support the findings indicated above. Those findings, and the evidence that supports them, indicate both that gross human rights violations in the form of crimes against humanity occurred, and that there is a reasonable basis for the attribution of institutional responsibility. That institutional responsibility, from the perspective of that evidence is shared. The evidence, including the admissions of the key authority figures, indicates the close cooperation of the TNI, KMP Militia, and the Village Chief in the organization and perpetration of a long series of crimes committed over a substantial period of time and following a pattern. These operations targeted both pro-independence supporters and their families - and particularly the women in their families. In terms of direct perpetration, furnishing material aid with the knowledge of what it would be used for (aiding and abetting), and a failure to prevent crimes that they knew were occurring, persons of authority in military and

civilian institutions failed to control the militias and also took an active part in encouraging and furthering their activities. While it is outside the scope of this report to comment on the individual responsibility of accused like Sabino Leite and Joao Da Silva, their admissions of responsibility and their statements about their roles and their relation to the TNI, supports the Court's finding of joint responsibility of these three institutions for the crimes against humanity which the Court found to have occurred.

3. Trial of Jose Cardoso, Case No. 4c, Judgment of 5 April 2003

While the other two defendants in the Lolotoe Case changed their pleas to guilty during the trial, Jose Cardoso did not. As a result, the trial continued with him as the only Defendant until it was finally concluded in April 2003. The indictment (subsequently amended indictment) for Jose Cardoso was the same as for Jhoni Franca and Sabino Leite. In the amended indictment Jose Cardoso is alleged to have been the commander of the KMO militia after Jhoni Franca was removed. He is charged with 13 counts of crimes against humanity:

- Deprivation of liberty and torture of Benedito Da Costa, Amelio Belo and family because their son Mario was suspected of being a member of Falintil. During a KMP operation aimed at pro-independence supporters in their village, Benedito Da Costa was tortured. Amelio Belo, Benedito Da Costa, and their two children were forcibly brought to the KORAMIL by Jhoni Franca, Jose Cardoso, and other KMP militia and detained there for approximately 3 months (paras. 28-30, specifically admitted by Jhoni Franca [hereafter JF] and Sabino Leite [hereafter SL]).
- Illegal detention, beating, torture, and mutilation of Adao Manuel, suspected of being a pro-independence supporter. Adao Manuel was brought to the KORAMIL by Jose Cardoso, Jhoni Franca, and other KMP militia. At the KORAMIL he was tortured, detained, and repeatedly beaten by Cardoso and Franca while being interrogated by them. (paras. 31-33, specifically admitted by JF and SL).
- Illegal detention, beating, torture, and mutilation of Mario Goncalves, suspected of being a pro-independence supporter. All three Accused were alleged to have ordered and participated in the beating and torture of Mario Goncalves after militia troops acting under their orders and incitement took him away from the Lolotoe church where he had sought shelter. He was then detained by them at the KORAMIL. (paras.34-37, specifically admitted by JF and SL)
- Illegal detention and beating of Jose Leite, suspected of being a pro-independence supporter. All three Accused are alleged to have ordered and participated in the beating of Jose Leite and to have detained and beaten him at the KORAMIL (paras.38-42, specifically admitted by JF and SL).
- Illegal arrest and detention under inhumane conditions of Aurea Cardoso and her children because her husband was suspected of being a pro-independence

supporter. Jhoni Franca and Jose Cardoso were alleged to have arrested, detained, and interrogated her at the KORAMIL over approximately three months. After accepting a bribe, Sabino Leite, Jose Cardoso, and TNI commander Lt. Bambang Indra prepared and signed a release order from the KORAMIL for her (paras. 43-48, specifically admitted by JF and SL. Para. 49 also admitted by SL only, specifying that she was detained under inhumane conditions).

- Illegal detention and torture of Herminio Da Graca, a CNRT member, for making speeches in favor of independence. The indictment alleges that the TNI and Sabino Leite received Herminio's name from the militia. Militia members apprehended him and he was detained and interrogated by Franca and Cardoso. He was subsequently detained at the KORAMIL and interrogated and tortured by a TNI Sgt. (paras. 50-52, specifically admitted by JF and SL).
- Illegal detention of Mariana Da Cunha because she was suspected of having a relationship with a pro-independence supporter. KMP militia and TNI soldiers searched a village for pro-independence supporters. Jose Cardoso read out the names of Mariana Da Cunha and Victims A, B, and C. Their village accused them of having relationships with Falintil members. Mariana Da Cunha was subsequently taken and detained against her will for six nights at the house of Sabino Leite. She was then released by Jhoni Franca (paras. 53-58, specifically admitted by JF and SL).
- Illegal detention, abduction, deprivation of liberty, and repeated rape of Victims A, B, and C, because they were suspected of having a relationship with pro-independence supporters. KMP militia, led by Jhoni Franca and Jose Cardoso, all armed with automatic rifles and other weapons, went to the residence of the victims. "Cardoso was wearing a TNI uniform." The victims were forcibly taken and detained at the houses of Sabino Leite and Jhoni Franca, and at the PKK building in Lolotoe. The accused and other KMP militia members forced them to go to militia parties. On June 26 Jose Cardoso took the three victims to Atambua. On June 28 Jose Cardoso and TNI Lt. Bambang Indra took them back to Lolotoe to Jhoni Franca's house, where their forcible detention continued until they were later released. (paras. 60-68, specifically admitted by JF and SL).
- Rape of Victims A, B, and C. While in Atambua (June 26-28) the three women were repeatedly raped by TNI Lt. Bambang Indra, TNI intelligence officer Francisco Noronha, and Jose Cardoso. They were threatened with death if they resisted. (paras. 69-75)
- Murder of Mariana Da Costa and Carlito Freitas, unarmed civilians. The victims were murdered during an attack by KMP militia and TNI. Jose Cardoso "led and commanded the joint TNI/KMP militia attack." He threatened those campaigning for independence with death. The body of Mariana Da Costa "was thereafter brutally mutilated by the TNI and members of the KMP militia." (paras. 76-81)
- Murder of Augusto Noronha, a member of CNRT. The victim was dragged from his house and murdered during a KMP operation under the command of Jose Cardoso, directed against pro-independence supporters in his village (paras. 82-83).

- Murder of Antonio Franca. The victim was murdered during a joint TNI/KMP militia attack on his village, under the command of Jose Cardoso. (paras. 84-85)⁵³³

Because there was no guilty plea, the Judgment in the Jose Cardoso case is far longer than the previous two and engages in a very detailed analysis of the evidence. This and the Los Palos judgment are the only two final decisions of the Special Panels to engage in this kind of detailed analysis. This is particularly important because in these three trials much more extensive witness testimony was presented than was the case in almost any other trial at the SPSC. This included, as noted above, testimony on the contextual elements of crimes against humanity as well as on the specific underlying offenses. The Judgment is 161 pages long and quite meticulous in its analysis of the testimony of each witness and of both the prosecution and defense cases.

The Court first reviews the Prosecution case:

1. Torture and Imprisonment of Benedito Da Costa, Adao Manuel, Mario Goncalves, Jose Leite, and imprisonment of Amelio Belo, Aurea Cardoso, Herminio Da Graca, Mariana Da Cunha, and Victims A, B, and C.

This section of the Judgment thus encompasses an analysis of the testimony regarding all of the detentions and interrogations at the KORAMIL and other facilities in Lolotoe. The Prosecution produced the following evidence to support the charges in these counts of the indictment:

- Amelia Belo testified that she was present when members of the KMO, including the Accused, arrived at her house in Guda Tas village, beat her husband and tied him up. The next day she and her husband were taken by the KMP to Lolotoe where they were detained until July 1999. (para 54)
- Benedito Da Costa testified that KMP militia under the command of the accused, Jose Cardoso, arrived at his village (Guda) on 21 May 1999 and arrested him because his son was a member of FALINTIL. There were also TNI among the group that arrested him. They tied him to a chair and beat him, while asking him questions as to the whereabouts of his son. The next day he was taken to Lolotoe where he was questioned by a police officer named Andre. Jose Cardoso was present at this interrogation. He was then detained at the KORAMIL and then later at the PKK building until July 1999 under threat of death if they tried to leave. He stated that during the detention the Accused tried to persuade him and other detainees “to follow him and support autonomy.” In July 1999 Benedito gave the Accused sandalwood and the detainees were released. The Accused signed the letter of release. (para 55)

⁵³³ The 13th Count, Persecution, was withdrawn by the Prosecution in February 2003.

- Aurea Cardoso testified that the KMP militia under the command of the Accused came to her village (Torbu) on August 21, 1999. They came to her house and questioned her about her husband and then ordered her to go with them, along with her two children. She was detained with the others in Lolotoe until July 1999. (para 56)
- Mario Gonsalves testified that he was a clandestine supporter of FALINTIL, who supplied them with food. Sabino Leite organized his detention on 24 May 1999, when he was going to church in Lolotoe. He was taken to a field where the Accused and Jhoni Franca ordered the militia to beat him. With encouragement from Sabino Leite, they cut off his ear and under threat of death forced him to eat it. He was then detained at the PKK building until July 1999. Jose Cardoso signed the letter of release. He was one of 14 persons detained at the PKK for two months. (paras 57-58)
- Jose Gouveia Leite testified that he was deputy secretary of CNRT in Lolotoe. He was asked to surrender to “the leader” by Sabino Leite [his godson] and he came to Lolotoe. He was detained and taken to a field where the Accused ordered militia to beat him, from which he sustained serious injuries. He was then detained at the KORAMIL, subsequently taken to the PKK house, and ultimately released in July 1999. (para 59)
- Adao Manuel testified that he was a clandestine supporter of independence and was hiding in the jungle. He was informed that the Accused had detained his daughter and taken her to Lolotoe. He went to look for his daughter and was apprehended by militia, who took him to the KORAMIL. At the KORAMIL he was beaten by Jhoni Franca and the Accused and then questioned. The Accused then took him outside the KORAMIL and beat him again which broke his ribs. He was then detained at the KORAMIL and later at the PKK. (paras 60-61)
- Herminio Da Graca testified that on 2 May 1999 he was going to work in Maliana when he was told by the brother of the Accused that he should report to Jhoni Franca and the Accused because they wanted to talk to him. They questioned him about a radio he owned and told him to go and bring it, threatening his family if he did not. He brought the radio and was then detained at Jhoni Franca’s house until 27 July 1999 when he escaped. He testified that during his detention the TNI took his motorcycle and that the motorcycle was then used by the Accused. (para 62)
- Maraiana Da Cunha testified that she was a relative of Victims A, B, and C. On 18 May 1999 the Accused, together with some militia members and four or five TNI soldiers entered her village of Zoilpo. They had a pro-autonomy party with some of the villagers. They came back the next day and the Accused was in charge of approximately 50 men. She was arrested along with Victim B, Victim C, Aurea Cardoso and others. Under the orders of the Accused and of Sabino Leite they were ordered to go to Lolotoe. The Accused told them that they were “the wives of Commander Deker.” They were detained at the house of Sabino Leite for six days. On the 6th day, Sabino Leite checked their names against a list and her name was not on the list. She was released but threatened by Sabino Leite and told to stay at the

house of her sister, Aurea Gouveia Leite, in Lolotoe. She also stated that on May 24th, while standing in front of her sister's house, she saw Jhoni Franca cut off the ear of Mario Goncalves. She and other detainees were threatened by death by the Accused and Sabino Leite if they did not follow them [politically]. She spoke to the three women who were her relatives [Victims A, B, and C] after they came back from Atambua where they had been taken. Upon their return they told her they had been repeatedly raped and forced to have sexual relations with more than one man. (paras 64-66)

- Victim A testified that on 18 May 1999 she was detained by the Accused in Zoilpo. He was carrying a gun and was with "many soldiers and militia members." She was taken by car to Sabino's house in Lolotoe and detained there for 3 nights, after which she was taken to the PKK building where she was held with 13 others. Victims A, B, and C were then taken to the house of Jhoni Franca where they were held by him and the Accused for more than two weeks. On 17 and 24 June the Accused, together with Lt. Bambang Indra and another Indonesian soldier took them to a party. They were told they would be killed if they did not go. The Accused was the commander of the KMP. At the June 17 party he kissed her. On 27 June they were taken to Atambua for three nights and then taken back to Lolotoe. After they returned to Lolotoe, one night a man came to them and told Victim B that Lt. Bambang had told her to come and sleep at the KORAMIL. The next morning she and Victim C were brought to the KORAMIL. Lt. Bambang then gave them a letter setting them free. He told them, "When you take this document back to your village there will not be any militia, any soldier, not anybody that will interfere with you." (paras 67-71)
- Victim B testified that she and Victims A and C were detained in Zoilpo and taken to Lolotoe, where they were held at Sabino Leite's house, the PKK building, and the house of Jhoni Franca. While at that house Noronha (whom she knew because he was also from Zoilpo) and Lt. Bambang came to the house several times. One night Lt. Bambang came to the house with "another foreigner from BTT", got drunk, and Lt. Bambang danced with her. They were taken to Atambua for three nights. When they came back they told Maraina Da Cunha what had happened there. Afterwards Lt. Bambang gave a letter of release to Victim C. (paras 72-78)
- Victim C testified that when the militia (approximately 50) came to Zoilpo she was told that if she was called to the house of Antonio Bere and told to make coffee for him and the Accused. Bere told her that if she did not go to Lolotoe with them "your family will be vanished." The Accused was wearing a military uniform and carrying a gun. In Lolotoe she and the other two women were held at the various places described above. On two occasions at Jhoni Franca's house the Accused and Francisco Noronha and Lt. Bambang Indra gave them "tuak" alcohol and took them to a militia party. They were taken by the same three men to Atambua for three nights. They returned to Lolotoe until they received the letter of release (paras 79-85).

2. Rape of Victims A, B, and C

- Victim A testified that on 27 June they were taken to Atambua. The Accused had told them they were going to go to Maliana to see Joao Tavares to solve the problem of their detention, but they were taken to a hotel in Atambua instead. When they arrived Lt. Bambang was standing in front of the hotel. The three women were taken to a room and then driven to Atapupu beach. The Accused and Noronha told the women that, “Tonight if you don’t sleep with us we will kill you and throw your bodies in the ocean.” The Accused was carrying a gun when they said this. In a previous statement she had attributed this statement only to Noronha. On the second night Victim B was taken to Lt. Bambang’s room and Victim C to Noronha’s room. The Accused took her by the hand and took her to a room. He threatened her with death if she did not do what he said. The Accused had intercourse with her twice. She stated that, “I gave myself, my body, to him in order not to die.”
- Victim B told the Court they had been told they were being taken to Panglima Tavares in Maliana but were taken to Atambua instead. They were threatened with death (being thrown into the sea) if they did not comply. Lt. Bambang ordered her to lie on the bed in his room. He took off his clothes and had intercourse with her. “The next night he raped her again.” He then left the room and the Accused entered and had intercourse with her. He then let Noronha in the room and locked the door, Noronha told her, “This is our day.” He then had intercourse with her.
- Victim C testified that they were taken to Atambua as described above. At Atapupu beach they were told that “If you don’t want to give your body we will kill you and your body will be thrown into the sea.” She was given to Noronha who again threatened her with death. He had intercourse. Afterwards when she was crying, he told her, “I know you’re still a virgin.” The next night he had intercourse with her again.
- Witness Joao Bosco made a statement that was agreed to by the defense and submitted into evidence. He stated that the Accused took the three women from Zoilpo. “I heard him declare in public that these three ladies were in the list of persons who support Falintil.”

3. *Murder of Mariana Da Costa and Carlito Freitas*

- Orlando Ati testified that he worked as a public servant in Lolotoe and knew the Accused as the commander of the militia. On September 8th he was in church and heard screaming from the direction of the church in Deudet. They were told that the militia and TNI were coming. He fled and hid. He heard automatic gunfire for about 30 minutes from where he was hiding. Later that afternoon he went to Sibi to see what had happened. He found that the house of Maria had been burned and the village deserted. He found the body of Carlos Freitas. He had been shot and his head split in two. He and a friend carried the body to the church (house of Maria) and continued to search. They found the body of Mariana Da Costa behind a tree. Her face and stomach had been slashed. He testified that her body,

“was no longer like that of a human being.” The witness and others buried the bodies that evening.

- Herminio Belo testified that he had known the Accused since they were small children and they were related. In 1999 the accused was the KMP leader. He was afraid of the Accused because he often said that people who didn't follow them might die. The witness knew three TNI who also worked with the Accused: Armando, Inacio, and Anacleto. On September 8, the Accused was with his wife and other supporters of independence at their farm. Marianna Da Costa, the witness' wife, was cooking for them. Shooting started from three directions but they could not see the attackers who were in the jungle. Marianna Da Costa died, but he did not see it. He ran out of the house. He saw the Accused from about 50 meters away giving the order to advance (“maju”) and then the shooting started again. He only learned later that his wife and Carlito had died in the attack. (paras 100-105)
- Tomas Cardoso is the uncle of the Accused. He stated that at that time the Accused was the commander of the KMP militia. On 8 September the witness was in Sibi in the faorm of Herminio Belo when, at about 11 am it was attacked. He recognized Armando Estaqui, Inacio, Josep Loco, and Constantino among the attackers. He then heard the Accused yelling “attack/adavance” (“pasukan maju”) and there was a second round of shooting. He then heard the Accused say, “Let's go to the church now.” He clearly recognized the voice of the Accused, which he knew well. (para 106)
- Olivia Juvita Dos Reis testified that the Accused was the leader of the militia in Lolotoe. On September 8 she and others were hiding in the church of Vila. They were hiding because they had heard rumors that the militia from Lolotoe were looking for people from her village to kill them. The women were in the church praying. Around 11 she heard gunfire from Sibi. About 15 minutes after the shooting stopped the Accused came into the church with about 20 militia members. The Accused was wearing a TNI uniform and carrying a rifle. About 4 of the 20 men were TNI soldiers, both Indonesian and Timorese. They wore TNI uniforms and carried rifles. All the other militia members wore civilian clothes and carried traditional weapons. She recognized some men in the group and knew some by name, like Adao and Aquelino. The Accused spoke to the witness and told her, “Some people died in Sibi, go and look what happened there.” She went to Sibi and saw the mother of Mariana da Costa standing and looking at the bodies of her daughter and Carlito Freitas. His body had gunshot wounds to the head, and the right side of his head was missing. The body of Mariana had several cuts on her chest and her neck and was covered in blood. Some other people arrived and they buried the bodies. (paras 107-108)
- Anibal Ferreira testified that the Accused was the Commander of the KMP militia, whiuch was common knowledge in Lolotoe. After the Popular Consultation many people, including the witness, went into hiding because

they were afraid of the militia. When he was in the garden of Herminio Belo on September 8, at around 11am the militia attacked. He ran about 100 meters away and hid behind a small tree and some bushes on higher ground than the house, so he had a clear line of sight. After hiding for a while he saw the militia move forward in three groups: one group of two men came from the direction of Mapao river; the second group came from Sulu mountain; the third came from Lolotoe village and from the direction of Sibi. He saw two Indonesian military members: Inacio and Armando Estaqui. The witness saw and recognized many militia members including the Accused, who was wearing military pants and a black shirt and carrying a rifle. He also recognized other men (he names 10 names). The Accused shouted the command “maju.” They moved towards the house and attacked it. There was a second round of shooting. The militia afterwards withdrew. He returned to the house and found Marianna Da Costa dead in the garden, with her stomach and neck cut. Carlito’s body was also there and the back of his head had been smashed open. He helped bury the bodies. (para 109)

- Luisa Monis testified that on September 4 she and many others moved to the church because they were afraid the militia would attack. Around 11 they heard shooting that lasted a few minutes. Then there was a gap in the shooting, which resumed about 15 minutes later. After another 15 minutes or so the militia arrived. They pushed open the door of the church and she saw TNI and militia enter. She gives five names, which are consistent with the names given by other witnesses. The Accused was wearing a TNI uniform and carried a gun. After the TNI left they went and looked for bodies after Adau told her that three people had died. They found the bodies of Carlito and Mariana. Carlito’s head was damaged and Mariana’s face looked like it been cut with a machete. (para 110)

4. *Murders of Augusto Nhoronha and Antonio Franca in Raimea village*

- Eugenio Noronha testified that he didn’t know why his brother was killed. The Accused was the commander of the KMP in Lolotoe. He heard the Accused on one occasion tell his men that they should follow KMP or die.
- Anapaula Ximenes testified that her husband was a member of the CNRT. The witness lived next door to the Accused in 1998-1999. The Accused was the commander of the KMP militia, and their office was in front of the witness’ house. She sometimes heard the Accused giving orders about making operations in Lolotoe. She also heard him saying that they should defend the Indonesian flag and destroy those not following his group.
- Noberto Belo testified that on 31 August 1999 he attended a meeting in Raimea. At the meeting were villagers, the Accused, the priest, and Kapolsek. The Accused was accompanied by six militia members (whom he names). The Accused was armed and carrying a rifle in the

presence of the police chief. After the priest and the Kapolsek left, the Accused told the villagers that the young men would be killed if autonomy lost.

- Joao Belo testified that he was a militia member but had been forced to join by the Accused and Jhoni Franca. The Accused was the KMP Commander. He was also at the meeting described above, which was held after the vote. The priest told people not to be afraid. After the priest and police chief left, the Accused said that all the youth in Lolotoe would be killed if they lost the vote. He said that all those handing out pamphlets would be killed. He was wearing a TNI uniform and carrying a rifle.
- Candido De Fatima testified that on September 16 he was one of the militia ordered to go on an operation. The Accused told them to burn houses and kill young men. The witness went with the Accused after they split into two groups. They waited outside Lolotoe while the other group went to Raimea. There they killed the two victims and then reported to the Accused.
- Fernanda De Deus Martins was the widow of Antonio Franca. She testified that he was distributing pro-independence material and “how to vote” cards. He went to Lolotoe on 26 August. She never saw him again. Her older sister later told her that her husband had been murdered on September 16th.

After reviewing the Prosecution Case, the Court then sets out the Defense Case and the testimony of each of the Defense witnesses. The witnesses called by the Defense testified as follows:

- Americo Pereira testified that the Accused joined the KMP but was pretending to be real militia while trying to save the people. He was living far away so he did not know what the militia were doing in Lolotoe. The Accused was made the Commander after Jhoni Franca, but it was the TNI who gave the orders to the militia. He knows that the TNI gave the orders because he was chief of Suku from 1997-1999 and he used to go to official meetings. At the meetings they were told that the TNI were giving the orders and that they would be risking their lives if they did not obey. There were administrators at the meetings but no TNI.
- Domingos Monis testified that on September 8 he met and talked with the Accused in Deudet. They heard gunfire from the direction of Sivi. The Accused told him to run away and the Accused ran towards Sivi.
- Felipe Alfonso testified that he was the cousin of the Accused and that they were both members of the Clandestine movement. They both joined the militia and the Accused became the commander. His role was to organize the militia. They conducted socialization activities in Lolotoe and surrounding areas. The socialization activities involved telling the people to go to West Timor. There were many members of

the militia who were pro-independence but joined because they were afraid. There was a split in the militia between those who were pro-autonomy and those who were pro-independence. After this split the pro-autonomy group did not obey the Accused any longer. The other group included two TNI members, Inacio and Armando Istakio. They were “among the most terrifying TNI in Lolotoe.” There was a relationship between the TNI and the militia but it was not too close. Lt. Bambang was the TNI commander. The militia only had machetes and some of them did not even have that. (paras 121-122)

- Fernando Do Rego testified that he was present when the militia lined up and the Accused told them not to kill anyone or to destroy property. (para 123)
- Oscar Du Ceo testified that on September 16 he was told by the Accused that they had come to burn government buildings but no private houses. The Accused told him they could not kill anyone or force anyone to go to West Timor. In addition to the Accused, there was another group of about 20 that included two TNI, Armando and Ignacio. It was this second group that went to Raimea and killed people, not the group of the Accused. The Accused spoke on the radio with Lt. Bambang Indra. Bambang Indra asked him where he was and told the Accused to leave without harming the old man. Shortly after the Accused was informed of killings at Raimea and he said they were now in trouble because they had already killed people.

This completes the review of the Defense case. The case appears to be built upon an alibi in regard to the Raimea murders and the idea that the Accused was actually an independence supporter who was forced to join the militia and become a commander.

Having reviewed the cases of the Prosecution and Defense, and having discussed the applicable law, the Court then made its findings. The Court first notes that the Prosecution and Defense agreed on the statements of 15 witnesses (named, but omitted here). (para 275) The Court also considered the issue of identification of the Accused. All witnesses positively identified the Accused and they were all from the Lolotoe sub-district where he resides with his family. This lends their identification credibility. (para 287) The Court also explained the factors they would take into account in weighing inconsistencies between pre-trial statements and testimony given in court.(paras 297-300) The Court then makes its findings:

General Findings

- Reviewing the various victims they conclude that all were civilians and either members of CNRT, engaged in pro-independence activities, or relatives or supporters of pro-independence. (para 308)
- The interrogations of Bendito Da Costa, Jose Leite, Mario Goncalves, Amelio Belo, Aurea Cardoso and her 2 children, Adao Manuel, Herminio Da Graca, Mariana Da Cunha, and Victims A, B, and C were all interrogated by the Accused

- himself. All the interrogations only focused upon their involvement, or the involvement of their family members, with the independence cause. (para 309)
- From the testimony of the victims and witnesses it is clear that the victimization of these individuals by the Accused and his subordinates, that is, members of the KMP, sometimes operating with members of the TNI, was carried out according to a policy or plan to attack supporters of independence. “What took place in Lolotoe sub-district was planned and organized by the Accused and his subordinates targeting the supporters of independence.” (para 310)
 - Mariana Da Cunha and Victims B and C testified about the meeting at Zoilpo on 21 May 1999 where the Accused spoke to the civilian population and read the names of these women from a list and then ordered them to be detained. (para 311) On August 30, 1999 the Accused held a meeting at Raimea where he warned the population that he knew the names of independence supporters and threatened them. (citing specific witness testimony)
 - The Defense case that the Accused belonged to a pro-independence clandestine organization does not excuse crimes committed against innocent civilians. The accused was the Deputy Commander and then the Commander of the KMP militia. (para 313)
 - It has been established beyond a reasonable doubt that there was a systematic attack against the civilian population in Lolotoe sub-district. These attacks were part of an orchestrated campaign of violence that included intimidation and threats to life, unlawful confinement, rape, torture, assaults, murders, and forced displacement. These were carried out by members of the militias, the TNI, and POLRI, with the acquiescence and participation of military and civil authorities. (paras 314-327)
 - 2nd Lt. Bambang Indra, DAMRAMIL, was the TNI commander in Lolotoe. He provided the KMP with logistical support. Many members of the KMP received compensation from the Indonesian government for their militia activities. (para 328)

Findings on Specific Charges

- All the witnesses who were involved in detentions (all named) provided testimony that corroborated that they were detained and that the Accused participated in their detention. The defense offered no evidence to refute the prosecution evidence. From the absence of any evidence to the contrary, the Court concludes that the only reason these individuals was detained was because of their connection, or the connection of their relatives to the independence cause. (para 332) The detainees ranged in age from 9 to 65. None of them were arrested on the basis of a valid arrest warrant. None of them were informed of the reason for their arrest and detention, or the term of their detention. They were guarded and controlled during their detention and lived under threat of death. (paras 332-335)
- The Defense argued that Benedito Da Costa was an unreliable witness because of his age (65) and because he often said he could not remember. The Court analyzed the facts that the witness did recount and concluded that on the basis of

- his testimony and that of Amelia Belo, that the Accused came to his village with the KMP and arrested him because his son was FALINTIL. They tied him up and beat him. He was detained and interrogated by a police officer. He was detained at the KORAMIL and then at the PKK Building. He gave the Accused some sandalwood and was then released along with others. The Accused signed the letter of release.
- The Accused beat Adao Manuel at the KORAMIL even before interrogating him. He then questioned him about FALINTIL. The Defense admitted that he had been detained at KORAMIL but denied that the Accused was involved in the detention. The Court finds that the evidence clearly established that the Accused had beaten him inside and outside the KORAMIL and questioned him there. (paras 339-341)
 - The Accused participated in the arrest and beating of Mario Goncalves, a supporter of independence. He pointed his gun at Goncalves to force him to eat his ear after Jhoni Franca had cut it off. He was then detained. The Court rejects the Defense's argument that the Accused only played a secondary role in the detention. (para 342)
 - Jose Leite, Deputy Secretary of CNRT in Lolotoe was arrested, beaten, and questioned by the Accused about independence activities. He was then detained at the KORAMIL and the PKK house. (para 344)
 - Aurea Cardoso and her two children were detained and questioned by the Accused on 21 May 1999. They were then held in Lolotoe until July 1999.
 - Herminio Da Graca was a CNRT member. He was questioned on 2 May 1999 by the Accused about his radio and detained. His motorcycle was seized by the TNI while he was detained.
 - On 18 May 1999 the Accused came to Zoilpo with a group of militia and four or five members of the TNI. They came back on 20 May and arrested Mariana da Cunha and some other women, telling them they were the "wives of Commander Deker." She was detained for six days at Sabino Leite's house. On the 6th day he checked her name against a list and then released her because her name was not on the list. (para 347)
 - Victims A, B, and C were detained by the Accused, who was wearing a military uniform and carrying a gun. They were held for six days at the house of Sabino Leite. After Mariana Da Cunha was released, they were taken to the PKK building and were questioned about giving food to FALINTIL members. They were then held at Jhoni Franca's house by Jhoni Franca and later the Accused. The Accused, Lt. Bambang, and Jhoni Franca twice took them to KMP parties under threat of death. They were later taken to Atambua and held there for 3 days. When they returned to detention in Lolotoe, Victim B was taken to Lt. Bambang one night while they were back at Lolotoe and the next day all 3 women were released. Lt Bambang gave them a letter of release which he said would protect them from any interference by militia or soldiers. (para 352) Throughout their period of detention their movements were controlled and they lived under the threat of death if they did not obey. (para 352)
 - In regard to the illegal detentions, the Defense produced no evidence to contradict the prosecution case. The Defense only argued that in order to constitute the offense of deprivation of liberty the deprivation must be severe. They argued that

- in this case the detention was not severe enough either in regard to the conditions of detention or the duration of the detention. The Court rejected this argument and held, as it had in the Leki and Franca Cases, that there was a severe deprivation of liberty under international law. (paras 358-361)
- The Court also found that the deprivation of liberty was part of a widespread or systematic attack against a civilian population because the “confinement in inhumane conditions in Lolotoe Sub-District targeted those who supported or were perceived to support independence ... Members of the civilian population were subjected to orchestrated inhumane conditions because of their opinion on the future status of East Timor, because they supported FALINTIL or were sympathetic to its members.” (para 364)
 - The Accused took an active part in executing this common purpose. Dressed in a military uniform and armed with an SKS rifle, he actively participated in the detentions, beatings, and interrogations. He and his co-perpetrators had a list of victims targeted, victims who had previously been identified because of their link to the independence cause.” (para 371) The Accused also acted jointly with the KMP and TNI in carrying out these detentions. (para 374)
 - In regard to the charge of torture the Court relied upon the “corroborated evidence from the victim witnesses.” (para 377) This evidence established that Benedito Da Costa, Jose Leite, Mario Goncalves, and Adao Manuel had all been detained and interrogated with the active participation of the Accused. They all sustained serious injuries from beatings or mutilation. In the case of Mario Goncalves, the Accused pointed his rifle at him while Jhoni Franca cut off his ear and forced him to eat it. (paras 378-381)
 - The defense case did not contest the facts. It argued that the beatings did not satisfy the requirements of the elements of torture. They also argued that the evidence did not show that the Accused tortured Mario Goncalves. Rather, by pointing his gun at him during the beating he was merely an aider and abetter. (para 382)
 - The Court found that the beatings, which resulted in broken ribs and other serious injuries, as well as the cutting of the ears of two victims was of sufficient severity to fulfill the requirements of the law of torture. (para 390) The Accused personally participated in these acts of torture. (para 395)⁵³⁴
 - In regard to the charge of rape, the Court found that victims A,B, and C were detained in Lolotoe in a number of locations, including the PKK building, the house of Sabino Leite, and the house of Jhoni Franca. (paras. 426-428). In late June they were then taken to Atambua, having been told they were going to go see Joao Tavares in Maliana. (para 429)
 - While in Atambua they were taken to Atapupu beach by Bambang, Noronha, and the Accused. They were threatened with death by the Accused and Noronha if

⁵³⁴ The findings on the charge of “Other Inhumane Acts” are essentially identical to those for torture. Because the Defense did not lead any evidence on this charge and did not challenge the testimony of the witnesses in regard to it, a summary of the specific findings will be omitted here. See paragraphs 399-425. It should be noted, however, that the court found that because the Prosecution did not lead evidence on the conditions of detention at the KORAMIL or PKK buildings, there were no grounds for a finding that the condition of detention there were such as to qualify as “other inhumane acts.” The Accused was thus found not guilty in regard to that portion of the charge.

- they did not sleep with the 3 men. The Accused took Victim B to the room of Bambang, who had sexual intercourse with her. The accused threatened Victim A with death and then had sexual intercourse with her twice. Noronha had sexual intercourse with Victim C, telling her, “If you do not give me your body you will die in this place.” On the second night Bambang again had sexual intercourse with Victim B. Noronha had sexual intercourse with Victim C. The accused then took him to Victim B and had sexual intercourse with her. (paras. 430-434)
- They were then taken back to Lolotoe. They were later ordered to go to the KORAMIL, where Bambang Indra gave them a letter that was a “declaration of their liberty.” (paras. 435-436)
 - The Accused personally raped Victims A and B. He also aided and abetted rape by taking the victims to Atambua, threatening them at Atapupu beach, taking victims B and C to the rooms of Lt. Bambang and Noronha, and taking Francisco into the room of Victim B. This also involved a joint criminal enterprise between the 3 men to rape the victims. (paras 453-461)
 - In regard to the murder of Mariana Da Costa and Carlito Freitas, the Court found that it was uncontested between the parties that the victims dies as a result of the attack. The only controversy was as to whether the Accused led or participated in the attack. (para 463)
 - The Court carefully analyzes all of the witness testimony, including the alibi offered by one of the defense witnesses. It finds that the prosecution witnesses were credible and that their testimony was corroborated. The testimony of all but one of the defense witnesses does not dispute that the Accused led the attack against the village. The Court finds that the alibi testimony of the other Defense witnesses was not credible. It concludes that the Accused led the militia attack that led to the killing of the two victims. For this reason the fact that the Accused did not personally participate in the actual shooting is legally irrelevant. (paras. 464- 483) He is therefore responsible for the deaths of the victims.
 - The Court also found that the Accused was wearing a military uniform, was armed with a rifle, and gave the order to attack. Two of the witnesses identified two TNI among the attackers: Armando Estaqui and Inacio. The Defense witness that provided an alibi for the Accused also confirmed the presence of TNI among the attackers. He stated that the TNI forced the Accused to go with them. He said that the sub-group which he and the Accused joined included TNI members Fernando, Inacio, and Almando. (para 466)
 - As to the charge of the murders of Augusto Noronha and Antonio Franca, the Court finds that it was not disputed that they were killed in Raimea on 16 September 1999. It was also undisputed that Augusto died after being shot and stabbed with swords by a group of KMP and TNI. Antonio died when trying to escape from his house which was under fire. He was beaten and stabbed to death by a group of militia and TNI. The issue in dispute was whether the Accused participated in the attacks. (paras 484-485)
 - According to witness Ameriko Pereira, the accused was the commander of the militia. He said that the TNI gave orders to the militia and that TNI soldiers participated in operations together with the militia. Prosecution witness Joao Belo saw the accused wearing a TNI uniform. (paras 487-488)

- Defense witness Felipe Alfonso said that as commander of the KMP the Accused was in charge of socialization activities and that he joined the militia to save his relatives. He said that there were two groups in the militia and that only one of them obeyed the Accused. On cross-examination, however, he admitted that of the 712 members of the KMP only 10 belonged to the group that did not obey the Accused. He was also unable to give any examples of occasions when this group disobeyed the Accused's orders. Defense witness Oscar Du Ceo testified as to how the Accused was in regular radio contact with Lt. Bambang during the Raimea operation. (paras 496-499)
- The Court finds that the Accused was not the superior officer of the TNI who participated in the attack on Raimea. Lt Bambang Indra was their superior. Accordingly, the Accused has no command responsibility for the role of the TNI in the attack. The Court finds that although the Prosecution proved beyond a reasonable doubt that the KMP and TNI attacked Raimea and killed the victims, it did not prove that the Accused participated in the attack. It acquitted him of this charge.

Conclusions as to the Three Lolotoe Cases

Crimes against humanity

It was undisputed that crimes against humanity occurred in Lolotoe in 1999. The admissions of the Accused and the Prosecution and Defense testimony all concur that there was a campaign by the KMP militia to intimidate the civilian population by attacking pro-independence supporters and their families. Illegal detention, beatings, torture, and murder were all used to carry out this purpose. The acts were not random but were clearly well organized. All of the testimony, both of Defense and Prosecution supports this. Villages were selected and particular individuals were targeted because of their activities or those of their families. Women relatives of independence supporters were a particular target. The use of lists of names and the selective targeting of individuals rather than random violence indicates organization. The attacks also follow a common pattern, as do the detentions. The duration of time over which the attacks were carried out, the multiplicity of victims and incidents, the organized nature of the attacks, the careful selection of victims, and the targeting of independence supporters all establish that this was a widespread and systematic attack against a civilian population. In other words, the findings of the SPSC that crimes against humanity occurred in these three cases is clearly supported by the evidence. The fact that the Defendants in two of the three cases pleaded guilty and admitted all of the essentials necessary to establish crimes against humanity strengthens this case. Even though Jose Cardoso did not plead guilty, he did not dispute the facts which support the finding of crimes against humanity.

Institutional Responsibility

As to institutional responsibility, the evidence is uncontradicted, unequivocal, and plentiful as to the responsibility of the KMP militia for the crimes of which the three men were convicted. There was also very substantial evidence to support the Court's findings as to the role of TNI soldiers and officers participating in this violence and

supporting the KMP. The role of the KORAMIL and the way it was freely used by the KMP, the way in which detainees were moved from TNI facilities to private houses of militia leaders and civil officials, and the close connection of Lt. Bambang Indra to the KMP leadership all corroborate the Court's findings. The testimony of numerous witnesses supports the findings as well, as do the admissions of the Defendants. The way in which Lt. Bambang Indra operates together with the KMP leadership and with Noronha in regard to Victims A, B, and C is another clear indication of the closeness of this relationship. This is particularly striking in regard to the transportation of the three victims to Atambua to rape them. There is also a substantial amount of testimony, and particularly the admissions of the Defendants to support the finding of logistical and financial support by the TNI and civil authorities. Although there is no evidence presented by the Defense to contradict this testimony, it is nonetheless the case that the testimony does not indicate the exact nature, scope, and method of this support. Of course, such testimony was not germane to the specific charges against the Defendants, so there was no reason for the Prosecution to produce it. In order to clarify the extent of institutional responsibility on the part of the TNI and civil officials it would be necessary to examine further evidence as to the mechanisms and extent of the support. The evidence in the Lolotoe cases is sufficient to establish that at the operational level in this particular subdistrict, the TNI played an active and important role in militia operations. Indeed the evidence about detentions and interrogations in particular suggests a very substantial integration of the the TNI and militias in regard to operations targeting independence supporters. To what extent the institutional responsibility for the crimes against humanity in Lolotoe extends to higher levels of military and political authorities is a question left open by the evidence in the case. Certainly the Accused stated clearly that TNI largely created and directed the militias. It was also, however, in their interest to shift responsibility to the TNI and present themselves as mere unwilling pawns. The Court makes sweeping conclusions about the way in which the events in Lolotoe relate to larger patterns of cooperation between militia and TNI in all of East Timor. These conclusions are based upon the human rights investigative reports they received into evidence rather than the testimony produced by those involved in the events at Lolotoe. No testimony was heard on the broader context or on the reports themselves. In short, the Lolotoe Judgments establish that crimes against humanity occurred in Lolotoe and that there was joint institutional responsibility for those crimes between the KMP militia, the TNI, and civil officials. The decisions do not provide an independent account of the mechanisms and evidence by which institutional responsibility may be definitively demonstrated at higher levels. In this regard they only rely upon previous reports rather than upon their own findings based upon a review of testimony and other evidence produced in Court.

B. The Los Palos Case

The Los Palos Case, as it is commonly known, was the first major crimes against humanity trial before the Special Panels for Serious Crimes.⁵³⁵ It was by far the longest trial held before the Special Panels. Involving ten Defendants accused of carrying out a series of five crimes as members of Team Alfa, it dealt more explicitly than any other SPSC case with the broader context of the violence in East Timor in 1999. More witnesses were heard and more forensic evidence admitted than in any other trial. It also produced by far the most detailed Judgment of any of the trials. The Judgment is 433 pages long, consisting of 1166 numbered paragraphs setting out in great detail the allegations of the parties, the analysis of the evidence on which the Defense and Prosecution cases rested, and the specific factual and legal findings of the Court. While almost all of the other crimes against humanity cases of the SPSC may rightly be criticized for failing to analyze the relation of the crimes charged to broader context by hearing evidence on the contextual (chapeau) elements necessary to prove a charge of a crimes against humanity, this is true to a far lesser extent in the Los Palos case. Indeed the Court spends a considerable amount of time analyzing the chapeau elements on the context of the violence. It also engages in detailed factual analysis of the way in which the requisite elements, for example, knowledge that an Accused's conduct was part of a broader attack against a civilian population, are or are not met by the Prosecution's case. For these reasons the Los Palos case deserves detailed examination here, because it, along with the Lolotoe cases, offers the best opportunity to assess the conclusion reached by the SPSC trials on crimes against humanity, that such crimes, or gross human rights violations, did in fact occur in East Timor in 1999. Because of the amount of testimony it heard and analyzed on the context in which Team Alfa operated, it also provides the best opportunity to consider the extent to which the Judgment, and the evidence on which it is based, can support findings of institutional responsibility for these crimes.

The method of proceeding here will be to examine the Judgment in considerable detail, following the logic of the Court's analysis of the case before it. Needless to say, because of the tremendous length of the Judgment it is impossible to discuss each detailed factual finding made by the Court. The focus here will be on the key findings, analyses, and conclusions that bear most centrally upon the two questions of issue here: Was there evidence on which to base conclusions about crimes against humanity and institutional responsibility? For this reason much of the Court's analysis of the precise role of each of the members of Team Alfa in each specific crime will be omitted. Such analysis is vital for a determination of individual responsibility, but such a determination is largely irrelevant here. This is especially the case because the basic facts of the most significant crimes charged in the indictment are not in dispute. This was because most of the Accused admitted that these crimes had been perpetrated by Team Alfa and only disputed their precise role in the events or whether they had voluntarily participated. For this reason, the role of specific individuals will only be addressed when it is relevant for the issue of institutional responsibility. This most often involves the Defendant Joni Marques because of his admitted leadership role in the events that were charged. Indeed, because Joni Marques also made so many admissions as to several of the crimes and the context in which they occurred, his individual role will often be discussed because it bears directly upon issues of institutional responsibility.

⁵³⁵ Case Number 09/2000, Prosecutor vs Joni Marques et. al.

At the beginning of the trial, when asked how they pleaded the Accused made statements that admitted some of the charges. Joni Marques admitted acts of torture and various murders, including that of several clergy, but the Court declined to accept the guilty plea because aspects of his admissions conflicted “with the essential facts of the case.” Accused Joao Da Costa admitted he had participated in beating of Evaristo Lopes, but stated that he was acting under orders from Syaful Anwar, and that it was Syaful Anwar that had killed the victim. (para 13)

Accused Mautersa Monis admitted being a Team Alfa member and that he had participated in the torture of Evaristo Lopes. He stated that he was acting under TNI orders, and specifically those of Syaful Anwar, who had actually killed the victim. Accused Gilberto Fernandes stated that he had struck Evaristo three times, but under orders from Syaful Anwar. He stated that Syaful Anwar had beaten the victim until he died. (para 13)

Three other Accused -Alaricio Fernandes, Gonsalo Dos Santos, and Paulo Da Costa - all denied that they were members of Team Alfa or had any connection to the crimes. Paulo Da Costa, on being questioned by the court, admitted that he had shot one victim, but under orders from Joni Marques. As to a second victim, he stated that the “main perpetrator” was Joni Marques. (para 13) Alaricio stated that he had been there when the two victims were killed, but only because he had been ordered to come with the group while he was buying vegetables at the market. (para 13)

The Court begins its analysis by setting out the central allegations of first the Prosecution case and then that of the Defense. In paragraph 16, it sets out the allegations of the Prosecution as reflected in its opening statement:

The Prosecution alleges a September 25 attack by Team Alfa killing nine people. They say this was not an isolated incident, but “the last in a series of crimes” committed in 1999. **They go on to state that in revenge Team Alfa was itself attacked and six members were killed, eight wounded. They do not say who were the perpetrators, but since they say it was in revenge it is clearly implied that this was by pro-independence supporters. They say that revenge cannot justify such a killing.** ⁵³⁶

The Prosecution then alleges that Team Alfa operated with the direct support of the Indonesian authorities and under the command of KOPASSUS. The Prosecution’s case focuses on five events involving Team Alfa, all of which, it says, were part of a larger widespread and systematic attack involving crimes against humanity. The five events were: torture and murder of Evaristo Lopes; forcible transfer in which villages around Leuro were attacked, burned, and the inhabitants forced to flee; murder of Alexio Oliveira at base of Battalion 745; murder of Alfredo and Kalisto; murder of nine persons, including six clergy, on the road outside of Lautem. (para 16)

⁵³⁶ Although this revenge killing involved almost as many victims as the September 25th attack, it was investigated but never brought to trial by the SCU. The Court discusses this issue, as will be seen below.

Many of the subsequent trials conducted by the SCU relied merely on various human rights reports to establish the widespread or systematic attack against a civilian population necessary to prove crimes against humanity. This was not the case in the Los Palos trial. The Prosecution opening statement set out by the Court makes clear that the Prosecution bases the case for crimes against humanity on the activities of Team Alfa itself: the pattern of its activities, over time (six months) and space (various attacks in different places), and the systematic targeting of pro-independence supporters. (para 16) In addition they say they are introducing five reports on the general situation in East Timor. So there are two bases for the Prosecution's argument that Crimes Against Humanity were committed. They quote part of the KPP HAM Executive Summary to support their allegation of the context, "There was a strong relationship and linkage between TNI, POLRI, government bureaucracy, and the militias." (Citing KPP HAM Indonesian version p. 71, English version p. 64).

The Court, in discussing the legal arguments advanced by the prosecution in support of the chapeau elements, notes that evidence has been led on this issue in the trial in the form of witness testimony, that supports the targeting of pro-independence groups, of the sharing of headquarters by Team Alfa and KOPASSUS, etc. In addition to detailed arguments made by the Prosecution from the factual findings of the five reports introduced, the Prosecution did lead other evidence to support the contextual elements and the link between Team Alfa and the Indonesian armed forces. (Judgment p. 33-35) The Prosecution introduced firearms into evidence and expert testimony on those weapons.

The Court presents the Prosecution's specific allegations in great detail. As to the murder of Evaristo Lopes, for example, they state that the Prosecution alleges that Team Alfa shared its headquarters with KOPASSUS. (para 19) Team Alfa set up a roadblock near their HQ on April 21. They removed Evaristo Lopes, a FALINTIL supporter, from a car and hit him with an iron bar. According to the Prosecution, Syaful Anwar was the deputy commander of KOPASSUS in Los Palos and was observing these events. He ordered the men to take Evaristo to the KOPASSUS headquarters. At the headquarters Evaristo was beaten with an iron bar and other means and questioned about FALINTIL. His hair was cut by one of the accused. At the end of the interrogation his throat was cut by Syaful Anwar and he died. His body was dumped in a field on the orders of Joni Marques. It was later taken to the hospital after being discovered. The post-mortem that was conducted confirmed the injuries and that his hands and legs had been tied. It also confirmed the uneven haircut.

The Court then details the Prosecution case on forcible transfer. This includes details of Team Alfa operations from 8-20 September in which various villagers were forced from their homes, CNRT were targeted, and houses were burnt. Team Alfa transported them from their villages. In regard to some of these events TNI encouragement or participation is alleged (e.g., groups of villagers were held at the Battalion 745 headquarters for five days until many of them were taken to Kupang. As to the murder of Alexios Oliveira on

September 11, the Prosecution case was that Team Alfa came to his village and detained him as a CNRT supporter. They took him from his house and brought him to the Battalion 745 HQ. At the HQ they took him to some TNI soldiers. Joni Marques and some of the Accused, together with some TNI, took him to be executed. According to the Prosecution case, he was then stabbed by Gonsalo dos Santos with a sword. (paras 30-31)

In regard to the murder of the clergy, the Prosecution case was that Joni Marques led Team Alfa from Com to Lautem on 25 September. Six of the group, including Joni Marques and two other Accused, were armed with SKS rifles. They set up a roadblock on the road to Lautem. They opened fire on a vehicle that approached, which contained a number of passengers, including the nuns and clergymen. Three men were burned alive after having been shot in the attack on the minibus. Joni Marques personally shot Sister Ermina, who was praying, and threw her body in the river. All eight persons in the vehicle were killed, along with a young man that Team Alfa had previously detained and tied to a nearby tree. All nine bodies were recovered and the post-mortem showed that they had died from multiple gunshot wounds and from blunt force trauma. The injuries were consistent with the witness' statements about the attack. All the post-mortem reports were included in the Case File, Folder A. pp. 267-332 (English file). (Judgment, para 41)

The Judgment then summarizes the allegations of the defense's case:

Joni Marques admitted being present at the murder of Evaristo. He stated on questioning from the Presiding Judge that it was Syaful Anwar who had ordered the murder and torture (para 43). Marques also stated that Team Alfa was formed by Kopassus in 1995, and received weapons and training from them. He said that the purpose behind the formation of Team Alfa had been to provide security support for the TNI and that he could not talk about its other purposes because these were "political issues." (para 44) He admitted that Team Alfa had been ordered by KOPASSUS to fight against independence supporters and against FALINTIL, but he denied that he knew FALINTIL supported independence. He denied being the Team Alfa commander or having received any money for his activities. (para 44). He stated that it was true that KOPASSUS and Team Alfa shared the same headquarters but said he had no choice but to go there. (para. 45). As to the murder and torture of Evaristo, he denied being at the roadblock and said he first saw Evaristo at the KOPASSUS/TeamAlfa Headquarters. He there saw him being beaten by Syaful Anwar and by other accused. He denied participating other than forcibly cutting the victim's hair. He admitted that Evaristo had died during the beating, but alleged that he left the room as Syaful Anwar was continuing to beat him. He stated that as he left the room he heard the victim scream, and then he was dead. He confirmed that it was Anwar who killed him and that KOPASSUS Lieutenant Ahmad was in the room at the time. It was Ahmad, he said, who ordered the body to be disposed of. (paras. 45-49) On examination from his defense counsel, Marques explained that he only became a member of Team Alfa to avoid being suspected as a FALINTIL supporter. In response to his Defense counsel's questions, he repeated that it was Anwar that had stabbed Evaristo in the throat. In response to more questions by the Court, he stated that as a Team Alfa member he was supposed to follow KOPASSUS orders and that he also sometimes provided security for the Bupati. (para 55) As to the forcible transfer charges, Marques

stated that 100% of his village was pro-autonomy and he had only provided transportation because they had all requested it. (para 56)

As to the murder of Oliveira, Marques stated that he took him in the minibus at his mother's request, but then he put a rifle to his head and questioned him about CNRT as he knew Oliveira was a CNRT supporter. He stated that the rifle had been given to him by the KOPASSUS. (paras. 59-61) They took Oliveira to Battalion 745 and he never saw him again. He did not know of his death and had no role in it. The defense argued that arranging for him to be brought to the base of Battalion 745 did not make Marques complicitous in the murder that ensued. The fact that Team Alfa transported Oliveira to the TNI base where he subsequently died was undisputed by the Defense.

At trial Marques decided to plead guilty to the murder of Araujo and Rodrigues. On questioning by the Court he stated that he killed Araujo at the victim's request after he had been wounded.

In regard to the murder of clergy he also changed his plea to guilty, though still denying he was the Commander of Team Alfa. He admitted participating in the murders and specifically also admitted that he did so knowing that it was part of a widespread and systematic attack against a civilian population. He stated, "I personally accept it because it was I myself who made the operation." (para. 68) At the end of the trial he asked to make a statement. He again accepted his responsibility but he asked for justice to also be done on behalf of his comrades who were killed on September 27th. (para. 71). On his behalf, the Defense argued in its closing that the evidence had not shown that Joni Marques ordered the murder of Evaristo or that he was in command at the killing. They stated, "The evidence has clearly shown that Syaful Anwar killed Evaristo Lopes." They also stated the presence of the two KOPASSUS officers indicated that Marques was not in authority in this situation. (para 72) In other words, the Prosecution allegation about the presence and role of these KOPASSUS officers was regarded as proved by the Defense and was undisputed.

The defense of Manuel Da Costa shifted the responsibility to Marques for the murder of the clergy (and Marques accepted responsibility for his leading role). Da Costa stated that Marques told him they had to set up a roadblock and kill the nuns. He said Marques told him, "Now we wait for the sisters who are to come to Baucau ... When they come, we kill them all!" (para. 74) He also admitted that after they had fired on the vehicle they poured five liters of gasoline on it and set it on fire, with those who had been wounded still inside, alive. (para. 74) Under questioning from the Prosecution he stated that he had become a member of Team Alfa in 1987 and that he became a platoon commander in 1997. He said that as a member of Team Alfa his duty was to follow orders from KOPASSUS and fight against FALINTIL. He stated that he received 500,000 Rp. per month as his salary as a platoon commander in Team Alfa. He also stated that he received orders from the Bupati, but denied that the Bupati provided his salary. (para. 75) He testified as to Operation Kenzen in which he said Syaful Anwar had ordered his unit to participate. This operation, he said, involved moving refugees to West Timor. (para. 76) Manuel also testified that he had used an SKS rifle in the operation and that the rifle had his name "Manuel" carved into the stock. He stated that he had been given the rifle by

KOPASSUS, but only on 14 September. His intention, he explained, was only to provide security against FALINTIL. (para. 79) Being questioned by defense counsel of other accused, he explained the relation of Team Alfa to KOPASSUS, stating that he had to follow orders of KOPASSUS. He feared that they would think that he was a FALINTIL supporter, like some of his relatives were. (para. 82) He also stated that Team Alfa only received its weapons from KOPASSUS and that “Team Alfa was a spearhead group for KOPASSUS.” He said that KOPASSUS was working together with the Bupati but that they were not allowed to let the Police know anything about what they were doing. (para 82)

The Defense case on behalf of Joao Da Costa was that he was indeed a member of Team Alfa and under the command of KOPASSUS, who equipped them with weapons and selected the members of the unit. He had been forced to join in 1995 after being apprehended as a FALINTIL suspect. (para.87) He said that their duty was to wait for orders from KOPASSUS to fight against FALINTIL. (para.88) In regard to the murder of Evaristo, he admitted that he was at the roadblock and stated that he had received a direct order the day before from Syaful Anwar to arrest Evaristo and that it was Anwar who had told them when Evaristo would be travelling. (para. 89) He denied that he had participated in the beating at the roadblock, but acknowledged that his comrades had. He stated that at the headquarters it was only Anwar who was torturing and interrogating Evaristo and that he did so until Evaristo died. He later said that he had not actually seen Anwar cut his throat, but he had seen the torture and he heard the screaming from just outside the room when Evaristo’s throat was cut and he died. (para. 93) He stated that they were ordered to take the body and bury it but that he did not know the reason for the murder. He stated that “only Syaful Anwar” knew that. (para. 89-91) The Court notes that his testimony contains some contradictions in that he at one point stated that he did not know the purpose of Team Alfa, yet at other points said that its role was to fight FALINTIL in the jungle.(para 92) About the role of Joni Marques, he stated that he was not at the roadblock but was at the HQ during the torture and murder. He also stated that at the headquarters the rooms used by Team Alfa were about three meters from those used by KOPASSUS.(para. 94). He said that he did not know that Evaristo was FALINTIL and that they had only been ordered to capture him, not kill him. (para. 95).

As to his role in the murder of the clergy, he stated that he had only killed one man, who was running to the river when he shot him. He stated that he did so under orders from Joni Marques. (para. 96) His testimony as to the details of the attack essentially confirmed previous testimony about the incident. In his legal argument his counsel relied on the argument that the beating of Evaristo was at the orders of the two KOPASSUS commanders (Amwar and Rachmad⁵³⁷) and that Joao had not materially participated. (para. 101) In regard to the murder of the clergy, the Defense counsel stated that it was “a brutal and atrocious attack”. They argued, however, that the same was true of the revenge killing by FALINTIL two days later [September 27] but that no one would be brought to justice for that crime (paragraph 101). They went on to argue that this did not diminish the gravity of the offense, in which Joao had freely admitted his role. He had wanted to plead guilty but the Court had not accepted the plea because he was not prepared to admit

⁵³⁷ Later in the Judgment his name is spelled as “Rahmad”.

to all the elements of the crimes against humanity charged. They also asked the Court to consider that Marques had accepted responsibility for this crime.

The Defense of Paulo Da Costa (pp. 101 ff.): In regard to all of the crimes of which he was accused his general line of defense was that he was not a Team Alfa member but only a driver who was forced to drive for them a minibus kept at the KPOASSUS headquarters. As to the killings at Lautem of the clergy he said that he was only being forced to drive but was not part of the operation. He stated that Marques made clear that the victims were targeted as pro-independence. He said that Marques said, "Kill them all, They're all CNRT." He saw Marques shoot the Sister in the head at point blank range. (para 122). The defense summarized its case on his behalf by saying that the Accused did not have the education to understand what was happening in East Timor and the responsibility for these crimes was with the Indonesian authorities who were directing and controlling what went on. (para .132)

The Defense of Amelio Da Costa: As to the murders of the clergy, he stated that he was an ordinary citizen and knew nothing of the plan for this operation, which was made by Joni Marques. He also thought they were just going to get rice. He had no part in murdering anyone (paras. 133-34). He detailed the facts of the murder, including Marques saying that they all had to be killed. He talked about the others shooting but said he had no role in it. He said that he was not a member of Team Alfa but of Pam Swakarsa, the purpose of which was to protect all voters, not just pro-autonomy supporters. (paras 134-45)

Defense of Hilario Da Silva: He claimed he was just an ordinary citizen who was taken along with Team Alfa, thinking they were going to get food. He also detailed the story about the roadblock and killing the clergy, but denied he was shooting. (paras. 139-41, pages 112-113) He said that he did not know what Team Alfa was but he agreed to identify the Accused who were members. He also said that he did not know what CNRT was, but he said that he saw CNRT members arrested at the Batallion 745 base. (paras. 141-143) In explaining the roadblock and killings again, however, he admitted, "We knew that Team Alfa was to kill FALINTIL." But he denied that he knew that that was what the roadblock was set up to do. (para 152) He also provided details of the September 27th attack against Team Alfa by Falintil (paragraph 160). The group ambushed allegedly included civilians as well as Team Alfa members.

The Defense of Gonsalo Dos Santos: He stated that he was not Team Alfa and knew nothing about Team Alfa. He said that Joni Marques was responsible for Team Alfa and that Marques forced him to go along. As to forcible transfer he denied that he had any role and said that he himself had been forced to go to Kupang. As to the murder of the clergy he also said that he had been forced by Joni Marques to go along. He detailed the story of the roadblock and the murders of the clergy. He also stated that three of the members of Team Alfa had SKS rifles. (para. 177) He said he was wearing a red headband because he knew that if they did not they could be identified as CNRT and killed. (para. 178, page 124) [This shows he did have an awareness of the political context]. He later stated that the UN should look at both sides of the violence and also prosecute those who attacked them on September 27th. (para. 189). He stated that he had

no choice to participate or he would have been killed. Being questioned by other Defense counsel he stated that refusing an order by Joni Marques to wear a red and white headband could have been grounds for being identified as a CNRT or independence supporter. He also, however, denied knowing what CNRT was. (para 199)

Defense of Alarico Fernandes: He denied being a Team Alfa member. He said that in regard to the charge of forcible transfer Joni Marques and 11 Team Alfa members armed with SKS rifles came to his village and Joni Marques said, “This place belongs to us.” He said Marques also stated, “Anyone who supports CNRT will have their houses burnt and will also be killed.” They then forced the villagers to go to Kupang. (paras 208-209) He knew Joni Marques because they grew up in the same village. He said that Marques and Team Alfa were well known around Los Palos. They threatened villagers with death if they supported CNRT. Later they burnt houses of CNRT supporters. He himself burnt two houses because he was ordered to do so. (para 211) He also said that after each burning operation they returned to Base 745. (para 214)

Defense of Mautersa Monis: He testified that he was a clandestine FA LINTIL member who for that reason joined Team Alfa. He said that Team Alfa was set up by the TNI and KOPASSUS to fight FALINTIL and support autonomy. He said he knew that when he joined Team Alfa in 1999. He said, “TNI and KOPASSUS supplied Team Alfa with training, ammunition, and provisions. KOPASSUS gave us orders to kill FALINTIL members.” (paras 219-220). In regard to Evaristo, he said that Anwar gave him an iron bar and that he was the first one to beat him. He said that he did not participate in the later torture of Evaristo but that Anwar was in the room with him. (para. 222-223)

Defense of Gilberto Fernandes: He joined Team Alfa as a cook. He participated in the beating of Evaristo, that was ordered by Anwar. He was not there when Evaristo died but before he left he saw Joni Marques, Anwar, and others participating in the torture. (paras 227-229). The Defense counsel argued that Gilberto was only a low ranking member of Team Alfa and did not participate in any of the meetings with KOPASSUS. Hence, they argued, he did not know about the context as required for Crimes Against Humanity. (para 233). The Defense also argued that the torture and murder of Evaristo was ordered by Anwar and Rachmad, the KOPASSUS commanders. (para 233)

This ends the Court’s summary of the factual allegations of the Defense in regard to each of the Accused. The Court then turns to its evaluation of the evidence. (Part IV). In the first section of this part it sets out the evidence that the Prosecution and Defense both agree on. This point is significant for it indicates the evidence that none of the ten Accused and their counsel disputed and which could be regarded by the Court as not in controversy and capable, from the standpoint of the parties, of supporting findings. This evidence includes:

1. The testimony of 35 witnesses (named in the Judgment).
2. The post-mortem evidence.
3. Forensic reports.

4. 11 Investigation reports by SCU field investigators.

5. Reports of KPP HAM and other such human rights investigations.

It should be noted that none of the crime scene investigation reports were contested, nor was the testimony of a significant number of witnesses. As in other trials, the Defense made no objection to the introduction of the KPP HAM and other human rights reports that set out the context necessary to support the chapeau elements of crimes against humanity. After the Los Palos case it became standard practice to accept this evidence without challenge. This enabled the Prosecution to make its case on the existence of a widespread or systematic attack against a civilian population with subjecting it to the process of scrutiny by the Court and Defense counsel. It was noted above that in this case the Court nonetheless engaged in a substantive analysis of the required contextual elements, using testimonial evidence to confirm the findings made by the reports. This was not, however, the case in nearly all other trials.

Having stated what evidence the parties agree on the Court then turns to its analysis of the prosecution evidence.

They first take the case of Evaristo and set out the testimony of every Prosecution witness. On the Court's analysis, in terms of the context of the murder the following witnesses' testimony concur on the nature of the context, that is the role of KOPASSUS in relation to the Team Alfa operation against Evaristo, and the presence of KOPASSUS at the torture and murder of Evaristo at the headquarters:

Mosies Lopes testified as an eyewitness who was in the car with Evaristo to the roadblock, the presence of Kopassus, and the taking of Evaristo to the Team Alfa/KOPASSUS headquarters. (paras 240-245) Rudi de Jesus was also in the car with Evaristo and testified how Evaristo was beaten at the roadblock and that a KOPASSUS commander then got out of his Kijang and ordered that Evaristo be taken to the headquarters (paras 246-54); Gonsalo Da Costa Sanches testified also that he had been in Team Alfa since 1998 and had been equipped with an SKS rifle,. He stated that he was at the roadblock and participated in the beating there, and at the headquarters. On his account, Rachmad and Anwar were present, and that he, Gonsalo was one of the ones ordered to bury the body (paras 255-63); Domingos Ribeiro testified that he was in the car with Evaristo and other FALINTIL, that they were stopped at the roadblock and Evaristo taken out, and that a KOPASSUS commander ordered Evaristo to be taken to the headquarters (paras. 264-268); Armindo Soares testified that he was Team Alfa since 1999 and that he was present at the headquarters at the beating and was under orders from TNI. He testified that Anwar was there and after questioning by the Prosecutor confirmed that Anwar had killed Evaristo (269-276); Mario Ribeiro testified that he was Team Alfa since 1987 and was present at the KOPASSUS base during this event. He testified as to the participation of Anwar and TNI Sgt. Armad. He said that Team Alfa received its directives from KOPASSUS as well as its weapons, that they operated jointly with KOPASSUS in looking for FALINTIL and were under orders to shoot them when they found them, and that he received 75,000 RP per month plus food. Under questioning from the Court he testified as to the close relation between KOPASSUS and the Bupati

(paras 277-288); Salvador Almaral testified that he was a Tim Ratih militia member since 1995 and that their role was to support autonomy, that he was on guard at the base when Evaristo was tortured and went to the room and saw Joni Marques, Anwar and several others (named) beating him and that he saw Anwar slit his throat and he was part of the group that took away the body for burial, including two KOPASSUS. On questioning from Defense if he had seen the killing with his own eyes he stated that he saw it himself, standing about five meters away: “Oscar held his head and Syaful Anwar cut his throat.” (paras 289-98); Valerio Valnte testified that he was FALINTIL and was arrested at the roadblock with Evaristo. He was also taken to the base and beaten, including by Anwar, that he heard Evaristo screaming but saw nothing and did not know who killed him, and that the next day he was taken back to his village in a blue Kijang with a KOPASSUS member (paras 299-306). This concludes the witnesses as to whose testimony was disputed by the Defense.

Skipping the very long detailed presentation of the Prosecution evidence on the Oliveira and Kallisto/Rodrigues murders and the forcible transfer charges, the Prosecution case as to the murder of the clergy on September 25th was summarized by the Court as follows:

Jose Pereira testified that he was one of the young boys chased by the militia at the roadblock, that he recognized Joao Da Costa as one of the armed men in the minibus, and that after he escaped to the river he heard shooting (paras 603-607); Gilberto Da Costa made a statement to the Court testifying that he was a guard at the TNI military post, that he went on the mission to collect rice at Lautem, that he was chasing the young boys when he heard gunshots, that when they went back to the roadblock they saw the dead nuns and others, and that he was ordered to push the victims’ van into the river, that all of their group carried SKS rifles given to them by Team Alfa, except the driver (paras 609-614); Joao Soares testified that he was repeatedly taken from Base 745 as part of a group to pick up rice, that he was at the roadblock, that he saw some of the killings of the clergy, and that he was ordered to push the van into the river; that he saw Hilario stabbing and Joni Marques shooting the nun (paras 615-622). This completes the testimony. Of course as the Prosecution pointed out, and as is detailed by the Court, there was no dispute as to the essential facts because Joni Marques admitted his role and confirmed the murders, as did various other Defendants (see above). As the Prosecution further notes, it is not disputed that the attack on September 25th was part of a widespread and systematic attack against the civilian population and that nine people were murdered, one of whom was not part of the clergy group.

The only dispute was as to the awareness of some of the perpetrators as to the context of their actions as required for crimes against humanity. This pertains to individual responsibility and is as such not relevant here, especially since Joni Marques admitted his awareness and his leadership role (para 623). In regard to this charge the Defense presented no evidence but only made arguments as to the various Defenses of superior orders/duress and the lack of knowledge as to the contextual element. These defenses primarily go to individual responsibility and not as to the facts of what happened at the roadblock. Defense counsel did, however, argue that Joni Marques was unreliable as a witness because he had a motive to lie. The Defense stated that Marques was the personal bodyguard of KOPASSUS officer Lt. Col. Rahmat, that he worked with KOPASSUS

and in order to cover up his own role in the murder of Evaristo he implicated others. This Defense does not dispute the basic facts and context. The Defense also pointed out various factual inconsistencies in various witnesses' testimony as to the role of particular individuals. Again, they did not dispute the basic facts of what occurred at the roadblock and the headquarters.

The Prosecution and Defense evidence and arguments in great detail, including the position of the parties as to the testimony of every witness in regard to each of the five charges, the Court then turns to its own findings in Part VI, stating that the burden is on the Prosecution to prove its case "beyond a reasonable doubt" (paras. 672-673). In Paragraph 679 the Court again notes that the Defense did not dispute any of the five reports introduced as evidence by the Prosecution. This means, of course, that they were not challenged and the Prosecution was not required to establish the validity of the methods and conclusions of the reports.

On the basis of their analysis of the evidence presented in Court apart from the reports, the Court reached the following conclusions about what the evidence has established that:

P. 685: "The evidence also shows that *none* of the victims took part in the hostilities."

P. 686: There was an extensive attack by pro-autonomy armed groups, supported by Indonesian authorities, on civilian groups linked with independence for East Timor. This finding is followed by excerpts from the reports, which the Court finds to have been confirmed by the testimony they heard. As noted above, the Los Palos case is one of the only ones where the Court actually makes finding on the contextual elements based on testimony in court as opposed to merely relying on the reports. Given the five different events that were charged in this trial, and given the range of anti-independence activity described by witnesses and admitted to by many of the Defendants, this finding appears to have been a reasonable conclusion on the basis of the evidence presented. As noted above, the Defense did not contest the existence of a widespread or systematic attack on a civilian population, nor did it contest the testimony about the evidence that was adduced to support such conclusions. Instead, the Defense only challenged the **knowledge** of specific Defendants (not including Joni Marques) as to the relation between their conduct and the broader attack. That is they challenged the element that the accused be proved to have been aware that his act was part of the broader context. The Court made explicit that it was relying on testimony given by witnesses before it in reaching its conclusion about the contextual element of a widespread attack: "Furthermore, the testimonies from villagers persuaded the Court about the attacks on the civilian population; namely, against persons who were either under suspicion or widely- known independence supporters. It is telling that despite some of the witnesses having close family ties to some of the Defendants, they nevertheless provided broad evidence about those attacks." (para 688) The Court also noted that other evidence, in the form of photographs, videos, and objects seized as physical evidence, also supported the witness testimony and the reports. (para 689) The Court concluded that despite their protestations of a low level of education, all of the Accused were in fact aware of the widespread and systematic attack against a civilian population that was taking place in East Timor. (para. 690). Thus, the Court concluded that, to use the technical terms, the chapeau (i.e., contextual) elements

for crimes against humanity had been proved beyond a reasonable doubt by the Prosecution.

Given that the undisputed evidence before the Court might well have been enough to establish a widespread attack even without any of the five reports,⁵³⁸ and given that the Defense did not challenge this evidence or the conclusions urged by the Prosecution about the existence of such an attack, the finding of the Court appears to be well-founded. That is, that crimes against humanity occurred. The question of institutional responsibility for those crimes is, of course, an independent issue and will be taken up in the analysis of the Court's specific findings as to the particular charges and incidents.

It must also be noted here that the Court took quite seriously the allegations of similar attacks by pro-independence groups. Their position on this deserves emphasis:

“As the aforementioned report noted, gross violations were also committed by parties oriented to the independence cause. During this trial more than one accused addressed to the Panel a request for the punishment of those who attacked part of the group on 27 September 1999 during an ambush which resulted in several deaths and serious and permanent injuries in some of them. The Court immediately requested the Prosecution Service to undertake inquiries about criminal persecution [sic] for that incident. The accused Paulo Da Costa added in his Closing Statement that a Serious Crimes unit investigator had already recently interviewed him.” (para 687)

In regard to the five crimes charged, the Court makes the following specific factual findings. Conclusions as to the role of specific Defendants are omitted except where they bear upon issues of institutional responsibility:

Charge 1. Murder and Torture of Evaristo Lopes as Crimes Against Humanity

- A roadblock was set up and manned by Team Alfa, including several of the Accused. Evaristo Lopes was specifically targeted by the roadblock operation (para 692) and unequivocal evidence showed that he was beaten at the roadblock.

⁵³⁸ The multiplicity of incidents necessary to establish the widespread element is a requirement that may be met without difficulty in such a case where there are several attacks, those attacks involve more than single victims, they occur over a period of time and not just in one incident, and are geographically dispersed. The targeting of particular groups and the employment of roadblocks, interrogation, and the like, would also be indicia that could support a finding that the attacks were systematic as well.

- Evaristo was taken to the headquarters (HQ) shared by KOPASSUS and Team Alfa. All of the accused admitted that they went to the KOPASSUS/Team Alfa HQ, and this was confirmed by the testimonies of the witnesses. (para 693)
- The victim was stripped naked, tied up by hands and feet, and beaten and stabbed to death by various of the accused (named in the findings and the testimony for the role of each is discussed in detail, particularly where there are any discrepancies between different accounts). His body was taken and dumped at a remote location by members of KOPASSUS and Team Alfa. (paras 698-699)
- Joni Marques and Rahmad [KOPASSUS] came out of a meeting at the HQ and issued an order to kill Evaristo. The witness testimony was not clear on precisely which of them issued the command to carry out this order upon coming out of the meeting room together. (paras. 704-705, 710)
- Evidence established that during the beating and torture that Evaristo was interrogated by Joni Marques about FALINTIL. (para 708)
- Having confessed to being a militia leader and having close ties to Indonesian military forces, Joni Marques was aware that the killing and torture of Evaristo in which he actively participated was not an isolated act against a civilian but was rather part of a wider policy targeting pro-independence supporters. Evaristo was tortured and killed for his political affiliations. (paras 718-719) Other members of Team Alfa (named for each of the Accused but names omitted here) who participated in the torture and beating shared this awareness of the wider context and policy of the targeting of violence against pro-independence supporters. (e.g., paras 727, 736, 751, 819)
- Accused Joao Da Costa received the order to arrest Evaristo from Syaful Anwar. Joao knew that Evaristo was being targeted as a FALINTIL supporter because when detaining him he said, “We’ve been looking for you for a long time.” (para 724).
- Syaful Anwar did the “final stabbing” of the victim but other members of Team Alfa (named) also stabbed him during the interrogation. (paras 725, 753)
- Accused Mautersa “knew that the group [TeamAlfa] had a plan to search for FALINTIL members in the forest, with the support of KOPASSUS, which was providing the weapons.” (para 734)

Charge 2. Forcible Transfer and Persecution as Crimes Against Humanity

- The discriminatory intent [a required element of persecution as a crimes against humanity] is indicated by the burning by Team Alfa of houses of CNRT or other

- pro-independence supporters. (para 769; the detailed findings as to specific testimony and incidents of burning and forcible relocation are set out in paras 757-768).
- Houses of other individuals were targeted as well, including some who were pro-autonomy supporters. This also relates to the discriminatory intent because the purpose was to target anyone who wished to remain in East Timor because this desire indicated their support for independence. (paras 770-771) This was indicated, for example, by the orders given on various occasions were to “Burn all the houses then Xanana will rebuild them.” (para 771) This finding does also not exclude the fact houses of pro-independence supporters were specifically targeted. (para 771)
 - The purpose behind this operation of burning was forcible transfer. The forcible nature of the transfer was “unequivocally” indicated by the testimony before the Court given both by the Accused as well as by witnesses. For example, a village Chief and CNRT supporter testified that “it was not Team Alfa that was forcing us to move but the Bupati of our region. They ordered us to go to Los Palos, then to Com in order to go to Kupang to become refugees.” (paras. 772-773, other witnesses statements, and the role of Team Alfa, are detailed in paras 774-780)
 - Joni Marques admitted that he participated in these operations in close collaboration with Indonesian military officers and always carried a weapon. Other Team Alfa members also carried these SKS rifles. This was established by the testimony both of the Accused members of Team Alfa and by witnesses. For example, one of the Accused, a member of Team Alfa, stated that 11 of them carried SKS rifles and that in this operation Joni Marques told them, “Anyone who supports CNRT will have their houses burnt and will also be killed.” (para 785), and other testimony as to the arms and Marques’ role in paras 784-795)
 - In carrying out this plan Team Alfa worked closely with KOPASSUS. They implemented the plan but did not formulate it. This was done by the “Indonesian authorities” acting through the heads of districts and providing support through equipment and personnel (paras 795-797, 799) The specific factual findings as to the role of individual Accused in acts of burning and forcible transfer, and of their awareness of the broader context of their actions are detailed in paras. 803-841)

Charge 3: Murder of Alexio Oliveira as a Crime Against Humanity

- The evidence from both Defense and Prosecution was undisputed that Alexio was taken by Team Alfa to TNI Base 745. (para 844) The Prosecution alleged he was killed there the defense argued that the prosecution witnesses had not established this beyond a reasonable doubt. (para 847)
- The evidence was clear that Alexio was taken to the Provost House (at Base 745) by three Team Alfa members [named] together with TNI members [not

named or otherwise identified in the Judgment]. He was never seen again. (para 848)

- Forensic experts established that the body taken from the well behind Base 745 was that of Alexio. (para 749)
- The forensic testimony was not clear on the manner of death, nor was there clear evidence as to precisely where and when he was killed. (paras 750-753).
- After an extremely detailed examination of all of the testimony as to the role of each of the Accused in the alleged murder of Alexio the Court concludes that because of discrepancies, inconsistencies, and lack of corroboration in the testimonies, that the Prosecution had not established clearly who killed Alexio. All Accused were acquitted of this charge.

Charge 4: Murders of Alfredo Araujo and Kalistu Rodrigues as Crimes Against Humanity

- There was no dispute as to the deaths of the two victims on September 21, 1999. It was admitted by the Accused and confirmed by witnesses. Also, Paula Da Costa admitted that he shot Kalistu and Joni Marques admitted that he shot Alfredo. This was also confirmed by witnesses. (paras. 889-890)
- The victims were killed because they were believed to be FALINTIL supporters. (paras 900-901) [Details as to the findings about the role of each of the Accused omitted here as irrelevant to this report]

Charge 5: Murders of Clergy and of Agus Muliawan and Izinho Freitas Amaral as Crimes Against Humanity

- It was established by the undisputed statements of the Accused and others that on September 25, 1999 Team Alfa set up a roadblock to ambush a vehicle coming from Baucau and that before the vehicle arrived they chased two young men at the site, one of whom they killed. It was also undisputed that all of the members of the vehicle, consisting of six clergy, a journalist, and one other lay person, were killed by Team Alfa members. (para 918)
- Joni Marques, on his own admission, ordered the ambush. Afterwards, he ordered the car to be pushed in the river, one of the victims (a nun) still being alive in the car. He then tossed a grenade in the water after the nun escaped from the car in the river. (paras 919, 926)
- Joni Marques' role as one of the commanders of Team Alfa is indicated by "his continuous contact with KOPASSUS and TNI authorities" and well as by his actions in the carrying of the operation. (paras 921-925)
- Joni Marques' plea of guilty was consistent with the evidentiary findings. These showed that he led the operation and directly participated in the murders. (926)

He specifically admitted to the Court that he knew that this operation to murder these civilians was part of the broader attack targeting civilian populations that was being carried out by “Indonesian authorities.” (para 927)

- Manuel Da Costa was a Team Alfa platoon commander. He knew of the plan to kill the nuns because when they set up the roadblock Joni Marques told him that, “Now we wait for the Sisters who are going to Baucau. We wait for them here. When they come we kill them all.” (para 930) The detailed factual findings and analysis of testimony related to the specific actions of each of the accused is omitted as irrelevant to this report. (paras 930-975)

Institutional Responsibility

The Court itself directed its verdicts against the Accused as individuals. The fact that some individuals were implicated is not enough, however, to establish institutional responsibility. There are, however, numerous factual findings by the Judgment which bears upon this issue. As indicated above, the admissions and statements by the Accused themselves repeatedly pointed to the close relationship of Team Alfa and KOPASSUS. These admissions are corroborated by a great deal of uncontradicted testimony by significant numbers of both Defense and Prosecution witnesses. The context of the murder of Evaristo is particularly clear in this regard in indicating that Team Alfa functioned under the direction and orders of KOPASSUS in targeting civilians thought to be independence supporters for torture and death. The shared headquarters of the two organizations also points to this inference, as do the joint meetings, joint participation in the torture and death, the equipping of Team Alfa with weapons, transportation, operational directives, etc. In making the findings that support these conclusions the Court does not rely on just the testimony of a few witnesses, but on a significant body of testimony that was not disputed as to the facts relevant here. This evidence indicates a systematic targeting of alleged or actual independence supporters. In every one of the 5 crimes dealt with in the Los Palos case the victims were unarmed civilians. They carefully planned roadblocks used in the murders of Evaristo and the nuns make particularly clear the operational methods of Team Alfa, as does the evidence in the forcible transfer part of the case. In regard to some of these crimes there is quite substantial evidence to support the Court’s finding of institutional responsibility on the part of Indonesian military or security units because of their roles in ordering, encouraging, equipping, and providing material support for Team Alfa. The Court also relied upon strong and undisputed evidence of ordering and of co-perpetration on the part of Indonesian military personnel in reaching its findings. Were these isolated acts that do not indicate a pattern of institutional support? The testimony suggests otherwise in regard to the Los Pasos area of operations. Whether this conclusion extends to other geographical areas in East Timor is another question that was beyond the scope of the Los Palos case except in its consideration of the five reports introduced into evidence by the Prosecution and certain other witness statements. Joni Marques admissions as to the relation between Team Alfa’s activities and the larger patterns of violence in East Timor indicate clearly that he, at least, understood what he was doing as a Team Alfa commander to be related to more general patterns of operations being conducted by Timorese militias and Indonesian military units in other regions of East Timor.

Further steps for Los Palos and Lolotoe Cases:

In order to determine definitively what other evidence in these case might have supported or contradicted the findings of the Court and the conclusions indicated above three further steps are necessary. First, one would have to examine the transcripts and analyze the testimony given by witnesses in court as well as all the statements of the accused. Second, the case files must be examined so as to (a) analyze the pre-trial statements of the witnesses who appeared in court and compare these statements to their in-court testimony (b) analyze all of the witness statements and evidence in the case file so as the only way to provide a comprehensive assessment of the evidence available in this case. Third, the investigative efforts of the SCU into the September 27 attack on Team Alfa and a group of civilians did not result in a trial before the Special Panels. What the results of those investigative efforts were requires further research in the Serious Crimes archive.

Chapter 10

Recommendations and Conclusions for Part II

In the previous sections of this report, we have summarized the basic conclusions, sources and methods of the core sets of documents housed in East Timor that are relevant to the CTF mandate. Although our analysis was limited in time and depth, we have been able to confirm that the conclusions of these documents that grave violations of human rights and crimes against humanity occurred in East Timor in 1999 are supported by the evidence available to them. The evidence is also sufficient to provide support for significant institutional responsibility for the Indonesian military as well as the civilian government, and most likely the Indonesian police forces. We reach no conclusions on the individual responsibility of particular individuals because this is outside the scope of our research mandate. The evidence also shows that East Timorese institutions such as FALINTIL must also clarify and fully assess their responsibility for grave violations of human rights. We must emphasize again that these conclusions are based upon the portions of the evidence available to us and that a great deal of available evidence remains to be analyzed. Needless to say, there is also a substantial amount of evidence that is currently unavailable. This includes documents held by the Indonesian military in its archives, documents currently housed in Australia, and documents kept by Yayasan Hak.

Technical suggestions have already been made in the “Introduction” about how to improve the research process in East Timor. Throughout the report in the foregoing chapters we have tried to highlight areas where the research or evidence seems ambiguous and needs further clarification. Our team has also recognized the existence of a great deal of evidence that seems to support the conclusions already presented here, but we currently do not have time, access or resources to demonstrate the full degree of corroboration of the evidence presented in this report. Areas also remain that we have not been able to access due to confidentiality or time. Nevertheless our preliminary analysis in this report suggests that the CAVR and SCU collections can and should be further utilized by the CTF. Future research steps could include:

Relevant to the CAVR

- A thorough confirmation of all the statistical information about 1999 and access to the second statistical database.
- An analysis of the transcripts of the VIP interviews
- A review of the Community Profiles and the information they contain about 1999
- A more intensive qualitative and quantitative inquiry into Falintil/Fretilin institutional responsibility for violations committed in 1999
- The negotiation of an exchange or inter-institution loan of secondary resources to the CTF from the CAVR about 1999
- Access to documents cited in the CAVR Final Report that are not accessible through the Serious Crimes Unit

- The negotiation of an MOU between the CAVR and the CTF that addresses the issues of confidentiality, photocopying, and citation.
- Formal exchanges and trainings that allow the CAVR and CTF staff to share knowledge about how views of accountability were implemented (i.e. reparations, community reconciliation ceremonies etc).

Relevant to the SCU:

- Examining the remaining case files on which indictments were based to analyze the evidentiary basis for the allegations in the indictments in cases, especially those that did not go to trial. This research would permit a fuller exploration of various dimensions of institutional responsibility.
- Further investigation into policy documents from both the security institutions (i.e. Police and TNI) and civilian institutions. This area would include following up on requests already made to the TNI for documentation, and should allow for similar requests to be made to civilian institutions in Indonesia.
- Further investigation into the institutional responsibility of FRETILIN/FALINTIL
- Further investigation into sexual violations and other areas neglected by the SCU investigations/indictment process
- Further investigation into district-specific patterns of violations of human rights

Relevant to the SPSC

- Analysis of the transcripts of the 55 trials conducted by the SPSC to determine precisely what testimony or other evidence was offered that supported specific conclusions of the Court
- Analysis of the case files of the 55 trials to determine what evidence not introduced in court supported allegations in the indictments. Both of these steps are necessary to evaluate fully the evidentiary basis of the verdicts and reasoning of the SPSC in the cases that went to trial.

Relevant to the Robinson report:

- Continue verifying Robinson’s analysis of documents and other information
- Seek and gain access to UN documents he used
- Use SCU and CAVR evidence to determine to what degree the “faucet” and “choreography” arguments can be corroborated
- Use SCU and CAVR evidence to further detail patterns of particular crimes described in his report
- Clarify and analyze the theories and models of accountability in his report most applicable to the CTF’s mandate

New ways in which the CTF can use the core set of documents to make progress in other areas of its mandate may include:

1. Use of the CAVR and SCU documents by the Commissioners and staff to prepare questions and background information for the public hearings.
2. Use of the CAVR and SCU documents to determine to what degree a witness has cooperated with the CTF when giving testimony.
3. Examining the entire CAVR Report and preparing a CTF summary of what aspects of pre -1999 violence are most relevant to the understanding of 1999, and therefore need to be featured in the CTF Final Report.
4. Further inquiry into the CAVR and SCU evidence to establish “truth” about particular issues and questions that remain unclear or contentious in the view of the CTF. If the mandate of this team is renewed, we suggest the Commission provide a specific statement of their research questions and agenda, along with a reasonable time-line and resources for its completion.
5. Further inquiry into the CAVR and SCU evidence to determine areas where East Timor and Indonesia could cooperate and collaborate as part of its “Friendship” mandate. Some areas might include the justice process, return of cultural artifacts, or exchange of information on both sides about missing persons from 1999.

In the most simplistic manner we can summarize the work that has been done in these core sets of documents and in this report as answering the When, What (CAVR’s strongest point), Who (SCU’s strongest point) and the How (Robinson’s strongest point) questions. The most challenging question ---- the WHY ---- remains to be answered in an effective manner. The CTF has the potential to make a significant contribution in this area if it chooses to direct its resources beyond the first level of accountability and towards a direction that would allow for deeper, but more difficult, “truths” to be told.

Establishing the “conclusive” truth about the events in East Timor in 1999 is not a task that can be completed quickly or without a great deal of public discussion and debate. We hope this report has provided the first set of evidentiary “nuts and bolts” from these core sets of documents in East Timor to begin the process of carefully questioning and weighing the competing versions and nuances of the truth. We recognize that much research remains to be done, even just within the scope of the CAVR and SCU collections. The body of knowledge within the scope of the CAVR and SCU collections is expansive and can be researched for many years to come by multiple generations in both Indonesia and East Timor in an effort to better understand these nations’ mutual and independent histories.

