

**DISTRICT COURT OF DILI**

**BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES**

**CASE NO. # 5/2003**

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**BRIEF IN SUPPORT OF THE APPLICATION FOR THE  
ISSUANCE OF AN ARREST WARRANT FOR WIRANTO**

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**DEPUTY GENERAL PROSECUTOR**

**v.**

**WIRANTO & OTHERS**

**For the Prosecutor:**

**Wambui Ngunya – Prosecutor  
Mark Wallbridge – Case Manager**

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## I. INTRODUCTION TO ARREST WARRANT APPLICATION<sup>1</sup>

On 24 February 2003, the Deputy General Prosecutor for Serious Crimes filed an indictment and an application requesting warrants of arrest pursuant to UNTAET Regulation 2000/30, as amended by Regulation 2001/25, in the matter of ***Deputy General Prosecutor for Serious Crimes v. Wiranto and Others.***<sup>2</sup>

Section 19A of UNTAET Regulation 2000/30 as amended states as follows:

If there are reasonable grounds to believe that a person has committed a crime, the public prosecutor may request the Investigating Judge to issue a warrant for the arrest of the person in accordance with the rules established in the present section.

The indictment charges General Wiranto with individual criminal responsibility under the doctrine of command responsibility for the crimes against humanity of murder, persecution and deportation committed in East Timor in 1999.<sup>3</sup> In support of the application for an arrest warrant, the Prosecutor has previously provided the Special Panels with 17 binders of material, including witness statements and expert reports. Five additional binders of material, most of which has come into the possession of the Serious Crimes Unit since the filing of the indictment, have been submitted to the Court in accordance with the Court's decision of 18 February 2004. This *Brief in Support of the Application for Issuance of an Arrest for Wiranto* is intended to assist the Court in reviewing the material that has been provided. The brief will first provide a short summation of the applicable law relevant to the charges against Wiranto and then summarize the voluminous evidence that supports these charges. The Prosecutor submits that the evidence provided to the Court in the supporting material establishes

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<sup>1</sup> In this document, page number citations in the form, for example p. 010346, refer to the Annex 'B' evidence folders provided to the Court in support of the arrest warrant application (the first two numbers refer to the volume number, i.e. Volume 01, and the last four to the page number, i.e. 0346). Footnotes commencing with MCV # refer to the video evidence also provided to the Court.

<sup>2</sup> Special Panel for Serious Crimes - Case #5/2003 (hereinafter *Prosecutor v. Wiranto*).

<sup>3</sup> Wiranto is charged with Murder in Count One, Deportation in Count Three and Persecution in Count Four. Counts Two and Five relate only to a co-accused on the indictment.

reasonable grounds to believe that the accused committed the offences with which he is charged and that the requested warrant for arrest should be issued.

## **II. THE ELEMENTS OF CRIMES AGAINST HUMANITY**

### **A. CONTEXTUAL ELEMENTS**

The *chapeau* or contextual elements of crimes against humanity require proof of a widespread or systematic attack directed against a civilian population. It must be proven that the accused had knowledge of the attack and a nexus must be established between the individual act and the wider attack.

UNTAET Regulation 2000/15, under which crimes against humanity may be prosecuted in East Timor, follows the requirement for crimes against humanity set forth in the Rome Statute for the International Criminal Court.<sup>4</sup> Section 5.1 of the UNTAET Regulation states:

For the purposes of the present regulation, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack and directed against any civilian population, with knowledge of the attack: (a) Murder; ... (d) Deportation or forcible transfer of population; ... (h) Persecution ...

To qualify as a crime against humanity, the criminal conduct cannot be a random act of violence but must form part of an attack against a civilian population that is either widespread or systematic.<sup>5</sup>

In contrast to the statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia<sup>6</sup> UNTAET Reg. 2000/15 section 5.1 does not require that the crimes occur within the context of an armed conflict.

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<sup>4</sup> Article 7, Statute of the International Criminal Court (hereinafter ICC). See also Article 5 ICTY Statute.

<sup>5</sup> See *Prosecutor v. Tadic*, ICTY Trial Chamber, Judgment, paras. 646-7 (hereinafter *Tadic*).

<sup>6</sup> Hereinafter ICTR and ICTY.

## B. WHAT IS MEANT BY “ATTACK”

The ICTR *Akayesu* judgment defined “attack” in the context of crimes against humanity as:<sup>7</sup>

... an unlawful act of the kind enumerated in article 3(a) to (l) of the Statute, like murder, extermination, enslavement etc. An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.

The ICTR judgments in *Rutaganda* and *Musema* upheld this definition.<sup>8</sup>

In *Kayishema*, the ICTR Trial Chamber clarified that an attack need not consist of a multiplicity of the same crimes (e.g. murder) but can also consist of an accumulation of different crimes.<sup>9</sup> The same approach is reflected in paragraph 3 of the Introduction to Crimes Against Humanity in the ICC Elements of Crimes:

### Article 7: Crimes against humanity: Introduction

3. “Attack directed against a civilian population” in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.<sup>10</sup>

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<sup>7</sup> *Prosecutor v. Akayesu*, ICTR Trial Chamber, Judgment, 2/9/98, para. 581 (hereinafter *Akayesu*).

<sup>8</sup> See *Prosecutor v. Rutaganda*, Judgment, ICTR Case No ICTR-96-3-T, T.Ch. I, 6 Dec. 1999 (hereinafter *Rutaganda*), para. 70; *Prosecutor v. Musema*, Judgment and Sentence, ICTR Case No. ICTR-96-13-T, T.Ch. I, 27 Jan. 2000 (hereinafter *Musema*), para. 205.

<sup>9</sup> See *Prosecutor v. Kayishema*, Judgment, ICTR Case No. ICTR-95-1-T, T.Ch. II, 21 May 1999 (hereinafter *Kayishema*), para. 122.

<sup>10</sup> A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of State or organizational action.



The *Kunarac* Trial Chamber (ICTY) held that:<sup>11</sup>

It is sufficient to show that the act took place in the context of an accumulation of acts of violence which, individually, may vary greatly in nature and gravity.

### C. "WIDESPREAD" ATTACK

A widespread attack is an attack carried out against a multiplicity of victims. As explained by the ICTR, widespread means "massive, frequent, large-scale action carried out collectively with considerable seriousness and directed against a civilian population".<sup>12</sup>

With regard to widespread attacks, most of the decisions of the ICTY also simply focus on the scale of the attack or the number of victims.<sup>13</sup> The ICTY stated in *Blaskic*:<sup>14</sup>

A crime may be widespread or committed on a large-scale by 'the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.

### D. "SYSTEMATIC" ATTACK

A systematic attack is an attack carried out pursuant to a preconceived policy or plan. It is the existence of such a policy that aggravates the criminal act such as to warrant its punishment as a crime against humanity.

In the *Kunarac* judgment the ICTY Trial Chamber held:<sup>15</sup>

The adjective 'systematic' signifies the organized nature of the acts of violence and the improbability of their random occurrence.

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<sup>11</sup> *Prosecutor v. Kunarac*, Trial Judgment, ICTY (Case No. IT-96-23 and IT-96-23/1, T.Ch. II, 22 Feb. 2001), para. 419 (hereinafter *Kunarac*); See also *Tadic*, para. 271.

<sup>12</sup> See *Akayesu*, para. 580; *Rutaganda*, para. 67; *Kayishema*, para. 123.

<sup>13</sup> See *Tadic*, para. 648.

<sup>14</sup> *Prosecutor v. Blaskic*, ICTY Trial Chamber, Judgment, para. 206 (hereinafter *Blaskic*). See also *Prosecutor v. Dario Kordic and Mario Cerkez*, ICTY Trial Chamber, Judgment, 26 February 2001, (hereinafter *Kordic*) para. 179; The Special Panel for Serious Crimes adopted the same definition of a widespread attack in para. 636 of the judgment in the case of *The Prosecutor v. Joni Marques & Others*.

<sup>15</sup> *Kunarac*, para. 429; See also *Kayishema*, para. 581.

In *Blaskic* the ICTY Trial Chamber adopted four criteria to define a systematic attack:<sup>16</sup>

- the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community;
- the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another;
- the preparation and use of significant public or private resources, whether military or other;
- the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.

The policy need not be conceived at the highest level of a State organ, formalized, or expressly announced but can be inferred from the manner in which acts take place; the widespread manner of the act may indicate a policy to commit these acts.<sup>17</sup>

The ICTR Trial Chamber formulated that: “[t]here is no requirement that this policy must be adopted formally as the policy of a state”.<sup>18</sup> According to the jurisprudence of the International Criminal Tribunals, “any organization or group” can be behind the policy. The ICTY Trial Chamber concluded in *Tadic*: “although a policy must exist to commit these acts, it need not be the policy of a State.”<sup>19</sup> Nor is there a requirement that the policy or plan “necessarily be declared expressly or even stated clearly and precisely.”<sup>20</sup>

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. A systematic attack would require active conduct from

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<sup>16</sup> *Blaskic* para. 203; See also *Prosecutor v. Bagilishema*, Judgment, ICTR (Case No. ICTR-95-1A-T, T. Ch.I) 7 June 2001, para. 77 (hereinafter *Bagilishema*). The Special Panel for Serious Crimes adopted the same definition of a systematic attack in para. 637 of the judgment in the case of *The Prosecutor v. Joni Marques & Others*.

<sup>17</sup> See *Tadic*, para. 653; *Blaskic*, paras. 204-5.

<sup>18</sup> *Akayesu*, para. 580.

<sup>19</sup> *Tadic*, para. 655. Confirmed in *Kupreskic*, para. 551.

<sup>20</sup> See also *Tadic*, para. 653; *Rutaganda*, para. 69; *Prosecutor v. Kupreskic and others*, ICTY Trial Chamber, Judgment *Kupreskic*, para. 551 (herein after *Kupreskic*); *Blaskic*, para. 204.

the side of the entity behind the policy. However, extensive or repeated activity is not required. What matters is whether the conduct is sufficient to trigger and direct the attack. For example, the identification of possible victims by the authorities and an (implicit or explicit) announcement of impunity would be sufficient. Other facts that may be inferred to show the existence of such a policy include the general historical circumstances and entire political context in which the crimes are committed, the creation and implementation in the territory of autonomous political institutions at whatever level of power, the general tenor of a political program as evidenced in writings and speeches, media propaganda, creation and implementation of autonomous militia groups, mobilization of armed forces, connections between the military hierarchy and the political institutions and their program.<sup>21</sup>

#### **E. DEFINITION OF “ANY CIVILIAN POPULATION”**

As civilians are the victims of crimes against humanity, the proscription of crimes against humanity under international criminal law serves as a protection of basic human rights in general.

The word “any” makes it clear that crimes against humanity can be committed against stateless persons or civilians of the same nationality as the perpetrator as well as against foreign citizens.<sup>22</sup>

“Civilian” must be given a broad definition to cover not only the general population, but also members of the armed forces and resistance forces who are *hors de combat*.<sup>23</sup> It is the situation faced by the victim at the time of the commission of the crime that must be taken into account to determine his/her civilian status.<sup>24</sup>

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<sup>21</sup> See *Blaskic*, para. 204.

<sup>22</sup> See *Tadic*, para. 635.

<sup>23</sup> See *Tadic*, para. 626, 641-3; *Akayesu*, para. 574-6, 582.

<sup>24</sup> See *Blaskic*, para. 214.

The element of “population” does not mean that the entire population of a given state or territory must be targeted; it is to indicate the collective nature of crimes against humanity, which excludes single or isolated acts.<sup>25</sup>

#### **F. THE *MENS REA* OF CRIMES AGAINST HUMANITY**

Section 5.1 of UNTAET Reg. 2000/15 requires that the perpetrator have “knowledge of the attack”. This means the perpetrator must have known that an attack existed and that his individual criminal act was part of the attack. Furthermore, he must have been aware of the policy behind the attack.

The International Criminal Tribunals expressly agree that constructive knowledge of the context is sufficient, i.e. the perpetrator had reason to know that crimes against humanity were being committed.

In *Kordic*, the Trial Chamber stated:<sup>26</sup>

The perpetrator must have knowledge of the wider context in which his acts occur, i.e., that he must know that his acts are performed in the context of a widespread or systematic attack does not appear to be controversial any more in the jurisprudence of the International Tribunal. Further, the Appeals Chamber has held that the accused must have known that his acts were related to the attack on a civilian population. There is no apparent requirement in the jurisprudence of either the Trial Chambers or the Appeals Chamber, that the perpetrator must approve of the context in which his acts occur, as well as have knowledge of it. The Trial Chamber finds the following statement, as referred to in *Kupreskic* and *Blaskic*, which is taken from the ICTR *Kayishema* Judgment, persuasive: [t]he perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. [...] Part of what transforms an individual’s act(s) into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct; therefore an accused should be aware of this greater dimension in order to be culpable thereof. Accordingly, actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian

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<sup>25</sup> See *Tadic*, para. 644.

<sup>26</sup> *Kordic*, para. 185-187.

population and pursuant to some sort of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused.

Purely personal motives or reasons do not exonerate the perpetrator from being guilty of crimes against humanity if his act fits into the pattern of crimes against humanity as described in this section.<sup>27</sup> Thus, it is now settled in the jurisprudence of the International Criminal Tribunals that crimes against humanity can be committed for purely personal reasons, provided that two conditions are met: (i) that the crimes were committed in the context of a widespread or systematic attack against a civilian population; and (ii) that the accused knew that his acts fitted into such a pattern.

Furthermore, the Prosecutor submits that the crimes need not be perpetrated with knowledge of the details of a widespread or systematic attack (for instance, the number of attacks or the perpetrators or their victims). It is sufficient that the perpetrator knew the facts related to the attack to render his conduct a contribution to the crimes of others. It would be sufficient, for example, if he understands that his act is part of a collective criminal conduct which renders the victims more vulnerable. Or, he may hope that the collective nature of the crimes will provide him with impunity. This is supported by the jurisprudence of the International Criminal Tribunals<sup>28</sup> and the ICC Elements of Crimes.

The Special Panel for Serious Crimes dealt with the requirements of knowledge in the case of *The Prosecutor v. Joni Marques & Others*:<sup>29</sup>

About the individual act and the context element (widespread or systematic attack), it has already been stated that "it is sufficient to know how the act took place in the context of an accumulation of acts of violence which, individually, may vary greatly in nature and gravity".<sup>30</sup> The perpetrator needs to have knowledge of the attack.

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<sup>27</sup> See *Tadic*, Appeals Chamber, paras. 248, 250, 255, 269, 270-272.

<sup>28</sup> See *Tadic*, para. 659.

<sup>29</sup> Special Panel Case No: 9/2000, Judgment (December 11, 2001) para 640 - 642.

<sup>30</sup> See *Kunarac*, para. 419.

The mental element required (*mens rea*) is that the perpetrator, or aider, or abettor or contributor knowingly took the risk of participating in the implementation of that context.<sup>31</sup> The perpetrator *knowingly* performed his acts in the context of a widespread or systematic attack.<sup>32</sup> The perpetrator needs only to be aware of the risk of the existence of an attack and the risk of the existence of some circumstances of the attack, regardless of his or her knowledge of the details.

His or her knowledge about the policy behind the attack must exist in the perpetrator's mind, at least taking the risk that he may be performing his conduct in the context of a policy upheld by a State or organization.<sup>33</sup>

In *The Deputy General Prosecutor v. Jose Cardoso Ferreira aka Mouzhino* the Special Panel reaffirmed these definitions of the contextual elements of crimes against humanity.

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<sup>31</sup> See *Blaskic*, para 251.

<sup>32</sup> See *Kordic*, para. 185-187.

<sup>33</sup> See *Kupreskic*, para. 556.

### **III. ELEMENTS OF INDIVIDUAL CHARGES**

#### **A. MURDER**

UNTAET Regulation 2000/15 Section 5.1(a) provides for the offence of murder as a crime against humanity. The ICTR defined murder as “the unlawful, intentional killing of a human being” enumerating the following requisite elements:<sup>34</sup>

1. The victim is dead;
2. The death resulted from an unlawful act or omission of the accused or a subordinate;
3. At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death and is reckless whether death ensues or not.

The elements of murder as a crime against humanity are enumerated in Article 7(1)(a) of the ICC Elements of Crimes.<sup>35</sup> These are:

1. The perpetrator killed one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

#### **B. DEPORTATION OR FORCIBLE TRANSFER**

Deportation is the forcible removal of persons to the territory of another State, whereas forcible transfer refers to the forcible transfer of persons to another location within the same State.<sup>36</sup>

UNTAET Regulation 2000/15 Section 5.2(c) states that for the purposes of Section 5.1:

“Deportation or forcible transfer of the population” means forced displacement of the persons concerned by expulsion or other

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<sup>34</sup> *Akayesu*, para. 589-590.

<sup>35</sup> Elements of Crimes, International Criminal Court, ICC-ASP/1/3, p. 116.

<sup>36</sup> See Kriangsak Kittichaisaree, *International Criminal Law*, Oxford University Press, 2001, p. 109.

coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

Article 7(1)(d) of the ICC Elements of Crimes enumerates the elements of deportation or forcible transfer as:<sup>37</sup>

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts. 2. Such person or persons were lawfully present in the area from which they were so deported or transferred. 3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence. 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 5. The perpetrator knew the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

### **C. PERSECUTION**

UNTAET Regulation 2000/15 Section 5.2(f) states that for the purposes of Section 5.1:

“Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

The crime of persecution encompasses acts of varying severity, from killing to a limitation on the type of professions open to the targeted group, as well as acts of a physical, economic, or judicial nature in violation of the right of an individual to equal enjoyment of basic rights.<sup>38</sup>

Article 7(1)(h) of the ICC Elements of Crimes enumerates the elements of persecution as:<sup>39</sup>

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. 2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such. 3.

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<sup>37</sup> Elements of Crimes, International Criminal Court, ICC-ASP/1/3, p. 118.

<sup>38</sup> *Tadic*, paras. 704, 708-710.

<sup>39</sup> Elements of Crimes, International Criminal Court, ICC-ASP/1/3, p. 122.



Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law. 4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court. 5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Similarly, the ICTY defined the crime of persecution under Article 5(h) of the ICTY Statute as follows:<sup>40</sup>

The elements of the crime of persecution are the occurrence of a persecutory act or omission and a discriminatory basis for that act or omission on one of the listed grounds specifically race, religion or politics. As discussed above, the persecutory act must be intended to cause, and result in, an infringement on an individual's enjoyment of a basic or fundamental right. The notion of persecutory act or omission provides broad coverage, including acts mentioned elsewhere in the statute as well as acts which, although not in and of themselves inhumane, are considered inhumane because of the discriminatory grounds on which they are taken.

In the first trial at the ICTY, the Trial Chamber found Dusko Tadic guilty of persecution based upon his role in "attacks on a civilian population; seizure, collection, segregation and forced transfer of civilians to camps; the calling-out of civilians; and beatings and killings of civilians".<sup>41</sup>

Paragraph 207 of the *Prosecutor v. Wiranto* indictment lists the persecutory acts carried out in the campaign against the civilian population of East Timor as:

- a. Murders, as described in paragraphs 41 to 158 of this indictment;
- b. Physical assaults and threats of physical assaults;

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<sup>40</sup> *Tadic*, para 715. See also *Blaskic*, para 219; See *Kupreskic*, para 622.

<sup>41</sup> *Tadic*, para. 717.

- c. Unlawful detentions. These detentions often occurred at TNI and militia posts and were frequently accompanied by intimidation and beatings, and in some instances ended in the murder of the detainee;
- d. Destruction of personal property, which resulted in the destruction of approximately 70% of the buildings in East Timor, including 40% of all dwelling houses. Most of these structures were destroyed by arson;
- e. Destruction of government buildings and other infrastructure essential for the functioning of government and commerce; and
- f. Destruction of religious sites and monuments.

#### **IV. EVIDENCE OF A WIDESPREAD AND SYSTEMATIC ATTACK**

##### **A. SUMMARY OF EVENTS**

The events in East Timor during the indictment period amounted to both a widespread and systematic attack on a civilian population.

The widespread nature of the attack is shown by the evidence that the TNI<sup>42</sup> and pro-Indonesia militias killed up to 1,500 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.

The pattern of violence was also systematic. In cooperation with the TNI the pro-Indonesia militias implemented a reign of intimidation and terror upon the East Timorese to ensure that the popular consultation ballot would result in a victory for the autonomy option. Those who were presumed to be supporters of independence were targeted, arrested and often killed. Militia leaders, often in the presence of high-ranking TNI, police and government officials, incited their followers to commit violence against independence supporters. TNI, police and government officials were routinely present at militia inauguration ceremonies and rallies and the TNI provided material support to the militias in the months before the ballot took place.

After the ballot result in favor of independence, the TNI and the militias forcibly transferred approximately 200,000 East Timorese to West Timor and implemented a scorched earth policy. This attack was on a massive scale and took place throughout East Timor indicating coordination and support by high-ranking TNI officers, who refused to support the idea of an independent East Timor.

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<sup>42</sup> Indonesian National Army (*Tentara Nasional Indonesia*).

The evidence demonstrating the commission of crimes against humanity, including numerous witness statements, expert reports, photographs, video footage, press statements and excerpts from adjudicated facts from prior cases at the Special Panels, is summarized below.

#### **B. REPORTS OF KILLINGS COMMITTED IN EAST TIMOR IN 1999**

To date the UNMISSET Serious Crimes Unit has received reports of over 1400 individual murder cases that occurred in the indictment period. These murders occurred in all 13 districts of East Timor as reflected in the following breakdown of reported killings from each district:<sup>43</sup>

1. Bobonaro: 270 people killed;
2. Covalima: 192 people killed;
3. Dili: 192 people killed;
4. Liquica: 183 people killed;
5. Oecussi: 172 people killed;
6. Ermera: 112 people killed;
7. Manufahi: 61 people killed;
8. Lautem: 53 people killed;
9. Manatuto: 40 people killed;
10. Viqueque: 40 people killed;
11. Baucau: 38 people killed;
12. Ainaro: 34 people killed; and
13. Aileu: 28 people killed.

Most of these killings took place in April and May, coinciding with many of the inauguration ceremonies or rallies of pro-integration militia groups, and in September after the announcement of the result of the popular consultation. Most of the victims were targeted because they were believed to be independence supporters.

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<sup>43</sup> Serious Crimes Unit case files; [REDACTED]

The *Prosecutor v. Wiranto* indictment specifies 281 murders across East Timor in order to show the widespread and systematic nature of the attack perpetrated against the people of East Timor. The enumerated killings were widespread because they span the districts of Bobonaro, Covalima, Dili, Lautem, Liquica, Oecussi, Manatuto and Baucau. The charged murders also demonstrate the systematic nature of the crimes by demonstrating the involvement of TNI soldiers, POLRI<sup>44</sup> officers and government officials and militia groups who were supported by these officials and their institutions.

### C. EXAMPLES OF SPECIFIC CRIMES COMMITTED

The following examples demonstrate the widespread and systematic nature of the attack that took place:

#### 1. Bobonaro District

At Cailaco, Bobonaro district, on 12 April 1999, the district administrator Guilherme dos Santos and the District Military Commander Lt. Col. Siagian were present when PPI<sup>45</sup> Militia Commander Joao Tavares ordered the killing of Joao Evangelista Lima Vidal after accusing him of supporting FRETILIN<sup>46</sup> and being involved in the death of Manuel Gama.<sup>47</sup> Subsequently TNI soldiers, including the district intelligence commander Lt. Sutrisno, took Joao Evangelista Lima Vidal away and shot him.<sup>48</sup>

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<sup>44</sup> Indonesian Police (*Polisi Republik Indonesia*).

<sup>45</sup> Integration Fighters' Force (*Pasukan Pejuang Integrasi*).

<sup>46</sup> Revolutionary Front for an Independent East Timor (*Frente Revolucionaria de Timor Leste Independente*).

<sup>47</sup>

[REDACTED]. ("Tavares was watching Joao being beaten...the DANDIM was also there...I also saw the BUPATI, Guilherme...Joao Tavares said to Joao, 'This is the people who receive money from the government. They are the people who call FALINTIL and come to the town. These people we have to kill.'" p. 060090; "At [the] order from Tavares two TNI soldiers...dragged Joao away...I then heard a lot of guns being fired from the direction in which Joao had been taken" p. 060081).

<sup>48</sup>

## 2. Dili District

In Dili, on 17 April 1999, the PPI organized a large pro-Indonesia rally and ordered militia members from throughout East Timor to attend. Members of the TNI were instrumental in organizing the rally and also attended the rally.<sup>49</sup> East Timor's Governor, Abilio Soares, Maj. Gen. Zacky Anwar Makarim, Sub-regional TNI Commander, Col. Suhartono (Tono) Suratman, Chief of Police, Col. (Pol.) Timbul Silaen, and the Commander of PPI, Joao Tavares, attended the rally. In addition, BUPATI<sup>50</sup> from the various districts were also present. During the rally, Eurico Guterres, Deputy Commander of PPI, addressed the crowd and told them that people who were against integration with Indonesia were the enemy. He told the representatives of the state, and those helping state forces, to capture anti-integrationists and shoot them if they resisted.<sup>51</sup> Guterres identified Mario Carrascalao as a traitor and stated that the East Timorese people could not unite because of Carrascalao's existence.<sup>52</sup> Immediately following the rally, TNI soldiers and militia divided into groups and attacked targets around the city. They destroyed property and assaulted civilians they believed to be independence supporters.<sup>53</sup> In one of these attacks, TNI soldiers and militia attacked the home of Manuel Carrascalao, the brother of Mario, where over 100 civilians were seeking refuge. TNI soldiers and militia shot, stabbed and beat to death 12 civilians.<sup>54</sup> Upon hearing of the attack upon his home, Manuel Carrascalao sought assistance from Col. Suratman. Col. Suratman laughed at his request and suggested that he should get help from the CNRT.<sup>55</sup>

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50 District Administrator (BUPATI).

51 MCV #1.

52 ; Eurico Guterres Transcript, p. 010171-010176;

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55 National Council of Timorese Resistance (*Conselho Nacional da Resistencia Timorese*); Manuel Carrascalao, p. 090385, 090396-090397;

On 5 September 1999, TNI soldiers and militia attacked the Dili Diocese compound and the people seeking refuge therein.<sup>56</sup> Jose Fernando Nilton da Costa was fatally stabbed in the attack and died later that day. Jose Martins de Sousa, Francisco Boavido and Eugenio da Costa were last seen alive after the attack in the presence of militia. Leonel da Silva de Oliveira disappeared during the attack and has not been seen alive since. Militia members also forced another 8 men into a Kijang (pick-up truck) who have not been seen alive again.<sup>57</sup> Many other civilians were seriously injured in the attack.<sup>58</sup> At the time of the attack, [REDACTED] telephoned the POLDA<sup>59</sup> office to advise them that the Diocese was being attacked. The POLDA advised that they were sending officers to the Diocese immediately. However POLRI officers already stationed outside the Diocese did nothing to prevent the attack.<sup>60</sup>

### **3. Covalima District**

At Tilomar, Covalima district, on 23 April 1999, TNI soldiers and militia attacked, stabbed and killed independence supporters Alexio Ximenes, Tomas Cardoso and Paulus Ximenes.<sup>61</sup>

At Suai, between January and September 1999 villagers from outside the town sought refuge at the Suai church compound from the violence being perpetrated by TNI soldiers and the militia in Covalima district.<sup>62</sup> On 4 and 5 September 1999 TNI soldiers under the command and control of the District Military Commander, Lt. Col. Lilik Kushardianto, and militia armed with swords, machetes and firearms, started to move around outside the church compound, discharging their

<sup>56</sup> [REDACTED]; Bishop Carlos Ximenes Belo, p. 100568-100570.

<sup>57</sup> Forensic Anthropology Report, Mortuary File Numbers: 490, 491, 492, 493, 495, 496 & 497, p. 100397-100451.

<sup>58</sup> [REDACTED]

<sup>59</sup> Regional Police (*Polisi Daerah*); NB. POLDA was the highest-level police command in East Timor.

<sup>60</sup> [REDACTED]

<sup>61</sup> [REDACTED]

<sup>62</sup> MCV #2 & MCV #3

firearms into the air and threatening the villagers who were inside. On 5 September 1999 the villagers were told by one of the priests that the church was no longer safe for them and that it could be attacked by TNI soldiers and militia. He advised the villagers to seek refuge elsewhere. Approximately 500 villagers fled the church compound. In the early afternoon of 6 September 1999 militia marched towards the church.<sup>63</sup> The District Administrator, Herman Sedyono, dressed in a TNI uniform and armed with a rifle, followed behind the militia.<sup>64</sup> TNI soldiers and militia surrounded the church compound and began to shoot into the compound.<sup>65</sup> As a result of the attack, many civilians including three priests were killed and many others sustained serious injuries.<sup>66</sup> The bodies of 30 individuals killed at the Suai church were exhumed from a mass grave in West Timor on 22 November 1999.<sup>67</sup>

#### **4. Lautem District**

In Lautem district, *Tim Alfa* was a militia group that had been established by the TNI in the 1980s. In early 1999 elements of TNI and the civil administration strengthened *Tim Alfa* to fight against East Timorese who were believed to be independence supporters.<sup>68</sup> On 25 September *Tim Alfa* militia set up a roadblock beside the Malailana River, near the village of Verukoco, to intercept a vehicle carrying priests and nuns who were traveling to Baucau. The militia were armed with SKS rifles.<sup>69</sup> When the vehicle approached the roadblock, militia fired their weapons into the vehicle. When the shooting stopped, some of the occupants were able to climb out of the vehicle. Militia hacked and stabbed them with machetes and shot them with rifles, including a nun who was kneeling and praying by the roadside.<sup>70</sup> The militia pushed the victims' bodies and the vehicle

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<sup>63</sup> MCV #4

<sup>64</sup> MCV #5

<sup>65</sup> MCV #6.

<sup>66</sup> See statements p. 080001-080708; MCV #7, MCV #8, MCV#9, MCV #10 & MCV #11.

<sup>67</sup> Summary of Forensic Anthropology Report, p. 190499-190537.

<sup>68</sup> MCV #12.

<sup>69</sup>

<sup>70</sup>

(“We hid in the bushes ... the nuns arrived and the shooting started” p. 150304).



into the river and then threw a grenade into the water to ensure there were no survivors. The militia tied a 13 year-old boy to a tree and then hacked him to death with a machete. The militia also threw his body into the river.<sup>71</sup> The militia killed nine people in the attack, including the nuns and priests.<sup>72</sup>

### **5. Liquica District**

In Liquica district on 5 April 1999 TNI soldiers, including Domingos Askupus and Filemeno dos Santos (Mauketu), and militia found Herminio dos Santos, a CNRT supporter, seeking refuge at a TNI post. Domingos Mendez then cut Herminio dos Santos' throat and stabbed him to death.<sup>73</sup>

In the days preceding 6 April 1999 a large group of civilians gathered in the Liquica church compound seeking refuge from the *Besi Merah Putih* militia and elements of TNI in the district. TNI soldiers and militia, as well as POLRI and BRIMOB<sup>74</sup> officers, surrounded the church. Militia harassed and intimidated the refugees telling them that they would be killed if they remained in the church. Militia leaders instructed their members that later they would be required to attack the church and kill persons sheltering inside as well as those who attempted to flee.<sup>75</sup> In the early afternoon of 6 April 1999 a gunshot was heard from the direction of the church. BRIMOB officers opened fire on the church and militia attacked the people inside.<sup>76</sup> Tear gas was thrown into the priest's residence forcing many refugees to run outside.<sup>77</sup> As the refugees attempted to flee the church compound, TNI soldiers and militia fired their guns into the crowd of men, women and children.<sup>78</sup> The militia also attacked the refugees with

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<sup>71</sup> Ibid.

<sup>72</sup> Death Certificates, p. 110036-110177; [REDACTED]

<sup>73</sup> [REDACTED]

<sup>74</sup> Police Mobile Brigade (*Brigade Mobil*).

<sup>75</sup> [REDACTED]

<sup>76</sup> MCV #13 & MCV #14.

<sup>77</sup> MCV #15 & MCV #16.

<sup>78</sup> MCV #17

machetes, knives, arrows and homemade firearms.<sup>79</sup> After the killings, Indonesian civil and military authorities ordered the militia to dispose of the bodies. TNI soldiers, POLRI officers and militia loaded dozens of bodies onto trucks that proceeded to various locations.<sup>80</sup> Not all of the gravesites have been discovered and the exact number of dead is unknown.<sup>81</sup> Following international outrage over the attack, high-ranking military and police officers inspected the damage.<sup>82</sup> Col. Suratman claimed that the independence victims were not fired upon and that the shots fired by the police were merely warning shots to keep the two sides apart.<sup>83</sup> He confirmed though that at least 25 people were killed in the incident.<sup>84</sup>

### **6. Oecussi District**

At Padimaw in Oecussi district on 7 September 1999 there was a meeting of *Sakunar* militia at the TNI District Military Command post. About 30 people attended the meeting. Simao Lopes, the Supreme Commander of *Sakunar* militia, addressed the meeting. A plan was discussed and orders given to attack the villages around Passabe and Oesilo. On 8 September 1999 TNI soldiers and *Sakunar* militia attacked the villages of Nibin, Kiobiselo and Tumin in the Passabe sub-district of Oecussi. They burned houses, killed livestock and attacked the inhabitants they believed to be independence supporters. In Nibin, TNI soldiers and militia killed the village chief, Armando Sani. In Kiobiselo, TNI soldiers and militia killed eight men.<sup>85</sup> In Tumin, TNI soldiers and militia killed

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80 [REDACTED] ("The truck was full with corpses to the top of the loading area. In this truck I counted 180 [one hundred and eighty] heads. I did not count the corpses in the other truck." p. 120053-120054); MCV #18.

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82 MCV #19.

83 MCV #20.

84 MCV #21.

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nine men.<sup>86</sup> On 9 September 1999 TNI soldiers and militia returned to these villages. They forced villagers across the border into West Timor and ordered them to register at the sub-district office in Imbate. At this government office, the young men were separated from the rest of the villagers and were tied together in pairs. TNI soldiers and militia then marched these men across the Noel Passabe River back into East Timor to Nifu Panief.<sup>87</sup> There, TNI soldiers and militia shot, hacked or stabbed 47 of the men to death and then forced the inhabitants of Passabe village to dig graves and bury the bodies.<sup>88</sup>

### **7. Withdrawal of TNI Battalion 745**

TNI Battalion 745 had its headquarters at Fuloro village, Los Palos sub-district, Lautem district. In July 1999 the Commander of Battalion 745, Maj. Jacob Djoko Sarosa, ordered the East Timorese soldiers in the battalion to tell the civilians in their villages to support the pro-Indonesia cause and oppose independence. He told the soldiers that TNI would never leave East Timor and stated that anyone who voted for independence would be killed.<sup>89</sup> A few days before the result of the popular consultation was announced, a TNI platoon commander, Lt. Camilo dos Santos, addressed soldiers from Battalion 745 and told them that if independence won, Battalion 745 would destroy livestock, houses, CNRT members and other independence supporters.<sup>90</sup> On 8 September, Battalion 745 soldiers shot and killed Antonio da Costa.<sup>91</sup> On 9 September, Battalion 745 soldiers arrested Ambrosio Bernadino Alves, an independence supporter. He

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<sup>88</sup> Summary Anthropology Report On 47 Individuals From Passabe, Oecussi, East Timor; Confidential report of forensic medical examinations, 130403-130441; MCV #22, MCV #23, MCV #25 & MCV #26.

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was interrogated and beaten by the soldiers and his corpse was later found buried close to the Battalion headquarters.<sup>92</sup>

Also on 9 September, Battalion 745 soldiers attacked Julio de Jesus at Baucau airport and took him away. His corpse was later found at the back of the Battalion 745 base in Fatumaca village, Baucau district.<sup>93</sup>

On 10 September 1999 Battalion 745 soldiers killed Florencio Monteiro and Florentino Monteiro.<sup>94</sup>

On 11 September 1999 *Tim Alfa* militia members took Alexio Oliveira to the Battalion 745 headquarters in Fuiloro village. Later that day a TNI soldier stabbed him to death.<sup>95</sup>

On 13 September 1999 Battalion 745 soldiers arrested four men and took them in the direction of the sub-village of Horo. All four men were independence supporters. The corpses of the four men were later found in the sub-village of Horo.<sup>96</sup>

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Photographs, p. 150223-

150224.

<sup>95</sup> Autopsy Report, p. 150233-150237; Forensic Anthropology Report, p. 150238-150244

; Crime Scene Statement, p. 150340-150341.

<sup>96</sup> Service Police Statement, p. 150342-150344; Service Police Statement, p. 150345; INTERFET Report, p. 150346-150351; Royal Military Police Soco Report, p. 150352-150361;

On 20 September 1999 Battalion 745 began to move by road in a convoy towards Dili on their way to West Timor. There were approximately 60 trucks and motorcycles in the convoy led by the battalion commander, Maj. Jacob Djoko Sarosa. Approximately 120 soldiers and their families rode in these vehicles. As Battalion 745 moved along the coast road toward Dili, soldiers from the convoy killed civilians.

On 20 September 1999, Battalion 745 and other TNI soldiers, beat, shot and killed Amilcar Barros, Joao Gomes and Augusto Venacio Soares in Lautem village.<sup>97</sup>

On 21 September 1999, Battalion 745 soldiers shot and killed Abreu da Costa and Egas da Silva who were trying to run away from the convoy near the village of Buile.<sup>98</sup>

As they approached the village of Buruma, on the outskirts of Baucau, Battalion 745 soldiers shot and killed Lucinda da Silva and Elizete da Silva who were trying to hide from the convoy.<sup>99</sup>

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<sup>97</sup> *Forensic Anthropology Report*, p. 150377-150380; *Autopsy Report*, p. 150381-150383;

[REDACTED] ("I watched the soldiers take Amilcar .... They then began to hit him in the head with their weapons .... The soldiers then dragged Amilcar's body ... then surrounded him and shot him.... The soldiers did the same for the other two boys, Joao and Augusto." p. 150392).

<sup>98</sup> [REDACTED] ("The two men... started running.... [T]wo men ... from the convoy stopped and started running after Egas and Abreu. Egas was shot in his abdomen .... Abreu ... was shot in his right knee.... [Then] both men were shot dead." p. 150410.)

<sup>99</sup> [REDACTED] ("The soldiers that killed Elizeta ... came together with many other soldiers in a convoy from the East." p. 150441).

In the village of Caibada, near Baucau, Battalion 745 soldiers shot and killed Carlos da Costa Rebeiro and Victor Belo.<sup>100</sup>

In the village of Becora, near Dili, Battalion 745 soldiers shot and killed Manuel Andreas as he was walking alongside the road.<sup>101</sup>

Also in Becora, Battalion 745 soldiers shot and killed Dutch journalist Sander Robert Thoenes as he was riding on a motorbike away from the pursuing soldiers.<sup>102</sup>

When the convoy arrived at the Sub-regional Military Command 164 in Dili, Col. Mohammad Noer Muis addressed the soldiers of Battalion 745 and instructed them never to tell anyone about what they had done on their way to Dili.<sup>103</sup>

### **8. Deportation or Forcible Transfer of Population**

Between the announcement of the result of the popular consultation on 4 September 1999 and 25 October 1999 TNI, soldiers and militia forcibly transferred approximately 200,000 civilians<sup>104</sup> from East Timor to West Timor. While some of those who left East Timor did so willingly, often militia members and their families, the majority were either physically forced to leave or fled to

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[Redacted] ("[We] started to walk up the main road ... As we were walking, I heard a burst of gunfire ... I saw that [Manuel] had been shot in the chest ... We were not armed with any type of weapons and at no time did any of the soldiers yell anything out to us before the shooting." p. 150592).

<sup>102</sup>

[Redacted]; *Map Extract Depicting Scene of Murder of Sander Robert Thoenes & Illustration of Crime Scene*, p. 150704-150705;

[Redacted]; *Official summarized report regarding the hearing of Dr. Maksum*, p. 150741-150750; *Autopsy Report & Photos*, p. 150751-150792; MCV #27.

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<sup>104</sup> Letter from UNHCR to [Redacted].

escape the campaign of violence. The forcible transfers were part of the widespread or systematic attack directed against the civilian population of East Timor.<sup>105</sup>

As part of the transfer strategy, TNI soldiers and militia intentionally created an atmosphere of fear and oppression through threats of force, the use of force and acts of violence.<sup>106</sup> Both TNI soldiers and militia told the civilian population that they would be killed if they did not leave their homes and go to West Timor.<sup>107</sup> TNI soldiers and militia attacked civilians who expressed reluctance to leave their homes. In many places, the threats were accompanied by a campaign to destroy property, including homes, farms, livestock, businesses, cultural monuments and religious sites. As a result of these actions, villages, towns and entire regions were made dangerous and uninhabitable.<sup>108</sup>

As a part of the forcible transfers, TNI and POLRI facilities were used as collection points to gather and register civilians before their transfer to West Timor. TNI civilian vehicles were used to displace large numbers of the population within East Timor or to take them to West Timor. Indonesian Naval ships carried civilians from the seaports of Com, Laga, Dili, Liquica, Beacu and Betano to West Timor and to other parts of Indonesia. TNI military aircraft and chartered commercial aircraft took civilians from the airports at Comoro and Baucau. In addition, many civilians were forced to cross the border to West Timor on foot or in private vehicles.<sup>109</sup> The means by which civilians were forcibly transferred to West Timor varied between districts, but in every district forcible

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<sup>105</sup> See statements p. 160001-160517; [REDACTED] ("There were ... soldiers ... shouting at the people to hurry .... Many of the people who were getting on to the ship were crying. Most of them looked frightened. They were surrounded by militia who were shouting at them to hurry and get into the ship. The militia was cursing at the people. The people were being forced into the ships .... Some were ... forced to leave their belongings behind. Many families were separated .... Every day the roads were full with trucks headed to West Timor." p. 010451-010452); MCV #28, MCV #29 MCV #30 & MCV #31.

<sup>106</sup> MCV #32.

<sup>107</sup> MCV #33 & MCV #34.

<sup>108</sup> See statements p. 160001-160517.

<sup>109</sup> Ibid

transfers were instigated and carried out by the combined efforts of the TNI and militia.<sup>110</sup>

### **9. Destruction of Property**

The attacks following the announcement of the ballot in September 1999 resulted in the destruction of approximately 70% of all buildings in East Timor, including public buildings and other infrastructure essential for the functioning of government and commerce.<sup>111</sup> Most of these structures were destroyed by arson.<sup>112</sup> The incidence of arson increased following the declaration of Martial Law.<sup>113</sup>

### **D. EXPERT REPORTS ON THE 1999 VIOLENCE IN EAST TIMOR**

The following reports were admitted as evidence by order of the Special Panel in *The Prosecutor v. Joni Marques & Others*.<sup>114</sup>

The Security Council Mission to Jakarta and Dili reported on 11 September 1999:<sup>115</sup>

#### Annex ...

The events witnessed in East Timor since 4 September 1999 represent the fulfillment of the worst threats made by the pro-autonomy campaigners and their Indonesian Government supporters. In the guise of a backlash against the vote for independence, what has actually happened is nothing less than a

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<sup>110</sup> Ibid

<sup>111</sup> See *Towards a Medium-Term Sector Strategy for Housing in East Timor*, Hassell Pty Ltd, p. 190327-190328; *Summary Report of the Joint Assessment Mission to East Timor*, World Bank, p.190356-190359, 190363-190364; *East Timor: Building a Nation: Framework for Reconstruction and Development: Joint Assessment Mission: Infrastructure Background Paper*, World Bank, p.190398-190401; See also Daily SitRep, p.190544-190545; 46 Photographs Property Destruction, p. 190547-190592; Satellite Photograph Dili Burning, p. 190593.

<sup>112</sup> See statements, p. 170001-170907; [REDACTED] ("The MUSPIDA knew that it was impossible to capture everyone and force them to go to West Timor so their plan was to destroy everything that was left so those that remained would have nothing." p. 010450); MCV #36, MCV #37 & MCV #38.

<sup>113</sup> MCV #39.

<sup>114</sup> *The Prosecutor v. Joni Marques & Others*, p. 149.

<sup>115</sup> *Security Council Report of the Security Council Mission to Jakarta and Dili*, 14 September 1999, p. 030116-030125.



systematic implementation of a "scorched earth" policy in East Timor, under the direction of the Indonesian military ...

Selective execution of students, intellectuals and activists

7. ... there are many reports of deaths in East Timor. In particular, many pro-independence activists and other community leaders, including the clergy, are feared to have been killed in reprisal for their support, real or implied, for the independence option. There are also reports of mass killings in various locations, including Dili and the IDP camp in the church at Suai.

8. It is clear that these crimes against humanity are part of a "scorched earth" policy. The reduction of East Timor to rubble, aside from teaching the East Timorese a lesson and sabotaging their chances of a successful transition to independence, sends a warning to other potential breakaway regions of Indonesia. But the worst may be yet to come. Much of the population remains very vulnerable to starvation or attack. The pro-independence guerrillas are, as far as we know, still concentrated in certain areas, and the political leadership is concentrated in Dare, quite close to Dili. Food and water shortages are becoming critical, and we cannot rule out further military operations against these populations.

The Report of the High Commissioner for Human Rights on the Human Rights Situation in East Timor describes the systematic regime of terror implemented by the TNI and the militia:<sup>116</sup>

14. ... pro-integration militia erected roadblocks throughout Dili and controlled the streets. According to reports received from UNAMET, militia members were terrorizing and murdering unarmed civilians; burning houses; displacing large numbers of people; as well as intimidating, threatening and attacking personnel of international organizations.

20. Some particular groups were targeted. Many witnesses reported that at the police headquarters, at the docks, on the boats and at final destinations, screening processes were undertaken. ... Those suspected of being pro-independence activists were taken away... In many cases, eyewitnesses reported that these activities were undertaken in the presence of both Indonesian police and military.

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<sup>116</sup> *Report of the High Commissioner for Human Rights on the Human Rights Situation in East Timor*, 24 September 1999, p. 030126-030134.

47. There is overwhelming evidence that East Timor has seen a deliberate, vicious and systematic campaign of gross violations of human rights.

Likewise as stated, in the Special Rapporteurs' Report on the Situation of Human Rights in East Timor:<sup>117</sup>

28. The violence which had marked the months preceding the popular consultation on 30 August intensified after the ballot and became increasingly systematic and widespread, particularly following the announcement of the results on 4 September.

59. While most of the atrocities committed in East Timor must clearly be attributed to pro-integration militia elements, the information gathered and testimonies heard by the Special Rapporteurs leave little doubt as to the direct and indirect involvement of TNI and police in supporting, planning, assisting and organizing the pro-integration militia groups.

71. It is still too early ... to assess the full extent of the human rights violations and crimes that were perpetrated before and after the 30 August consultation. What is clear is that they took place in the context of an attack against the East Timorese population that overwhelmingly supported independence from Indonesia. They include murder, torture, sexual violence, forcible transfer of population and other persecution and inhumane acts, including property destruction. These have all been committed on a scale that is widespread or systematic or both.

The Report of the International Commission of Inquiry on East Timor to the Secretary General found the following:<sup>118</sup>

123. The International Commission of Inquiry has concluded that there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army (TNI) and the militias in the violations.

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<sup>117</sup> *Situation of Human Rights in East Timor: Note by the Secretary General*, 10 December 1999, p. 030200-030213.

<sup>118</sup> *Report of the International Commission of Inquiry on East Timor to the Secretary General*, 31 January 2000, p. 030269-030294.

137. There is evidence that the policy of engaging militias was implemented by the Kopassus (Special Forces Command of TNI) and other intelligence agencies of the Indonesian army. The policy manifested itself in the form of active recruitment, funding, arming and guidance and of the provision of logistics to support the militias in intimidation and terror attacks.

### **E. ADJUDICATED FACTS FROM PRIOR SPECIAL PANEL CASES**

The Special Panel for Serious Crimes has previously held that a widespread and systematic attack was committed against the population of East Timor in 1999. Under international criminal law and the jurisprudence of the Special Panels, the Court can take judicial notice of adjudicated facts from these cases.<sup>119</sup>

In *The Prosecutor v. Joni Marques & Others*, the Special Panel for Serious Crimes<sup>120</sup> made the following factual findings relying in part on the Report of the International Commission of Inquiry on East Timor to the Secretary-General:<sup>121</sup>

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:

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<sup>119</sup> The Prosecutor would like to point out that in the 21 November 2003 decision in the case of the *Prosecutor v. Damaio da Costa Nunes*, Case 1/2003, the court admitted the prosecution motion for judicial notice to be taken of adjudicated facts with respect to other proceedings of the Special Panel referring to the general situation of violence in East Timor and the participation of TNI and militias in the systematic attacks against the civilian population in 1999. Adjudicated facts were defined by the prosecution as:

- Facts contained in a judgment of the Special Panels against which no appeal had been lodged; or
- Facts contained in a judgment of the Special Panels against which an appeal has been lodged but not in relation to the factual bindings in question; or
- Facts contained in a judgment of the Court of Appeal that has ruled on them.

<sup>120</sup> Judgment dated 11 December 2001, para. 686.

<sup>121</sup> Excerpts from the *Report of the International Commission of Inquiry on East Timor to the Secretary General*, 31 January 2000, p. 030289-030291.

“[T]here were patterns of gross violation of human rights and breaches of humanitarian law, which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army (TNI) and the militias in the violations. More specifically, the International Commission would like to emphasize the following:

#### **Intimidation and terror**

The evidence gathered shows that intimidation and terror were systematically used to prevent the people from freely exercising their political choice. Before the popular consultation ballot, intimidation and terror were primarily aimed at pro-independence groups and individuals. In the post-ballot period and after the announcement of the results, the attacks were widespread and took the form of vengeance.

#### **Killings and massacres**

There is evidence of threats of violence against persons and actual violence resulting in injuries and deaths in large numbers. The killings were often brutal and gruesome. In some instances, massacres took place in sites where people had sought refuge.

#### **Gender violence**

Because the men fled to the mountains, the women were targeted for sexual assault in a cruel and systematic way.

There is evidence of actual sexual abuse and rape of women. While in general, the militia refrained from killing women, they were subjected to humiliation and different forms of harassment that included, stripping and sexual slavery. Women and children were also victims of forced displacement into exile.

#### **International Staff and Journalists**

Local and international staff of UNAMET, other humanitarian agencies, NGOs and journalists were also targeted by the militia and TNI. After the announcement of the result of the consultation, this resulted in the evacuation of local and international staff of UNAMET and other agencies, as well as journalists and others. This seemed to be in order to prevent them from witnessing acts of violence and destruction of property that took place subsequently.

### **Destruction of Property**

The acts of violence by militia and TNI included burning down of houses and office buildings of pro-independence groups. The evidence gathered shows that before the popular consultation ballot, destruction of property was selective and not widespread, involving the properties of specific individuals known for their support of pro-independence.

After the announcement of the results, the destruction was widespread and systematic in towns and cities. The Commission saw for itself the extent of damage in Dili and all the other sites it visited. The damage to private and public property ranges from 60 to 80 per cent in the whole country. Even more serious is the fact that most hospitals and health centers have been destroyed, as well as school buildings. The destruction includes damage to public utilities, such as water and power. The widespread and systematic nature of the destruction indicates that it was planned and co-coordinated.

### **Displacement of people**

Evidence gathered shows that before the popular consultation ballot, intimidation and terror resulted in internal displacement of people. People sought refuge in churches, and other safe areas, including fleeing to mountains. Intimidation of the internally displaced included killings in places of refuge, denial of access to humanitarian agencies and, in some instances, denial of necessities such as water. The intimidation was aimed at dispersing people from their places of refuge.

After the announcement of the results of the popular consultation, thousands of people were forcibly assembled and moved to West Timor. The evidence shows that people were moved by sea and by road. The movement and evacuation of people would not have been possible without prior planning and a systematic execution of the plan.

Evidence gathered from people who have returned from West Timor shows that the people in the camps in West Timor have been subjected to intimidation and terror. The Commission also received reports of the abduction of children from camps. There is evidence of intimidation by militia to prevent those who want to return to East Timor from doing so. Due to this, it was thus extremely frustrating for the Commission not to have been able to visit West Timor as it had requested from the beginning.

### **Destruction of Evidence**

The information gathered by the Commission shows that there was a systematic attempt to destroy evidence, including

removal of bodies from the sites of killings. The removal of dead bodies to West Timor from the massacre site in Suai church is a clear indication of the extent of efforts to conceal evidence. The Commission was in Dili when the bodies of victims of the Suai massacre were brought back from West Timor after having been exhumed there by the Indonesian National Commission of Inquiry. There are possibilities that more bodies will be found on a day to day basis.

## **V. COMMAND RESPONSIBILITY**

### **A. ELEMENTS OF COMMAND RESPONSIBILITY**

The indictment charges Wiranto with crimes against humanity on the basis of command responsibility. Section 16 of UNTAET Regulation 2000/15 provides:

In addition to the other grounds of criminal responsibility under the present regulation for serious criminal offences referred to in Sections 4 to 7 of the present regulation, the fact that any of the acts referred to in the said Sections 4 to 7 was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Section 16 reflects the requisite elements for command responsibility under customary international law.<sup>122</sup> These are:

- The superior had effective control over those who perpetrated the crime. Effective control is defined as the material ability to prevent subordinates from committing crimes or to punish those responsible for their commission.
- The superior knew or had reason to know that his subordinates were committing or were about to commit such crimes.
- The superior failed to take reasonable and necessary measures to prevent the commission of the crimes or to punish the perpetrators.

Liability under the doctrine of command responsibility arises only if, in the language of UNTAET Regulation 2000/15, the accused failed to take “necessary and reasonable measures to prevent such acts or to punish the perpetrators

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<sup>122</sup> *Report of the Secretary-General of the United Nations on the establishment of the ICTY*, para 76; Article 7(3) ICTY Statute; Article 6(3) ICTR Statute; Article 28 ICC Statute; Articles 86(2) and 87(3) of the First Additional Protocol to the Geneva Conventions of 1948 (1977). See also *Prosecutor v. Delalic*, Judgment, ICTY Appeals Chamber, 20 February 2001, para. 239 (hereinafter *Delalic Appeal*); *Blaskic*, para. 333.

thereof.” There is no requirement to prove a causal link between the superior’s failure to act and the commission of the crime.<sup>123</sup>

As the International Committee of the Red Cross commentary on article 87(3) of Additional Protocol I explains, the duty to prevent and punish is imposed upon commanders because they are capable of preventing breaches through a number of different methods as a result of their being “able to exercise control over troops and the weapons that they use”.<sup>124</sup> The type of action required of the superior depends on the particular circumstances and is not dependent upon his legal powers. The *Delalic* judgment states that a superior should be held “responsible for failing to take measures that are within his material possibility”.<sup>125</sup>

## **B. THE POSITIONS AND AUTHORITY OF THE ACCUSED**

Throughout the indictment period, Wiranto held the dual positions of Commander of the Armed Forces<sup>126</sup> and Minister of Defense and Security of the Republic of Indonesia. Wiranto was at the apex of the chain of command for the Indonesian military and police forces throughout Indonesia, including East Timor, and exercised *de jure* authority over all Indonesian uniformed personnel. According to international case law, the Court may presume a superior’s effective control over subordinates when the superior holds *de jure* authority, absent any evidence to the contrary.<sup>127</sup> The evidence also proves that the accused, as the highest military and police official in Indonesia, exercised effective control over the militias who perpetrated many of the crimes. Wiranto’s *de facto* or effective control over the militia is demonstrated by evidence that the militias were formed,

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<sup>123</sup> See *Prosecutor v. Delalic*, Judgment, ICTY Trial Chamber, 16 November 1998, (hereinafter *Delalic*) para. 398-400.

<sup>124</sup> See International Committee of the Red Cross Commentary on Additional Protocol I, para. 3560.

<sup>125</sup> See *Delalic*, para. 395.

<sup>126</sup> As of 1 April 1999, The Armed Forces of The Republic of Indonesia (Angkatan Bersenjata Republik Indonesia- ABRI) were renamed the Indonesian National Army (Tentara Nasional Indonesia- TNI).

<sup>127</sup> See *Delalic*, para. 364ff.



funded, armed and controlled by the Indonesian army with the knowledge of the accused.

### C. EFFECTIVE CONTROL OVER THE TNI

The Court may consider both the *de jure* authority of the accused, namely his position within the formal chain of command, and the *de facto* powers exercised by the accused.<sup>128</sup> The actual authority of the accused is assessed on the facts of each case.<sup>129</sup>

The positions of Commander of the Armed Forces and Minister of Defense and Security of the Republic of Indonesia gave the accused direct and *de jure* authority over all branches and personnel of the army including the Regional (KODAM<sup>130</sup>) and Sub-regional Military Command (KOREM<sup>131</sup>) that were responsible for East Timor.<sup>132</sup> General Wiranto also exercised direct authority in East Timor through Maj. Gen. Makarim, a co-accused on this indictment, who headed the Special Team of the Adjutant General's Task Force, a special military authority specifically created by the accused in March 1999.<sup>133</sup>

As Commander of the TNI, the accused had formal responsibility for the institution and had operational command over all service branches including the military police, army, navy and air force.<sup>134</sup> The Chief of Staff of each service branch reported directly to the accused in his capacity as Commander of the

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<sup>128</sup> See *Delalic*, para. 370-371.

<sup>129</sup> See *Akayesu*, para. 483.

<sup>130</sup> Regional Military Command (*Komando Daerah Militer*).

<sup>131</sup> Sub-regional Military Command (*Komando Resort Militer*).

<sup>132</sup> [REDACTED]

[REDACTED]. See also Paul Symon, p. 020124. Ian Martin, p. 010226, 010234-010237 ("General Wiranto ... stressed his responsibility for security in East Timor" p. 010226).

<sup>133</sup> Alan Mills, p. 010014; [REDACTED]; See also Paul Symon, p. 020124.

<sup>134</sup> General Wiranto Witness Examination/Accused DRS. G.M. Timbul Silaen (No.Reg. Perkara: 01/HAM/TIM-TIM/02/2002), Human Rights ad hoc Tribunal, Central Jakarta, Case of Serious Human Rights violations in East Timor ([REDACTED]), p. 180370-180435 (hereinafter General Wiranto Witness Examination).

TNI.<sup>135</sup> The military institutions subordinate to General Wiranto, included, but were not limited to, those listed in Diagram 1.

The Indonesian Army is divided into three components (See Diagram 2):

- The Territorial Command (KOTER<sup>136</sup>)
- The Army Strategic Reserve Command (KOSTRAD<sup>137</sup>)
- The Special Forces Command (KOPASSUS<sup>138</sup>)

As of 1 January 1999, the TNI territorial structure in Indonesia consisted of 10 Regional Military Commands (KODAM<sup>139</sup>). KODAM IX/Udayana included the territory of East Timor, and was commanded by Maj. Gen. Damiri, a co-accused in the indictment with Wiranto.

Below the KODAM level there were 41 Sub-regional Military Commands (KOREM<sup>140</sup>) throughout Indonesia. KOREM 164/Wira Dharma covered the territory of East Timor and was commanded by Col. Suratman, who was later replaced by Col. Noer Muis. Both are also co-accused in the indictment. The commander of KOREM 164/WD had direct authority over all officers holding posts in the KOREM or deployed under it. Furthermore, the commander of KOREM 164/WD was required to report all orders/decisions that he gave as well as developments within his territorial jurisdiction to Maj. Gen. Damiri as Commander of KODAM IX/Udayana.

From KOREM 164/WD headquarters in Dili, the TNI controlled the province through 13 District Military Commands (KODIM<sup>141</sup>), with each KODIM commanding an average of five subordinate Sub-district Military Commands

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<sup>135</sup> [REDACTED]

<sup>136</sup> Territorial Command (*Komando Teritorial*).

<sup>137</sup> Army Strategic Reserve Command (*Komando Cadangan Strategis Angkatan Darat*).

<sup>138</sup> Special Forces Command (*Komando Pasukan Khusus*).

<sup>139</sup> Regional Military Command (*Komando Daerah Militer*).

<sup>140</sup> Sub-regional Military Command (*Komando Resort Militer*).

<sup>141</sup> District Military Command (*Komando Distrik Militer*).

(KORAMIL<sup>142</sup>).<sup>143</sup> In the case of East Timor, infantry battalions 744 and 745 were also under the direct command of KOREM 164/WD.

The Indonesian military maintained a significant number of personnel in East Timor from the invasion in 1975 until withdrawing the last of its forces at the end of October 1999. Nearly 18,000 regular soldiers were stationed in East Timor in 1998 and 1999.<sup>144</sup>

#### **D. EFFECTIVE CONTROL OVER THE POLRI**

The Indonesian police (POLRI) was the state agency responsible for upholding law and public order in East Timor during the lead up to the popular consultation. The 5 May Agreement reached between the United Nations and the governments of Indonesia and Portugal established the process and modalities of the popular consultation and included the provision that Indonesian police "will be solely responsible for the maintenance of law and order."<sup>145</sup> Indonesian diplomats, the police commander Timbul Silaen and the accused himself repeatedly acknowledged that the POLRI were responsible for security in East Timor.<sup>146</sup>

Like the territorial structure of the TNI, the police in East Timor were organized under a Regional Police command (POLDA<sup>147</sup>) headed by Timbul Silaen. In addition, there was a police unit in each of the 13 districts (POLRES<sup>148</sup>) headed by a District Police Chief (KAPOLRES<sup>149</sup>). Additional units were located at

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<sup>142</sup> Sub-district Military Command (*Komando Rayon Militer*).

<sup>143</sup> [REDACTED]

<sup>144</sup> [REDACTED]

<sup>145</sup> *5 May Agreement*, General Assembly fifty-third session A/53/951, S/1999/513, p. 030113-030115.

<sup>146</sup> MCV #40.

<sup>147</sup> Regional Police (*Polisi Daerah*).

<sup>148</sup> District Police (*Polisi Resort*).

<sup>149</sup> District Police Chief (*Kepala Polisi Resort*).

various locations of the sub-district level (POLSEK<sup>150</sup>). An internal police document indicates that there were 6,704 police officers stationed in East Timor in August 1999.<sup>151</sup> Wiranto also testified that he equipped the POLDA in East Timor after the 5 May Agreement with personnel and material.<sup>152</sup> When necessary to maintain security, the police had the right to request assistance from the TNI.<sup>153</sup>

POLRI was part of the army or ABRI<sup>154</sup> until 1 April 1999 when the two institutions were separated. However, both the police and army remained under the jurisdiction of the Minister of Defense and Security.<sup>155</sup> Wiranto held this position throughout the indictment period and was the superior of all military and police forces in Indonesia.<sup>156</sup>

As one East Timorese police officer recalls, the separation had no practical effect on the continued close relationship between the police and army.<sup>157</sup>

I saw him [the KAPOLRES<sup>158</sup>] as a military Indonesian officer like the BUPATI<sup>159</sup> and the DANDIM.<sup>160</sup> I say military, in fact POLRI was separated from ABRI on 1 April 1999, but that was only administratively. When it came to the work in the field nothing changed after that date. The KAPOLRES, the DANDIM and the BUPATI were still the same kind of military Indonesian officers who

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<sup>150</sup> Sub-district Police (*Polisi Sektor*).

<sup>151</sup> Kepolisian Negara Republik Indonesia, Daerah Timor Timur, "Rencana Operasi Hamoin Lorosae II," Secret Plan No. Pol: Ren Ops/04/VIII/1999, 4 August 1999 (██████████, Doc #65, p. 210001); See also 'Operation Implementation Orders "Hanoim Lorosae-99", Security of United Nations Mission in Determining Operation in East Timor', Regional Police East Timor, Ermera Resort, Police Nr. R/PRINLAKOPS/03/V/1999 (██████████ Doc# 29, p. 210150).

<sup>152</sup> Ibid; see also General Wiranto Witness Examination, p. 180385 (last paragraph).

<sup>153</sup> See General Wiranto Witness Examination, p. 180378 where the court asks: "if the Indonesian Regional Police Chief needed help from the TNI, this means that the TNI are prepared to help, prepared to backup security of the Police duty, is that correct?" Wiranto: Yes, correct." See also p. 180400 where Wiranto testifies: "... there is Article 28 that requires if the police are not able to handle riots thus it is correct in requesting aid from the TNI apparatus:..."

<sup>154</sup> Armed Forces of the Republic of Indonesia (*Angkatan Bersenjata Republik Indonesia* (ABRI)) renamed Indonesian National Army (*Tentara Nasional Indonesia* (TNI)) in April 1999.

<sup>155</sup> General Wiranto Witness Examination, p. 180372.

<sup>156</sup> General Wiranto Witness Examination, p. 180374.

<sup>157</sup> ██████████.

<sup>158</sup> District Police Chief (*Kepala Polisi Resort*).

<sup>159</sup> District Administrator.

<sup>160</sup> District Military Commander (*Komandan Distrik Militer*).

kept close together and the KAPOLRES didn't start to act more independently from the Indonesian Army officers after April 1999.

The military character of POLRI was especially apparent in its elite unit, the Mobile Brigade (BRIMOB), which had 2,497 personnel in East Timor in 1999.<sup>161</sup> It was BRIMOB who failed to prevent the attack on the United Nations compound in Maliana.<sup>162</sup>

Further evidence of Wiranto's authority over the police can be seen from orders he issued concerning their role in East Timor. Wiranto testified in Jakarta that he had issued directives formally transferring command control from the Regional Military Commander to the Regional Police Chief.<sup>163</sup> Wiranto told the Jakarta Court, "I as the Minister of Defense and Security/Commander of the Armed Forces did not coordinate with the Indonesian Police Chief, because I was the superior of the Indonesian Police Chief, so...Yes, certainly, with the authority [entrusted] with me ..."<sup>164</sup> He went on later to add "if Your Honor asks what orders were given to the Indonesian Regional Police Chief, very many ..."<sup>165</sup>

## **E. EFFECTIVE CONTROL OVER THE MILITIAS**

### **1. Requirements to Prove de facto Control**

The *Blaskic* Trial Chamber judgment of the ICTY noted that the duties of military commanders extend not only to "armed forces under their command" but also to "other persons under their control."<sup>166</sup> Accordingly, a commander may incur criminal responsibility for crimes committed by persons who are not formally his direct subordinates, insofar as he exercises effective control over them.<sup>167</sup> The

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<sup>161</sup> Alan Mills, p. 010022.

<sup>162</sup> MCV #41.

<sup>163</sup> General Wiranto Witness Examination, p. 180375; see also 'Hard-Line Militiamen Held As Ministers Visit Timor', *The Age*, 13/7/99, p. 200040.

<sup>164</sup> General Wiranto Witness Examination, p. 180374.

<sup>165</sup> General Wiranto Witness Examination, p. 180387.

<sup>166</sup> *Blaskic*, paras 300-301.

<sup>167</sup> The *Blaskic* Trial Chamber took notice of Article 28(1) of the Rome Statute of the International Criminal Court, which limits a military commander's criminal responsibility to crimes which are about to be or which are being committed by "forces under his or her effective command and control".

ICTY Trial Chamber held in the *Delalic* case, “formal designation as a commander should not be considered a necessary prerequisite for command responsibility to attach”.<sup>168</sup> This includes cases where military and civilian commanders utilize privately organized militia or rebel groups for their own devices or fail to prevent their criminal conduct. These commanders would escape criminal responsibility if a formal command structure were a prerequisite to enforcing humanitarian law.

While the pro-Indonesia militias in East Timor may not have appeared in the formal hierarchy of the Indonesian Armed Forces, the evidence is overwhelming that the armed forces, headed by Wiranto, exercised *de facto* power and “effective control” over these militias. The evidence shows that armed forces assisted in the formation, funding, training, and arming of the militias and that they often either assisted in the militia violence or stood by and let it happen.

## **2. Formation & Recruitment of the Militias**

Militias had a long history in East Timor. One of the principles of Indonesia's defense policy is the doctrine of Total People's Security and Defense, under which civilian populations are encouraged to form militia forces.<sup>169</sup> The most common of these civilian security forces are RATIH<sup>170</sup>. Several of the older militia groups in East Timor, including *Tim Sera*, *Tim Saka* and *Tim Alfa* were formally part of the RATIH system.<sup>171</sup>

During 1999 as part of the systematic attack directed against the civilian population, the mobilization of violent militias took place throughout East Timor.<sup>172</sup> Many of the militia members were recruited as part of the systematic

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<sup>168</sup> *Delalic*, para. 370 (See also generally paras. 364-378).

<sup>169</sup> Law of the Republic of Indonesia, No. 20 of 1982, p. 030007-030008, for the main provisions for the defense and security of the Republic of Indonesia. See also, *People's War: Militias in East Timor and Indonesia*, Geoffrey Robinson, South East Asia Research (2002), p. 271-318.

<sup>170</sup> Trained Population (*Rakyat Terlatih*).

<sup>171</sup> [REDACTED]; MCV #42.

<sup>172</sup> [REDACTED]; 'Army

effort set in motion by early 1999 in the context of the 'socialization of autonomy' campaign.<sup>173</sup> Men in the villages were forced or persuaded to enlist as militia members. The militia commander then handed over the lists of the new members to the TNI officers in charge who in turn channeled the information to military and administrative heads at the district level.<sup>174</sup> The TNI handed down assignments with daily activities to the militia commanders.<sup>175</sup> A number of military and government documents from late 1998 and 1999 show that some militia members were in fact enlisted TNI soldiers.<sup>176</sup> During 1999, with the backing of TNI and the civil administration, more than 24 militia groups operated in the territory.<sup>177</sup> TNI and civilian government officials helped establish an umbrella organization under which all militia groups were organized. The organization was

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Backing Militia: Canberra', *The Australian*, 9/6/99, p. 200024; 'Army Gave Guns To Militias: Canberra', *The Age*, 10/6/99, p. 200025; MCV #43, MCV #44 & MCV #45.

<sup>173</sup> [REDACTED]. See also 'List of militias' from Supadi Let Col Inf. Kodim 1637, Ermera, November 1997 ([REDACTED], Doc# 1, p. 210305); 'List of Sera Members including the date of joining' from Nudji Maulana, Head Sgt. Command Post Nanggala 13, Baguia, Baucau District, 2 January 1998 ([REDACTED], Doc#2, p. 210372); MCV #46, MCV #47, MCV #48 MCV #49 MCV #50 & MCV #51.

<sup>174</sup> [REDACTED].  
<sup>175</sup> Ibid, p. 180087; Alan Mills, p. 010029-010030; see also *Crimes Against Humanity in East Timor, January to October 1999: Their Nature and Causes*, James Dunn, 14 February 2001, p. 040079.

<sup>176</sup> See Komandan Komando Pasukan Aitarak Sector B (Eurico Guterres) to Dandim 1627/Dili and others, Letter No. 46/PD/MK-AT/VI/199 concerning "Permohonan Dispensasi", June 22, 1999 ([REDACTED], Doc. #51, p. 210283); 'Request for attached list of individuals to be relieved of normal duties for participation in Aitarak' from Eurico Guterres to Mayor of Dili, 26 May 1999 ([REDACTED], Doc# 42, p. 210285).

<sup>177</sup> The militias and their locations are as follows:

<b>AILEU HAMETIN INTEGRASI</b> , Aileu	<b>DARAH MERAH</b> , Ermera
<b>FIRMI MERAH PUTIH</b> , Bobonaro	<b>NAGA MERAH</b> , Ermera
<b>HALILINTAR</b> , Bobonaro	<b>TIM ALFA</b> , Lautem
<b>DADURUS MERAH PUTIH</b> , Bobonaro	<b>JATI MERAH PUTIH</b> , Lautem
<b>GUNTUR MERAH PUTIH</b> , Bobonaro	<b>BESI MERAH PUTIH</b> , Liquica
<b>HAMETIN MERAH PUTIH</b> , Bobonaro	<b>PANAH</b> , Liquica
<b>KAER MERAH PUTIH</b> , Bobonaro	<b>MANATUTO HADOMI INTEGRASI</b> , Manatuto
<b>LAKSAUR MERAH PUTIH</b> , Covalima	<b>ABLAI</b> , Manufahi
<b>MAHIDI</b> , Covalima	<b>TIM SAME</b> , Manufahi
<b>AITARAK</b> , Dili	<b>SAKUNAR</b> , Oecussi
<b>GADAPAKSI</b> , Dili	<b>MAKIKIT</b> , Viqueque
<b>DARAH INTEGRASI</b> , Ermera	<b>PPI JUNIOR 59/75</b> , Viqueque

called the Integration Fighters' Force (PPI<sup>178</sup>). Joao Tavares was the commander of the organization<sup>179</sup> and Eurico Guterres was the deputy commander.<sup>180</sup>

By April 1999, violent militias had been organized in nearly all districts of East Timor and most held pro-autonomy ceremonies at this time.<sup>181</sup> In many instances, high-level members of the civilian administration, TNI and POLRI officers attended these public events.<sup>182</sup> During the ceremonies representatives of the PPI, usually either Joao Tavares or Eurico Guterres, would address the crowd inciting the militias to violence against anyone who did not support integration with Indonesia.<sup>183</sup>

Many of those who supported and directed the militias were high-ranking TNI and police officers serving under the command of the accused. They specifically included Major General Zacky Anwar Makarim, General Adam Rachmat Damiri, Colonel Suhartono Suratman, and Colonel (Police) Timbul Silaen.<sup>184</sup>

<sup>178</sup> *Pasukan Pejuang Integrasi*.

<sup>179</sup> [REDACTED]

<sup>180</sup> [REDACTED]

<sup>181</sup> See 'Telegram from Danramil 1627-04/MTR to Dan Dim 1627/Dili' 11 May 1999, showing cooperation between Koramil staff and Aitarak in preparing militia inauguration ceremony ([REDACTED] Doc# 30, p. 210269); 'Daily Report for 8-11 May from Dulhadjar Capt., Intel Section of Kodim 1631 to Kasi Intel Korem 164', 12 May 1999 ([REDACTED] Doc# 32, p. 210273); See also Doc# 35, [REDACTED], p. 210297; see also, [REDACTED].

<sup>182</sup> Witness statements for each of the militia ceremonies are:

*Ablai* [Maliana]

[REDACTED]; *Junior 59/75* [Viqueque]

[REDACTED]; *BMP* [Liquica]

[REDACTED]; *Mahidi* [Ainaro]

[REDACTED]; *Sakunar* [Oecussi]

[REDACTED]; *DMP*

[Bobonaro] [REDACTED] (At this ceremony, while a chicken was being slaughtered, Joao Tavares said to the crowd 'You must follow autonomy, if you do not we will cut you like this chicken', p. 020390); *Laksaur* [Covalima] [REDACTED]

[REDACTED]; *Darah Merah Integrasi* [Ermera] Ci [REDACTED]

[REDACTED]; *Mahodomi* [Manatuto] [REDACTED];

[REDACTED]; *Aitarak* [Dili] [REDACTED]

<sup>183</sup> [REDACTED]; Eurico Guterres Transcript, p. 010175-010176 ("As long as you betray integration, you are my enemy for as long as ... you live" p. 010175); [REDACTED]

[REDACTED] (" Eurico said ... that 'the family of

Carrascalao should be killed.'" p. 010351);

<sup>184</sup> [REDACTED]



In August 1998 Maj. Gen. Adam Damiri, Commander of Regional Military Command IX/Udayana, arranged for a pro-Indonesian East Timorese leader to fly from Jakarta to Denpasar, Bali, for a meeting. At this meeting, Maj. Gen. Damiri told the East Timorese leader to establish a group to promote integration.<sup>185</sup>

Also in August 1998 Maj. Gen. Damiri traveled to Dili and met with TNI commanders and pro-Indonesian East Timorese leaders. Colonel Suhartono Suratman, Commander of Sub-Regional Military Command 164/WD, was present at this meeting. Maj. Gen. Damiri told the group that international attention was focused on East Timor and this was a problem for Indonesia. He told them that they needed to come up with a plan for creating organizations that would spread pro-Indonesian sentiment throughout East Timor.<sup>186</sup> He told them that they must form a solid civil defense force based on previous TNI-supported models and that this force should be expanded and developed to protect integration.<sup>187</sup>

In November 1998 Maj. Gen. Damiri traveled to East Timor. During this visit he again met with pro-Indonesian East Timorese leaders in Dili, including individuals who later became leaders of militia groups. Maj. Gen. Damiri asked the men to join together and assist TNI to fight the pro-independence group Revolutionary Front for an Independent East Timor (FRETILIN).<sup>188</sup> He praised future militia leader Eurico Guterres as being a young man eager to fight for integration and said that he was willing to give Guterres 50 million rupiah to begin his work.<sup>189</sup>

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<sup>185</sup> [REDACTED]

<sup>186</sup> [REDACTED]

<sup>187</sup> [REDACTED]

<sup>188</sup> *Frente Revolucionaria de Timor Leste Independente*; [REDACTED]

<sup>189</sup> [REDACTED]; MCV #52.

In November 1998 Col. Suratman met with pro-Indonesian East Timorese leaders at his headquarters in Dili. Lieutenant Colonel Yayat Sudrajat was present at this meeting. Col. Suratman told the group that he wanted future militia leader Eurico Guterres to form a new organization to defend integration similar to the pro-Indonesian youth organization *Gadapaksi*.<sup>190</sup>

In early 1999, General Makarim received the founding members of the pro-Indonesian East Timor People's Front (BRTT) at his office in Jakarta.<sup>191</sup> During the meeting he said that guerilla warfare would be necessary to overcome independence supporters if the autonomy option lost at the ballot.<sup>192</sup>

In February 1999 Col. Suratman met with a pro-Indonesian East Timorese leader in Dili. He told him that because TNI was under a reformist regime, it could not take part in open operations against the independence movement. Col. Suratman asked the pro-Indonesian leader to form a militia group. Col. Suratman said that TNI was willing to provide any form of assistance required by militia groups.<sup>193</sup>

There is compelling evidence that Major General Zacky Anwar Makarim, who Wiranto referred to as his "personal representative" in East Timor,<sup>194</sup> played a key role in the organization of the militias who would later perpetrate the violence. Stephen Polden, UNAMET Civpol Superintendent, recalls:<sup>195</sup>

... Colonel Tono Suratman was in charge of the TNI in East Timor. Subsequently Colonel Muis replaced him. Although this was the theoretical chain of command for the TNI, UNAMET staff, myself inclusive, thought there was a third hand in all of this, one which was responsible for coordinating the efforts of the militia and in fact working with the militia in plain clothes ... this third hand was the TNI group known as Kopassus Special Forces ... they reported through Major General Zacky Anwar Makarim of the KPS.

<sup>190</sup> Guards who Uphold Integration (*Garda Penegak Integrasi*); [REDACTED].

<sup>191</sup> *Barisan Rakyat Timor Timur*.

<sup>192</sup> [REDACTED].

<sup>193</sup> [REDACTED].

<sup>194</sup> Ian Martin, p. 010220-010221.

<sup>195</sup> Stephen Polden, p. 020165.

Alan Mills recalls:<sup>196</sup>

... the militia got their orders from the TNI ... The senior leader of the militia was Joao Tavares. Tavares lived in Maliana and had a very close relationship with Major General Zacky Anwar Makarim. On one occasion, Anthony Goldstone, Ian Martin and myself went to a meeting at Anwar's house and he introduced Tavares to us. Tavares was like a puppet ...

Makarim, who had a background in intelligence<sup>197</sup>, reported regularly and directly to Wiranto. An order given by Wiranto refers to Makarim by the title Special Team Head of the Adjutant General's Task Force.<sup>198</sup> Together with high-ranking military commanders such as Col. Suratman, the Regional Military Commander, Maj. Gen. Makarim worked with KOPASSUS officers posted in KOREM 164/WD to organize, arm and encourage militias in East Timor.<sup>199</sup> During this period there appeared to be dual chains of command, with the formal chain of command supplemented by one running from the accused through Maj. Gen. Makarim to the KOREM 164/WD Commander Col. Suratman and Intelligence Task Force Commander Lt. Col. Sudrajat.<sup>200</sup> Maj. Gen. Makarim and those officers commanding the territorial segments of the TNI and KOPASSUS worked with East Timorese leaders and figures in the military reserve organizations to remobilize existing militias, organize new militias, provide training, supply weapons, and encourage militia activities.<sup>201</sup> These men were responsible for masterminding the campaign of intimidation and coercion in East Timor.<sup>202</sup>

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<sup>196</sup> Alan Mills, p. 010005; MCV #53.

<sup>197</sup> Maj. Gen. Makarim had previously been the Head of the Armed Forces Intelligence Body (Kepala BIA); MCV #54.

<sup>198</sup> 'To What End, Indonesia?', The Age, 11/9/99, p.200072-200076.

<sup>199</sup> [REDACTED]; Paul Bruce Symon, p. 020124; [REDACTED];

<sup>200</sup> [REDACTED]; Paul Bruce Symon, p. 02012-020124; 'The Blood Is On Wiranto's Hands', The Australian, 6/9/99, p. 200061.

<sup>201</sup> [REDACTED]; Stephen Polden, p. 020165.

<sup>202</sup> 'Plan of Action for monitoring of Referendum: Adam Damiri, Major General Panglima of Kodam IX to Various staff at Kodam' 31 May 1999 [REDACTED], Doc# 45, p. 210301); 'UN Finds High-Level Army Terror Role', The Age, 6/9/99, p. 200064.

In May 1999, General Makarim held a meeting in Farol, Dili which included pro-Indonesian East Timorese leaders. At the meeting General Makarim said that if independence won the ballot then guerrillas would be used to create disruption in East Timor.<sup>203</sup>

The militia leaders reported back to military headquarters in Jakarta, seeking high-level support from the TNI. On one occasion the working party for BRTT met with Maj. Gen. Kiki Syahnakri in Jakarta, who was Operational Assistant to the accused. One witness present at the meeting recalled Maj. Gen. Syahnakri telling the group that the TNI would support BRTT and that Maj. Gen. Makarim was responsible for everything that happened in East Timor in relation to the activities leading up to the popular consultation.<sup>204</sup> The militia leaders met frequently with the senior TNI and government officials.<sup>205</sup>

The militias were implementing TNI's broader objectives for the future of East Timor and therefore were under Wiranto's indirect and *de facto* command. This is indicated by the 'Contingency Plan' which was reportedly prepared, on Wiranto's order, by Major General Endriartono Sutarto, the Assistant for Operations to the Armed Forces Chief of General Staff in May 1999. The 13-page document outlined with considerable accuracy what actually happened in the days and weeks after the ballot.<sup>206</sup> Significantly, the accused testified before the Human Rights ad hoc Tribunal in Jakarta that he had developed a 16-step security program including the contingency plan in May 1999.<sup>207</sup> Private and public

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[REDACTED]; MCV #55.

<sup>206</sup> Wiranto Witness Examination, p. 180379, where Wiranto refers to this contingency plan. See also *Report of the Indonesian Investigative Commission into Human Rights Violations in East Timor* (Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur) (cited in *Masters of Terror: Indonesia's Military and Violence in East Timor in 1999*, Australian National University, 2002) (hereinafter the KPP-HAM report) p. 030251; See also Korem 164/WD, "Rencana Operasi Wira Dharma-99", Dili, July 1999, p. 2 ([REDACTED], Doc #55, p. 210331). See also [REDACTED] Doc # 60, p. 210362, [REDACTED] Doc #69, p. 210367; General Wiranto Witness Examination, p. 180376.

<sup>207</sup> General Wiranto Witness Examination, p. 180376, 180384.

statements of senior Indonesian officers in the weeks before the ballot confirm this.<sup>208</sup>

### **3. Arms & Material Supplied to Militias**

The evidence shows that each militia group in East Timor was supplied with automatic weapons and other resources such as radios and food by the TNI.<sup>209</sup> Moreover, militia members had access to TNI military posts and vehicles.<sup>210</sup> For example, [REDACTED] stated:<sup>211</sup>

Q: When you were in the field what weapons did you have?

A: M-16 was the only weapon we had, but we often...also used AK-47s.

Q: Who supplied the weapons?

A: KOPASSUS.

Q: Did you ever use SKSs?

A: We used SKS in the final days.

In his statement, [REDACTED] relates.<sup>212</sup>

In January 1999, I returned to Los Palos and was employed with the Kopassus Section as a radio operator. The Kopassus office was located on top a [sic] hill and was also the headquarters for Tim Alfa Militia Group.

<sup>208</sup> 'Warning On Timor Deal', The Age, 20/4/99, p. 200008.

<sup>209</sup> 'Military Chief Denies Arming Timor Militia', The Australian, 3/2/99, p. 200001; 'East Timor Paramilitary Armed For Peace', The Age, 3/2/99, p. 200002; 'Gusmao Calls For Militias To Disarm', The Australian, 4/2/99, p. 200003; *East Timor: Demand for Justice*, Amnesty International, 28 October 1999, p. 030163; *East Timor: Paramilitary Attacks Jeopardize East Timor's Future*, Amnesty International, 16 April 1999, p. 030082-030085; See also Alan Mills, p. 010013; [REDACTED]

[REDACTED]; See also *Prosecutor v. Jose Ferreira*, 7 November 2000; See also [REDACTED], Doc# 62 (p. 210376), 64 (p. 210395); 'Dili Bishop Accuses Militias', The Age, 5/2/99, p. 200004-200005; 'Timor Struggle Law Of The Jungle: Militia Leader', The Age, 20/4/99, p. 200006; MCV #56, MCV #57 & MCV #58.

<sup>210</sup> [REDACTED]; See also Dan Sat Gas Pam Dili to Dan Rem Up. Kasi Intel Rem 164/WD and others, Secret Telegram No. STR/202/1999, 16 April 1999 ([REDACTED], Doc. #17, p. 210370). See also [REDACTED] Doc. # 60, p. 210362 (reference to the Contingency Plan); MCV # 59.

<sup>211</sup> [REDACTED].

<sup>212</sup> [REDACTED].

██████████ recalls "the Blue Kijang used by the Team Alfa and Indonesian Commandos".<sup>213</sup>

In March 1999 Lt. Col. Sudrajat and other members of TNI delivered a large number of firearms to a pro-Indonesian East Timorese leader. Lt. Col. Sudrajat asked the East Timorese leader to give the weapons to pro-Indonesian militia groups.<sup>214</sup>

In April 1999 Maj. Gen. Makarim told TNI commanders and pro-Indonesian East Timorese leaders that they should work hard for autonomy because if autonomy lost, more blood would flow.<sup>215</sup> He offered pro-Indonesian East Timorese leaders the use of automatic firearms and ordered Col. Suratman to arrange for the distribution of these firearms.<sup>216</sup>

In April 1999 Col. Suratman, after being asked by Maj. Gen. Makarim to provide automatic firearms to pro-Indonesian East Timorese leaders, ordered his subordinate Lt. Col. Sudrajat to arrange for the collection and distribution of the firearms.<sup>217</sup>

#### **4. Funding of Militias**

The funding for the militias was mostly provided out of the Indonesian development budget for East Timor (60% - amounting to 53 billion rupiah (US\$5.3 million)).<sup>218</sup> It was distributed through the civilian administration in Dili to

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██████████; MCV #61.  
██████████: 'UN Asks Jakarta To Clarify Funds For ET Vote', The Age, 6/6/99, p. 200020; 'Aid Money Redirected, Papers Show', 15/6/99, p. 200026; 'Dili Funds Pro-Jakarta Side In Breach Of Accord', The Age, 7/6/99, p. 200022-200023; MCV #62, MCV #63 & MCV #64.

the 13 Districts.<sup>219</sup> From there the BUPATI allocated the funds to the TNI and militia.<sup>220</sup>

Several internal documents of the *Aitarak* militia clearly show that TNI personnel were members of the militia and that they were paid as such.<sup>221</sup> A former TNI Sergeant recalls:<sup>222</sup>

The TNI who were in charge of the militia received 200,000 per month on top of their regular TNI salary, it was given to them by the Panglima Joao Tavares at his house ...

However, Indonesian military officers within Wiranto's chain of command were also involved in the distribution of the funds to the militias.<sup>223</sup> For example, militia groups such as *Tim Alfa*, *Tim Sera* and *Tim Saka* received their money directly from the TNI.<sup>224</sup> For example, one pro-autonomy Timorese recalls:<sup>225</sup>

In November 1998, Eurico Guterres invited all of us pro-autonomy leaders to KOREM Dili ... Adam Damiri started by talking on how to organize a pro-autonomy front and he appointed Eurico Guterres as leader of the youth organization *Gadapaksi*. Guterres said he had no money and Damiri promised he would support Guterres organization with 50 million rupiahs ...

In February 1999 Maj. Gen. Damiri met with pro-Indonesian East Timorese leaders at Regional Military Command IX/Udayana headquarters in Denpasar, Bali. Maj. Gen. Damiri told the men that TNI was ready to give secret support to pro-Indonesian forces. He explained that it must be secret in order to avoid

<sup>219</sup>

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[redacted]; see also [redacted], Doc.#23 (p. 210436), #38 (p. 210462).

<sup>221</sup> According to the report prepared by the Aitarak treasurer, the 96 who were TNI were paid 120,000 rupiah. See Memorandum from the Treasurer to Eurico Guterres concerning Aitarak budget, August 28, 1999, SCU Collection, Doc. #79, p. 180629-180632.

<sup>222</sup>

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international scrutiny and criticism. Maj. Gen. Damiri asked the men to gather East Timorese who had served in TNI. He told them that they should meet with Col. Suratman for further instructions.<sup>226</sup>

### **5. Training of Militias**

The TNI trained the militias.<sup>227</sup> It is apparent that, "the training of around 11,000 militia in East Timor could never have gone ahead without [General Wiranto's] knowledge and consent."<sup>228</sup>

In a telegram from the DANREM 164/WD, Commander Col. Suratman ordered all DANDIM to exercise greater care and discipline in training the RATIH units in their districts. It states: "Insist upon strict order and discipline in order to prevent any losses, physical or non-physical, inside or outside the training unit."<sup>229</sup>

Significantly, Col. Suratman's telegram is based on an order from the Regional Military Commander, Maj. Gen. Damiri (No. STR/90/1999). Moreover, Col. Suratman's telegram cites for authority a 1996 order of the Army Chief of Staff concerning the appropriate procedures for recruiting and training the RATIH. The militia training was regulated by well-established rules and procedures issued at the very highest levels of the TNI. The evidence establishes that the militias were organized, trained, supplied and commanded by the TNI officers under Wiranto's command.<sup>230</sup>

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Mark Ogilvie, p. 180216. Doc# 14 &15 (p. 210446), 25 (p. 210449); 'New Threat To Timor Vote', The Age, 18/6/99, p. 200028-200029; MCV #65, MCV #66 & MCV #67.

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<sup>229</sup> Danrem 164/WD to Dandim 1627-1639 and others, Doc. #10, p. 210400).

<sup>230</sup>

; 'Armed With Information, Now What?', The Age, 29/5/99, p. 200018-200019.



## 6. TNI & POLRI Complicity in Militia Violence

Once established, TNI commanders in the districts of East Timor ordered and directed the militias in their conduct.<sup>231</sup> The militia groups, with the support and assistance of TNI and acting together with TNI soldiers, participated in a widespread and systematic attack acting and operating with impunity.<sup>232</sup>

Evidence demonstrates that the militias received direct operational support from the TNI in 1999.<sup>233</sup> In some cases the TNI had lists of presumed pro-independence supporters, which were passed on to the militia groups with the names and location of those who were to be killed.<sup>234</sup> In most cases, the TNI and police stood by as the militia committed the crimes, or demonstrated indifference when crimes were reported to them;<sup>235</sup> in some cases, however, the TNI personally committed the crimes.<sup>236</sup> This pattern of joint criminal liability spread across every district in East Timor.<sup>237</sup>

<sup>231</sup> [REDACTED]; MCV #68.

<sup>232</sup> [REDACTED]; MCV #68, MCV #69, MCV #70 & MCV #71.

<sup>233</sup> [REDACTED]

<sup>234</sup> [REDACTED].  
<sup>235</sup> Ian Martin, p. 010243; Mark Ogilvie, p. 180228; 'A Town Held Hostage By Hooligans', The Age, 6/9/99, p. 200062.

<sup>236</sup> 'Timorese Sent To Camps', The Age, 7/5/99, p. 200009-200010; 'Refugees 'Hostage' To Timor Ballot', The Age, 10/7/99, p. 200039.

<sup>237</sup> [REDACTED]; Security Council Report of the Security Council Mission to Jakarta and Dili, 14 September 1999, p. 030116-030122; Report of the High Commissioner for Human Rights on the Human Rights Situation in East Timor, 24 September 1999, p. 030128-030133; Situation of Human Rights in East Timor: Note by the Secretary General, 10 December 1999, p. 030200-030213; Report of the International Commission of Inquiry on East Timor to the Secretary General, 31 January 2000, p. 030289-030292; KPP-HAM Report, p. 030250-030264; [REDACTED]; 'Kopassus Accused Of Timor Slaughter', The Australian, 24/5/99, p. 200016.

A significant feature of the complicity was that TNI would often appear in civilian clothes so as not to be recognized as military officers on the scene.<sup>238</sup> As Alan Mills recalls:<sup>239</sup>

I also mentioned the numerous reports CIVPOL had received concerning TNI providing direct support and encouragement to the militias; some of these TNI were even identified wearing civilian clothes.

In or about February 1999 Lieutenant Colonel Yayat Sudrajat met with TNI personnel and pro-Indonesian East Timorese leaders at Intelligence Taskforce<sup>240</sup> headquarters in Dili. Lt. Col. Sudrajat told the group that the Intelligence Taskforce had a list of independence supporters that were to be killed. He stated that the Intelligence Taskforce and the pro-Indonesian groups would cooperate to carry out these killings. He said that KOPASSUS dressed as thugs would start to carry out murders of pro-independence supporters.<sup>241</sup>

In June 1999 Col. Suratman held a meeting at his headquarters in Dili. He informed a group of TNI soldiers and militia that if autonomy lost in the popular consultation, everything that had been given to East Timor by the Government of Indonesia had to be destroyed. Col. Suratman told them that if independence won, there would be a scorched earth policy so that an independent East Timor would have to start with nothing. He stated that all forces in East Timor would have to carry out the order.<sup>242</sup>

One former East Timorese TNI soldier recalled that after the announcement that independence had won the ballot:

Combined Aitarak militia and TNI burned houses down in Metinaro sub-district. The houses were burned down at random....That was because we were not allowed to leave anything from Indonesia behind in favor of the

<sup>238</sup> MCV #72, MCV #73 & MCV #74.

<sup>239</sup> Alan Mills, p. 0100114. See also Paul Symon, p. 020127; Rezaqul Haider, p. 010207.

<sup>240</sup> SGI (*Satuan Tugas Intelijen*); NB *Satuan Gabungan Intelijen* was the previous name for the Intelligence Taskforce however its acronym, SGI, remained the same.

<sup>241</sup> [REDACTED]; MCV #75.

<sup>242</sup> [REDACTED] (see also p. 010376: "The orders were still the same, if autonomy lost, East Timor would go back to zero."); [REDACTED].

East Timorese Pro-Independence people...The orders were still the same, if autonomy lost, East Timor would go back to zero...I knew that things were bad in Dili because we saw the enormous smoke above Dili. We couldn't identify anymore who was TNI and who was militia, the militia was using the same weapons as the TNI ...<sup>243</sup>

In recalling the events of early September, Bishop Belo related:<sup>244</sup>

When we returned home ... the situation was extremely tense, only the militias were moving around ... by the evening the number of refugees had reached 5000 ... I awoke on the morning of the 6<sup>th</sup> at 5 in the morning to see 2 trucks filled with KOSTRAD soldiers outside the front of my house ... I made a telephone call to the Chief of Police to request trucks to evacuate the refugees from Dili to Baucau. The Chief of Police, Timbul Silaen, said, "It would be better if you called the Head of the Military Command", which I did ... I think his name was Nur, he just answered, "there are no trucks". Then at approximately 9:15 a Lieutenant Colonel from KOSTRAD arrived ... he asked, "how is the situation here?", I answered that we wanted protection to stop the militias from attacking ... but others in my house heard the Lieutenant Colonel ... arriving at the end of the road ... he shouted at the militias that were waiting there, "Attack now, attack now! If you don't, I'll kill you." At approximately 9:30 they started to ride around my house on motorcycles, screaming and throwing stones ... The youth at my house later told me the police themselves threw gasoline on the fire at the time.

Paul Symon, a Military Liaison Officer for the UN, was in Dili on 23 September. He had received reports that there would be an attempt to burn down the Resende Hotel located next to the current GPA building. Symon stated that he went to the hotel and saw TNI soldiers stacking timber inside and unloading drums of kerosene or diesel out of TNI trucks.<sup>245</sup>

Major General Haider stated:

I personally along with fellow MLOs witnessed both the TNI and militias burning buildings and destroying property. One method employed by the TNI was to place a container of petrol inside the building and then place a lit mosquito coil above it. Once the coil

<sup>243</sup> [REDACTED]

<sup>244</sup> Bishop Carlos Ximenes Belo, p. 010096; MCV #76.

<sup>245</sup> Paul Symon, p. 020130-020131.

had burnt down it would light the petrol thus starting a fire. The result would be that the building would be destroyed after the TNI or in some cases militias had left thus alleviating them of blame. We verified one such incident that occurred just outside the Consulate.<sup>246</sup>

Similarly, the police often viewed the militia violence with complete indifference or acted in complicity with their crimes.<sup>247</sup> In some cases, the KAPOLRES used threats and intimidation to coerce members of the public, or their own staff, to support pro-autonomy.<sup>248</sup> In most cases POLRI officers failed to take affective action against those who were about to commit or who had already committed crimes. This was the case even when the violence occurred directly in front of the police.<sup>249</sup> As [REDACTED], recalls, when describing the attack on the humanitarian convoy at Liquica on 4 July 1999:<sup>250</sup>

I did not see any attempts by the police to arrest or investigate any of the militia who came right up to the police station gates, they were heavily armed and were threatening past the police to those of us inside. I did not see the police make any attempts to arrest the militia or take any action against them. I also didn't see any action taken towards the militia leaders who were within the Police station walking amongst us and meeting with the police officers. I remember that the person identified to me as Manuel de Sousa [the head of the BMP militia in that district] going into a room, sitting down and meeting with police officers.

Later, he describes an incident at Ermera on polling day, during which he witnessed UN Civpol officers who were loading ballot boxes onto a helicopter being threatened by militia firing weapons in the presence of POLRI officers:<sup>251</sup>

Q: Did you see the Indonesian police take any action against the militia who were firing their guns against the UN Civpol?

A: No.

Q: Did you see anyone arrested?

<sup>246</sup> Rezaqul Haider, p. 010213.

<sup>247</sup> MCV #77, MCV #78, MCV #79, MCV #80, MCV #81, MCV #82 & MCV #83.

<sup>248</sup>

<sup>249</sup>

<sup>250</sup> [REDACTED]; MCV #84.

<sup>251</sup>

A: No, and the militia were firing their weapons, I have a very clear recollection...

In other cases, POLRI officers were members of the militia in their districts and actively participated in atrocities that took place in East Timor in 1999.<sup>252</sup> Even though POLRI was aware of the crimes being committed, they never investigated the murders or killings committed.<sup>253</sup> This is apparent from a letter from Joao Tavares, the Supreme Commander of the Integration Fighter's Force, instructing the militias to immediately assemble in rank and become proactive in eliminating assembly halls of anti-integrationists. This letter was addressed to the various militia groups and copied to, among others the Regional Police Chief and District Police in East Timor.<sup>254</sup>

The routine failure of the POLRI to respond to acts of violence by militia groups when they occurred or to take adequate measures to investigate or punish them after the fact<sup>255</sup> reflects the lack of will on the part of the accused Wiranto to prevent the violence or punish its perpetrators.

### **7. Wiranto's Control over the Militias**

The fact that the Indonesian military had selected formed, trained, funded and armed the militias leads to the inescapable conclusion that the top Indonesian leadership had the ability to control militia activities. Militia leaders had been chosen for their positions by the Indonesian military and there is every indication that they followed their orders. For example, at one meeting in Bali that included top military and militia leaders shortly after the announcement that the popular

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<sup>252</sup> [REDACTED];  
MCV #85, MCV #86, MCV #87, MCV #88, MCV #89, MCV #90, MCV #91 & MCV #92.

<sup>253</sup> [REDACTED]; 'UN Despair At The Indonesian Police Who Watch Crime And Do Nothing', 2/9/99, p. 200057-200058; 'Police Promise Dili Crackdown', 6/6/99, p. 200021.

<sup>254</sup> CNRT Document brings to note letter by Joao Tavares, 3 August 1999 ([REDACTED]  
[REDACTED], Doc# 66, p. 210291).

<sup>255</sup> Alan Mills, p.010016; Rezaqul Haider, p. 010216; [REDACTED]; Stephen Polden, p. 020168-020178.

consultation would be permitted, Eurico Guterres asked what his instructions were if autonomy lost the ballot.<sup>256</sup> After the announcement that independence had won an overwhelming victory in the ballot, the allegiance of the most ruthless militia leaders, such as Eurico Guterres, was even greater as it was clear that they were likely to seek refuge in Indonesia.

Many observers noticed a dramatic decrease in militia activity whenever a high-ranking military officials visited East Timor. [REDACTED]

[REDACTED], described the situation as follows:<sup>257</sup>

One of the more striking indications that militia violence was orchestrated at a high level was the fact it could seemingly be turned on and off like a tap, in accordance with the political interests or needs of senior TNI and government officials.

Militia activity, which Police and TNI authorities had consistently claimed was uncontrollable, suddenly stopped on almost every occasion that important high-level delegations visited the territory. The most conspicuous instance of this pattern came on 11 September when the US Security Council delegation visited Dili to investigate reports of militia and TNI violence. Sandwiched between several days of relentless shooting and burning, the day of the visit was almost completely without incident.

As the Report of Security Council Mission to Dili on 11 September 1999, noted: "... there were clear signs that the [violence] could, as UNAMET staff described it, be switched "on and off".<sup>258</sup>

TNI control of the militias was also evident to UNAMET staff on the ground. Indeed, the eventual evacuation of UNAMET staff was undertaken because of the feared imminent departure of the TNI, and the resulting danger posed by uncontrolled militias. [REDACTED] relates:<sup>259</sup>

<sup>256</sup> [REDACTED]

<sup>257</sup> [REDACTED]

<sup>258</sup> Security Council Report of the Security Council Mission to Jakarta and Dili, 14 September 1999, p. 030120;

<sup>259</sup> [REDACTED]

... the judgment was made [by UNAMET staff] that the militia were completely under the control of the TNI, because ... there had been specific orders not to attack us. So if the TNI left then the militia would be uncontrolled and the UN would be unable to safely remain in East Timor.

Wiranto's ability to control the pro-autonomy militias is patently evident from his own statement that he could disarm the militias. Ian Martin, the Special Representative to the Secretary General of the United Nations, recalls:<sup>260</sup>

During this meeting I clearly recall General Wiranto telling me that if FALINTIL<sup>261</sup> was ready to surrender its weapons to the Indonesian Police, he could guarantee that the militia would be disarmed within two days ... I believe this was not the only occasion General Wiranto said this.

### **8. Adjudicated Facts Showing Effective Control**

The Special Panel for Serious Crimes in East Timor has previously made factual findings that the militia violence occurred with the consent and support of the TNI and POLRI forces. The Trial Chamber decision in the case of *The Prosecutor v. Joni Marques & Others*, confirmed the central role of the Special Forces Command (KOPASSUS<sup>262</sup>) in providing weapons and training to the militias.<sup>263</sup> The Special Panel in that case went on to quote with approval the findings of the International Commission of Inquiry:<sup>264</sup>

#### **Indonesian army and militia involvement**

Evidence gathered shows that militia groups were responsible for the intimidation and terror experienced by the people of East Timor before and after the popular consultation.

The evidence further shows that the number of militia groups and their activities increased from January 1999. There is also evidence that the Indonesian Army and the civilian authorities in East Timor

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<sup>260</sup> Ian Martin, p. 010226.

<sup>261</sup> Armed Forces for the National Liberation of East Timor (*Forças Armadas de Libertação Nacional de Timor Leste*).

<sup>262</sup> Special Forces Command (*Komando Pasukan Khusus*).

<sup>263</sup> *The Prosecutor v. Joni Marques & Others*, Judgment, Dili District Court, p. 58. See also Jose Pereira, p. 110183-110200; 'Gusmao Calls For Militia To Disarm', *The Australian*, 4/2/99, p. 200003.

<sup>264</sup> *The Prosecutor v. Joni Marques & Others*, Judgment, 11 December 2001, para 686. Here the Court accepted the findings of the International Commission of Inquiry into the patterns of human rights violations and breaches of humanitarian law in East Timor (Excerpts from the *Report of the International Commission of Inquiry on East Timor to the Secretary General*, 31 January 2000, p. 030291).

and some in Jakarta pursued a policy of engaging the militia to influence the outcome of the popular consultation. The approach pursued was to provide the impression that the East Timorese were fighting among themselves.

There is evidence that the policy of engaging militias was implemented by KOPASSUS (Special Forces Command of TNI) and other intelligence agencies of the Indonesian army. The policy manifested itself in the form of active recruitment, funding, arming and guidance and of the provision of logistics to support the militias in intimidation and terror attacks.

There is evidence to show that, in certain cases, Indonesian army personnel, in addition to directing the militia, were directly involved in intimidation and terror attacks. The intimidation, terror, destruction of property, displacement and evacuation of people would not have been possible without the active involvement of the Indonesian army, and the knowledge and approval of the top military command.

The Indonesian police, who were responsible for security under the 5 May agreement, appear to have been involved in acts of intimidation and terror and in other cases to have been inactive in preventing such acts.

The Commission is of the view that ultimately the Indonesian army was responsible for the intimidation, terror, killings and other acts of violence experienced by the people of East Timor before and after the popular consultation. Further, the evidence collected to date indicates that particular individuals were directly involved in violations of human rights.

The Commission received allegations that armed groups supporting independence were also involved in violent attacks during the period from January 1999. The incidents were relatively fewer in number and confirmation of their existence has not been obtained.

In *Prosecutor v. Sabino Gouveia Leite*<sup>265</sup> the Special Panel for Serious Crimes made the following factual findings concerning the evidence of militia crimes and their support by the TNI:

The widespread or systematic attacks were part of an orchestrated campaign of violence, that included among other things incitement, threats to life, intimidation, unlawful confinement, assaults, forced displacement, arson, murders, rapes and other forms of violence carried out by members of the pro-autonomy militia, members of the Indonesian Armed Forces, ABRI [Angkatan Bersenjata Republik Indonesia] renamed TNI [Tentara Nasional Indonesia] in

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<sup>265</sup> Judgment dated December 7, 2002. See also *Prosecutor v. Jose Cardoso Ferreira aka Mouzinho*, Judgment dated April 5, 2003.



acquiescence and active participation of Civilian and Military authorities.

In 1999, more than twenty-five militia groups operated throughout East Timor. Their goal was to support autonomy with Indonesia. The Integration Fighter's Force [Pasukan Pejuang Integrasi-PPI] under the command of Joao Tavares was the umbrella organization under which these militia groups were organized. It had the backing of the TNI and the Civil Administration. PPI commanders issued, called upon and incited militia groups and their members to intimidate independence supporters and those perceived to support them. The militia groups participated in the widespread or systematic attack and acted and operated with impunity.

The Indonesian Military in East Timor consisted of both regular territorial forces [BTT] and Special Combat Forces, i.e., the Strategic Reserve Command [Komando Strategis Angkatan Darat-KOSTRAD] and the Special Forces Command [Komando Pasukan Khusus-KOPASSUS], all of which had units, staff officers and soldiers stationed in East Timor.

These large-scale attacks were directed against civilians of all age groups, predominantly against individuals who were perceived to support independence and resulted in lethal injury including death by sharp force injury, gun shot injury, blunt force trauma or a combination of the three.

Widespread or systematic attacks were also carried out against property and livestock, including mass destruction of houses by fire, stealing of property, killing and stealing of livestock.

The widespread or systematic attack resulted in the internal displacement of thousands of persons [IDPs].<sup>266</sup> Additionally, the forcible transfer and deportation of the civilian population within East Timor and to West Timor, Indonesia was an essential feature of the orchestrated campaign of violence.

Under the terms of the 5 May Agreements, between Indonesia, Portugal and the United Nations on the popular consultation, the Indonesian security authorities had the responsibility to ensure a safe environment devoid of violence or other forms of intimidation as well as the general maintenance of law and order before and during the popular consultation. The TNI and POLRI [which were the Indonesian Security Authorities] failed to meet these obligations

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<sup>266</sup> 17 Photographs of Internally Displaced Persons Ermera, p. 190604-190620.

**and made no attempt to disarm or neutralize the militia groups.  
They were allowed to act with impunity.**

## **VI. MENS REA FOR COMMAND RESPONSIBILITY**

### **A. "KNEW OR HAD REASON TO KNOW" STANDARD<sup>267</sup>**

According to Section 16 of Regulation 2000/15, a superior is under a duty to take action if he either "knew or had reason to know" that subordinates were about to or had already committed crimes. Evidence of Wiranto's knowledge can be direct or circumstantial. There can be no reasonable doubt that Wiranto knew of the campaign of violence charged in the indictment given the scale and notoriety of the crimes committed, the intense diplomatic and media attention focused on Timor at the time, the many communications the accused received about the violence, and Wiranto's own statements about what he saw and was told.

### **B. STATEMENTS OF THE ACCUSED SHOWING KNOWLEDGE**

In his own testimony in the Jakarta trial of Timbul Silaen, Wiranto testified that he received extensive reports about the situation and violence in East Timor, including regular reports from his staff because, in his words, "it was assumed very important when the chaos occurred because of the popular consultation."<sup>268</sup> He admitted he also received telephone reports from the Regional Military Commander, Maj. Gen. Damiri, Sub-regional Military Commander, Col. Suratman, and Regional Police Chief, Timbul Silaen, about the situation.<sup>269</sup>

### **C. THE WIDESPREAD NATURE AND LOCATION OF THE ACTS**

All districts in East Timor had particular militia groups. There was also a territorial network of TNI forces and POLRI stationed in East Timor. The widespread attack

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<sup>267</sup> This *mens rea* standard is one of serious negligence rather than strict liability. For 'actual knowledge' the Final Report of the United Nations Commission of Experts at para. 58 enumerates indicia pointing to a superior's knowledge. These indicia are employed below to demonstrate that the accused had actual knowledge. The 'had reason to know' standard refers to constructive knowledge. Under customary international law a superior is liable where the particular information available to him is sufficient to put him 'on notice' of the offences committed by his subordinates.

<sup>268</sup> General Wiranto Witness Examination, p. 180380. See also p. 180386 and 180388 where Wiranto admits he received reports about events in Liquica of 6 April, 17 April and in Dili of 5 September and 6 September.

<sup>269</sup> General Wiranto Witness Examination, p. 180380.

on the people of East Timor was carried out through cooperative action of the TNI, POLRI and militia groups.

Indeed, the KPP-HAM report found that:<sup>270</sup>

... the whole range of violations of fundamental human rights carried out in a wide and organized manner that happened in the period before and after the ballot in East Timor was fully known and realized by the ABRI/TNI Commander General Wiranto as being the one responsible for national security ...

The coordinated campaign included incidents of murder, rape, torture and acts of persecution in districts from Bobonaro, Covalima, Dili, Lautem, Liquica, and Oecussi. TNI, POLRI and militias also committed the deportation of approximately 200,000 civilians to West Timor. These civilians came from all districts of East Timor. Furthermore, the violence resulted in the destruction of approximately 70 percent of the infrastructure of East Timor.<sup>271</sup>

#### **D. THE LOCATION OF THE SUPERIOR AT RELEVANT TIMES**

Given his positions as Minister of Defense and Security, and Commander of the Indonesian Armed Forces, the accused was predominantly located in Jakarta, but he was informed daily of the evolving situation by Maj. Gen. Makarim and regular staff reports.<sup>272</sup> Additionally, Wiranto admits to being in East Timor on five occasions during the indictment period: 20-21 April; 12 July; 7 August; 5 September and 11 September.<sup>273</sup> On these trips, UN officials brought incidents of violence to his attention.<sup>274</sup> Moreover, UN officials traveled to Jakarta to inform

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<sup>270</sup> KPP-HAM Report, p. 030267.

<sup>271</sup> MCV #93 & MCV #94.

<sup>272</sup> Alan Mills, p. 010014; Ian Martin p. 010226.

<sup>273</sup> General Wiranto Witness Examination, p. 180377.

<sup>274</sup> Ian Martin, p. 010242 (meeting with General Wiranto on 5 September 1999); Alan Mills, p. 010022-010023; Bishop Belo, p. 010082-010083 (meeting with General Wiranto on 5 September 1999); Major General Rezaqul Haider, p. 010213 (security situation was brought to General Wiranto's attention on 10 September 1999); Ian Martin, p. 010246-010247 (meeting of 10 September 1999 with General Wiranto in Dili).

the accused of the dangers and implore him to order his troops to end the violence.<sup>275</sup>

- On 20 April 1999, Wiranto made his first trip of the year to Dili. The purpose of this trip was to broker a conciliation agreement between pro-autonomy and pro-independence groups on 21 April.<sup>276</sup> On the evening of the 20<sup>th</sup> he, Maj. Gen. Makarim and others dined at length with pro-autonomy Timorese militia leaders. During the evening, in the presence of Lt. Col. Yayat Sudrajat and Col. Suhartono Suratman, Maj. Gen. Makarim offered to supply guns to a pro-autonomy leader.<sup>277</sup>
- On 12 July 1999 a delegation of 15 Indonesian ministers, led by Wiranto and Ali Alatas, and known by the Indonesian authorities as 'the Coordinating Committee', traveled to Dili. During this trip, the accused did not meet with UNAMET staff, instead preferring to talk to "his people".<sup>278</sup>
- On 7 August, ministers including Alatas and the accused made another visit to Dili.<sup>279</sup> This was the second time the Coordinating Committee came to Dili. Again, the accused did not meet with UNAMET staff.
- On 5 September 1999 Gen. Wiranto and Ali Alatas were present at a meeting at Comoro Airport in Dili with senior UNAMET staff.<sup>280</sup> Lt. Col. Nigel Dransfield, the Senior MLO in Maliana, was especially asked to attend in order to give an eyewitness account to Wiranto and Alatas of TNI involvement in unlawful activities such as rioting. The shooting of Civpol officer Earl

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<sup>275</sup> Ian Martin, p. 010223-010224, 010225-010228, 010238; Major General Rezaqul Haider, p. 010202-010203.

<sup>276</sup> General Wiranto Witness Examination, p. 180374.

<sup>277</sup> [REDACTED]

<sup>278</sup> Ian Martin, p. 010228; see also 'Timor Visit To Look At Rising Violence', The Age, 9/7/99, p. 200038.

<sup>279</sup> Ian Martin, p. 010236-010237; see also 'Jakarta Commits To Keeping Peace', The Australian, 15/7/99, p. 200043-200044.

<sup>280</sup> Alan Mills, p. 010022-010023; Paul Symon, p. 020125-020126; Ian Martin, p. 010242-010243; MCV #95.

Candler by TNI or BRIMOB forces was also raised. The accused failed to respond to these accusations.<sup>281</sup>

- Later that day, Maj. Gen. Makarim, Maj. Gen. Syahnakri, Maj. Gen. Damiri, Col. Muis, Col. (Pol.) Timbul Silaen and Joao Tavares, among others, were present at a meeting at Farol with Bishop Carlos Ximenes Felipe Belo.<sup>282</sup> Bishop Belo asked Wiranto to control the militias and return the situation to normal. Joao Tavares advised Gen. Wiranto that the militias would not surrender until FALINTIL surrender. Tavares also said that the militias under his control did not accept the referendum result and were ready to fight. Later in the meeting, Bishop Belo asked Gen. Wiranto again to control the militias. General Wiranto issued orders to Col. Muis to control the situation and return it to normality. Gen. Wiranto advised Joao Tavares, that if Timorese groups wished to engage in violence amongst themselves, it was 'up to you'.<sup>283</sup>
- During his testimony at the trial in Jakarta of Timbul Silaen, Wiranto acknowledged that when he drove through Dili on 5 September he saw "people's houses burnt, people's houses burnt by [the people] themselves and suchlike."<sup>284</sup>
- On 11 September Wiranto was met by chance at Comoro Airport by Ian Martin. Wiranto had come in advance for the arrival of the Security Council delegation. Martin took this opportunity to reiterate to the accused the UN's "deep concern" at the very serious security situation, and the deteriorating condition of the refugees at the UN compound.<sup>285</sup> Wiranto was also present at

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<sup>281</sup> See Ian Martin, p. 010242-010243.

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<sup>283</sup>

[REDACTED]; Bishop Carlos Ximenes Belo, p. 100567-100568.

<sup>284</sup> General Wiranto Witness Examination, p. 180394. See also p. 180383, where Wiranto admits he was told by his officers "don't go to the city, it's dangerous ...".

<sup>285</sup> Ian Martin, p. 010246-010247.

the Security Council delegation briefing at the KOREM that day but did not accompany the group on their tour of the Dili devastation.<sup>286</sup>

#### **E. KNOWLEDGE FROM REPORTS RECEIVED**

Under customary international law, a superior is liable where the particular information available to him is sufficient to put him "on notice" of the offences committed by his subordinates.<sup>287</sup> So long as the superior has this information in his possession he does not need to have acquainted himself with the substance of it in order for his liability to arise.<sup>288</sup>

One Timorese witness reported:<sup>289</sup>

The TNI knew exactly what was happening in the districts as it was reported to them through TNI channels. If something happened in Cassa it was reported to the SGI, the TNI, the commander, section commander and this was sent through the TNI hierarchy higher up the TNI.

It is beyond reasonable dispute that the accused knew of the massive crimes being committed in East Timor. The crimes were the subject of intense international media reports and diplomatic activity. The referendum in East Timor was a subject of interest not only within Indonesia but also in the international community. Given the critical position held by the accused and information that was available to him and relevant to his job, the only reasonable inference is that he knew of the crimes being committed.<sup>290</sup>

UNAMET Staff addressed TNI responsibility for the violence in East Timor on numerous occasions in meetings and even negotiated agreements with high-ranking TNI on the security situation.<sup>291</sup>

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<sup>286</sup> Ian Martin, p. 010247.

<sup>287</sup> *Delalic*, para. 393.

<sup>288</sup> *Delalic*, para. 239.

<sup>289</sup> [REDACTED]

<sup>290</sup> MCV #96

<sup>291</sup> Alan Mills, p. 010010-010013 (see especially document entitled 'Proposed Criteria for Security Conditions'); 'UN To Lobby Alatas On Timor', *The Australian*, 07/07/99, p. 200037; 'Fury At Militia

On a regular basis between June and October 1999, senior UNAMET officials presented written and oral briefings concerning general patterns and specific incidents of violence to high-ranking TNI, police and civilian authorities as well as directly to Wiranto.<sup>292</sup> Informed and influential figures such as Ian Martin<sup>293</sup> and Bishop Belo<sup>294</sup> implored the accused to end the violence. Martin had directly provided Wiranto with written reports concerning militia attacks in Maliana and Liquica.<sup>295</sup>

As Ian Martin relates:<sup>296</sup>

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 threat towards UNAMET, and I gave him a frank account of the incidents and general security climate. I put it 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.

General Wiranto said 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".

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Violence', *The Age*, 6/7/99, p. 200035-200036; 'Talks On Jakarta Terror Link', *The Age*, 5/7/99, p. 200033; 'Timor Leaders Build Bridge To Military', *The Age*, 6/7/99, p. 200034.

<sup>292</sup> Written briefings provided by UNAMET officials included: two dossiers of evidence on the misuse of official funds and recourse to pressure of office in support of pro-autonomy campaign, submitted to the government on June 16 and July 14, 1999; detailed reports on the Maliana incident of June 29 and the Liquica incidents of July 4, submitted in mid-July 1999; a letter dated August 5, from UNAMET head of mission, Ian Martin to Task Force Chairman Tarmidzi conveying deep concern about a recent attack on UNAMET staff, and about possible criminal behavior by government officials in Bobonaro; a letter dated August 19, from Ian Martin, to Tarmidzi, and another from Chief UNAMET MLO, Maj. Gen. Rezaqul Haider, to Maj. Gen. Makarim, outlining the involvement of named TNI officers in supporting militias, and calling for their removal (Personal communication, Ian Martin, June 4, 2003). See also Rezaqul Haider, p. 010204-010205 (meetings with Damiri, Suratman, Makarim); [REDACTED]; Ian Martin, p. 010236.

<sup>293</sup> Ian Martin, p. 010224-010226.

<sup>294</sup> Bishop Carlos Ximenes Belo, p. 010082-010083.

<sup>295</sup> Ian Martin, P. 010224.

<sup>296</sup> Ian Martin, p. 010225-010226.



Martin further noted "General Wiranto made no attempt to refute the points I had made alleging TNI involvement with the militia."<sup>297</sup>

The accused and other high-ranking Indonesian officials also received frequent written and oral reports about the situation in East Timor through their own command hierarchy.<sup>298</sup> Wiranto received daily updates on the status of the campaign in East Timor through the TNI chain of command and his special representative located in Dili, Maj. Gen. Makarim.<sup>299</sup> Although these internal reports often avoided the question of direct TNI involvement with militias, some did make it clear that there was a link and described the violence in detail.<sup>300</sup>

#### **F. KNOWLEDGE THAT CRIMES WERE ABOUT TO OCCUR**

The evidence is overwhelming that the Indonesian military, including Wiranto, were well aware that a campaign of violence was likely to occur if autonomy lost in the ballot, yet took no action to prevent the crimes. Francisco Lopes, the leader of BRTT, often said during the pre-ballot campaign that if autonomy won "blood would drop" but if it lost "blood would flow."<sup>301</sup>

As Col. Suratman publicly predicted in an Australian television interview broadcast on 12 May 1999:

Well if this does happen (Independence), there will be no winners. Everything is going to be destroyed. East Timor won't exist as it does now, it will be much worse than it was 23 years ago.<sup>302</sup>

<sup>297</sup> Ian Martin, p. 010227.

<sup>298</sup> General Wiranto Witness Examination, p. 180381; MCV #97 & MCV #98.

<sup>299</sup> [REDACTED]; Major General Rezaqul Haider, p. 010202-020203; Ian Martin, p. 010022-010023.

<sup>300</sup> The reports included: a secret TNI telegram from Col Suratman, dated January 28, 1999, recounting several killings of civilians recently committed by militias ([REDACTED], Doc #9, p. 210362); a secret telegram dated 18 April 1999, describing the widespread militia violence in Dili on April 17, 1999 in which 13 civilians were killed ([REDACTED], Doc #19, p. 210454); the secret 'Garnadi' report dated July 3, 1999 which referred to militias as 'heroes of integration' ([REDACTED], Doc #56, p. 210466); a letter from Gen. Wiranto to President Habibie, dated 6 September 1999, describing the widespread violence and destruction in East Timor, and referring to the close ties between the TNI and the militias as a factor inhibiting firm action against the latter ([REDACTED], Doc TNI #7, p. 210486).

<sup>301</sup> [REDACTED]

<sup>302</sup> James Ross Coulthart, p. 180621-180622; MCV #99.

By June, 1999 Col. Suratman was specifically telling TNI soldiers that if the autonomy option lost all infrastructure and everything that had been given by the government of Indonesia to East Timor was to be destroyed.<sup>303</sup> When questioned by soldiers about this, Col. Suratman responded "... if independence wins there will be a scorched earth operation so if East Timorese want independence they will have to start from nothing". Col. Suratman also stated that all forces in East Timor were to carry out the scorched earth operation.<sup>304</sup>

In his Jakarta testimony, Wiranto acknowledged that he had anticipated the violence that occurred after the ballot result was announced:<sup>305</sup>

... thus I said whoever lost there would certainly occur emotional attitudes, that we had already predicted, Your Honor. Because of this, we arranged what we call a contingency plan, to take steps if this occurred, so that it would not explode into a civil war, East Timor would be finished, everything would be in disorder, that is what I reported Your Honor, what we call a contingency plan, due to this, Your Honor, when it became reality, when after the popular consultation there was chaos, thus the contingency plan was valid

...

Just before the ballot result was announced Col. Noer Muis (who had replaced Col. Suratman as Military Commander of KOREM 164/WD) said that the military had prepared detailed contingency plans to evacuate 250,000 East Timorese civilians by land, sea and air in the event of full-scale civil war breaking out. This plan was so close to what happened in subsequent days that it is logical to conclude the evacuation was conducted according to the same military plan.<sup>306</sup>

The TNI chose the militia leaders. The militias had a violent past in East Timor and their potential for violence was well known to the accused. Moreover,

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305 General Wiranto Witness Examination, p. 180379.

306 'Towns afire as East Timor braces for referendum result', MorningSun.net, 04/09/1999, p. 200101; 'Demands for intervention as Timor runs scared', Asia Times Online, 04/09/99, p. 200102.

pictures of Timorese being tortured and young Timorese women or girls being sexually assaulted and killed by men in TNI uniforms had even appeared in international media and on the Internet.<sup>307</sup> Wiranto was well aware of the history of human rights abuses, as there was a long history of complaints about human rights abuses committed by the Indonesian military in East Timor. As recently as February 2004 Wiranto admitted: "The Indonesian military have no concept, whatsoever, of behavior that can be categorized as gross violations of human rights." He added, "There should be a policy from the leaders to chase after or eradicate or combat such ... crimes against humanity. This has never been an agenda in Indonesia."<sup>308</sup> Unfortunately for the people of East Timor, Wiranto took no action in 1999 to prevent or punish these human rights abuses that he now maintains were part of the culture of the military he led.

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<sup>307</sup> For example, see 'Indonesian Military-Organized Sexual Violence in Timor Causes Concern', p. 180616-180620.

<sup>308</sup> 'Thaksin furious over bad human rights report card from the US', TODAYonline, 28/02/2004, p200099.

## **VII. FAILURE TO PREVENT OR PUNISH CRIMES AGAINST HUMANITY**

### **A. FAILURE TO PREVENT OR PUNISH THE MILITIAS**

Given the size and strength of the forces at Wiranto's command in East Timor versus the relative weakness of the militias who perpetrated much of the violence and destruction, it is evident that the accused had the ability to prevent the crimes but chose not to do so. Only 20 percent of the population supported continued integration in the Popular Consultation ballot, yet pro-integration militias were able to destroy over 70 percent of the country in a few weeks despite the presence of much larger and better trained and armed TNI and POLRI forces on the ground. TNI military statistics show that in August 1999, there were 17,941 regular TNI troops in East Timor<sup>309</sup> and a police document indicated there were 6,704 police officers present.<sup>310</sup>

In contrast to the strength of the TNI and POLRI, one report compiled on Wiranto's orders described the number and nature of militias involved as follows:

The armed force is about 1,100 people with 546 weapons of various kinds, including home-made [*rakitan*] weapons; they are joined in pro-integration organizations. The mass of militant supporters is 11,950 people joined in opposition organizations like Besi Merah Putih, Aitarak, Mahidi, Laksaur Merah Putih, Guntur Kailak, Halilintar, Junior, Tim Pancasila, Mahadomi, Ablai and Naga Merah.<sup>311</sup>

The army and police under Wiranto's command did not take necessary and reasonable measures to prevent the crimes being committed by the militias or punish the perpetrators.<sup>312</sup> Militia members were permitted to walk the streets

<sup>309</sup> [REDACTED]

<sup>310</sup> Kepolisian Negara Republik Indonesia, Daerah Timor Timur, "Rencana Operasi Hamoin Lorosae II," Secret Plan No. Pol: Ren Ops/04/VIII/1999, 4 August 1999 ([REDACTED], Doc #65, p. 210001).

<sup>311</sup> Cited in the KPP-HAM Report, p. 030251.

<sup>312</sup> For a general overview of the chain of command see 'War Crimes: The Evidence', The Age, 2/10/99, p. 200080-200084. See also 'Army Chief Behind Violence: Gusmao', The Age, 30/11/99, p. 200088; 'Justice Must Be Done', The Age, 29/1/00, p. 200089-200093; 'Wiranto 'Morally

with weapons in hand, while the police and army stood by. Stephen Polden pointed out that this lax attitude towards the militias contrasts sharply with the actions of the police and army towards other armed individuals.<sup>313</sup>

I had worked with the Indonesian authorities for three years as Senior Liaison Officer in Jakarta before my service with the United Nations and have observed the Indonesian military and police at work. They are an organization which follows orders, if you do not follow orders then you end up in jail. The Militia in East Timor ran rampant and there is no way they could have done this without the collusion between the Military and the Police. In Indonesia it is a very serious offence to have an unlicensed, illegal firearm, yet in East Timor both the Police and the Military allowed the Militia to run around with homemade weapons through to automatic Military weapons without hindrance.

██████████ also recounts this attitude when he remembers asking a TNI member, after martial law had been declared, to arrest militia members who were carrying grenades near the UNAMET compound:<sup>314</sup>

He said to me, "We don't have the orders to do that." I was shocked by that, and placed a great deal of significance on that. ... [T]o me that meant that they had orders not to arrest them, because it was illegal to carry arms. You wouldn't need orders to arrest people who were carrying arms, but you would need contrary orders not to arrest them.

Moreover, documents confirm direct TNI responsibility in distributing weapons to and tolerating their possession by militias.<sup>315</sup> One telegram from the DANREM, Col. Suratman, to all 13 DANDIM in East Timor states "collect all weapons held

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Responsible' For Militias', The Age, 29/1/00, p. 200094; 'UN Blames Army For Timor Hell', The Australian, 31/1/00, p. 200095; 'Will Wahid Tackle Timor's Terrorists?', The Age, 2/2/00, p. 200096-200097; 'Generals Plotted Terror', 10/9/99, p. 200068-200069; 'Armed With Information, Now What?' The Age, 29/5/99, p. 200018-200019.

<sup>313</sup> Stephen Polden, p. 020165; ██████████

<sup>314</sup> ██████████

<sup>315</sup> Kodim 1628/Baucau, "Daftar: Nominatif Anggota Kompi Khusus Pusaka, Kodim 1628/Baucau", February 3, 1999 (██████████, Doc #10, p. 210400); see also ██████████ Doc.# 6 (p. 210421), #9 (p. 210326).

by WANRA and RATIH members when they are not conducting special tasks or combat operations in the respective areas".<sup>316</sup>

Suratman's order demonstrates the ability of the TNI to control the distribution of weapons to militias and their willingness to allow these weapons to be used for "special tasks and combat operations" at a time when the Indonesian authorities had promised to promote security and end the bloodshed. The evidence is clear that the "special tasks and combat operations" of the militia groups were part of the widespread and systematic attack on the large majority of the civilian population of East Timor who favored independence.

A clear example of the ability of the TNI and POLRI to control the violence was observed by Stephen Polden when he went to Maliana after the 29 June attack on the UNAMET compound there. Polden was meeting with TNI and POLRI commanders who could not explain why they had taken no action to prevent the attack. However, during the meeting, a CIVPOL officer entered and said he had information that another attack on the compound was planned for that afternoon.

Polden recounts:

"I passed this information onto the Indonesian Military and Police officers present. The plainclothes TNI officer surprised everyone when he indicated he was already aware of the impending attack. In response to this I asked what he was going to do about it? He immediately got on the radio, spoke to someone in Bahasa and at the end of the conversation said that the attack had been called off."<sup>317</sup>

Ian Martin recalls:<sup>318</sup>

I believe senior TNI officers, including General Wiranto, must have been well aware of the widespread and systematic violence but failed to take adequate measures to stop it.

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<sup>316</sup> Danrem 164/WD to Dandim 1627-1639 and others (████████████████████), Doc #7, p. 210408).

<sup>317</sup> Stephen Polden, p. 020171.

<sup>318</sup> Ian Martin, p. 010248-010249.

He further states:<sup>319</sup>

Mr. Alatas said that the extent of militia activity should be supported with actual fact and said that the Government of Indonesia was going to undertake an investigation... Mr. Alatas said he hoped that I had raised the issue with General Wiranto, which I confirmed I had done. Mr. Alatas said since very serious allegations had been made, they would be given the serious attention that they deserved, and if they were found to be true, General Wiranto would take the necessary action to deal with the matter.

As Alan Mills recalls:<sup>320</sup>

During the meeting [Ian] Martin made mention of the continued presence of the militia threatening peoples in the districts and the perception that TNI were seen as encouraging rather than discouraging militia activities. Alatas responded that these were serious allegations to make and if true General Wiranto would be asked to take the necessary follow-up action.

Alatas was certainly correct that Wiranto was the individual with the greatest power to take measures to prevent the crimes or punish the perpetrators. However, the evidence shows that he failed to do so.

## **B. FAILURE TO PREVENT OR PUNISH THE POLRI**

As Minister of Defense and Security, with command over both the TNI and POLRI, the accused was authorized and empowered to address the security situation in East Timor. Moreover, he was under an international obligation to ensure that the Referendum was conducted peacefully in accordance with the terms of the 5 May Agreement.<sup>321</sup>

According to the KPP-HAM Report:<sup>322</sup>

All the crimes against humanity in East Timor ... took place because of the failure of the TNI Commander to guarantee the security of the implementation of the announcement of two options by the government. The police structure at that time under the

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<sup>319</sup> Ian Martin, p. 010228.

<sup>320</sup> Alan Mills, p. 010011.

<sup>321</sup> See KPP-HAM Report p. 030247.

<sup>322</sup> KPP-HAM Report, p. 030267.

command of the Minister for Defense contributed to the weakening of the ability of the police apparatus in carrying out the task of security based on the New York agreement. For this, General Wiranto as Commander of the TNI must bear the responsibility.

Alan Mills described the role of the POLRI in the attack on the UN compound in Maliana.<sup>323</sup>

... the events in Maliana on 29 June 1999 proved to involve...a force of about 100 local militia members who converged on the compound attacking it with stones... This attack was completely directed by the TNI...UNCIVPOL were given prior warning of a pending attack on their compound and they had in turn passed this warning on to the local Indonesian police. Despite this warning, local Police failed to prevent the attack or intervene once it was underway.

When describing several events involving attacks on UNAMET staff, he remarks: "As usual, the Indonesian Police arrived too late to be effective ..."<sup>324</sup>

One eyewitness to a murder reported:<sup>325</sup>

Q: In your estimation how many people were present when Antony Saldanha was shot?

A: Several hundred were present, militia, TNI...

Q: Did the Indonesian Military or Police take any action to try to stop the murder?

A: No.

Q: Did they attempt to arrest Jose Soares after he shot Antony Saldanha?

A: No, it seemed to be that the Indonesian Police and soldiers didn't care what happened.

Another witness to the violence recalled: "I never saw a member of the TNI or POLRI try to stop the violence that would occur while they watched."<sup>326</sup>

Yet another witness attributed the failure of the police to deter the militias to the fact that the militias were obviously backed by the TNI:<sup>327</sup>

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<sup>323</sup> Alan Mills, p. 010007.

<sup>324</sup> Alan Mills, p. 0110016.

<sup>325</sup>

<sup>326</sup>



Q: Did the Police do something to stop the activities of the militia?

A: No. This was because the militia was more organized and was from the KODIM, KOPASSUS, and the BRTT.

### C. FAILURE TO PREVENT OR PUNISH THE TNI

All military institutions rely on the principle of obedience to orders according to the superior-subordinate relationship. Their ability to function depends on the chain of command. Thus, in cases of misconduct or violation of law superiors discipline the perpetrators internally. Within the military there are military prosecutors, courts and police, which are used to prevent or to punish offences committed by members of the armed forces. In common with military forces globally, the TNI has a system of military justice.<sup>328</sup> This military justice system, like in many countries, parallels the civil code, while having added elements covering specific military offences. Normally unit commanders are in charge of disciplining their subordinates, but for more serious offences, a tribunal called a 'Military Honor Council' may be convened.<sup>329</sup>

Through his position as Commander of the Armed Forces of Indonesia the accused had a number of internal mechanisms at his disposal to prevent and to punish those who committed crimes in East Timor.<sup>330</sup> Unfortunately, those measures which were implemented did not fulfill the requisite criteria. In apparent response to international pressure, the accused replaced the KOREM commander, Col. Suratman, with Col. Muis, and replaced the KODIM Commanders in Bobonaro and Covalima Districts.<sup>331</sup> However, Suratman was later seen in East Timor after he was replaced and was subsequently promoted

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328 UU No. 44 1970, Pasal 110

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330 See Alan Mills, p. 010011; Ian Martin, p. 010228.

331 See Mark Ogilvie, p. 180225-180226; 'New Chief May Curb Militia Clout', The Age, 28/8/99, p. 200048; 'Timor Commander Replaced Amid Poll-Eve Tension', The Age, 14/8/99, p. 200045-200046; 'Timor Brass Shuffle Tipped As Peace Hope', The Australian, 14-15/8/99, p. 200047 (Article refers to promotion of Suratman).

by Wiranto to the rank of Brigadier General.<sup>332</sup> Another former TNI witness stated that despite the fact that Lt. Col. Siagian had been replaced in Bobonaro district, he still maintained operational command.<sup>333</sup> Major General Rezaqul Haider, the Chief Military Liaison Officer for the UN had personally observed Siagian in the district on a number of occasions after his alleged removal dressed in civilian clothes.<sup>334</sup> Furthermore, Zacky Anwar Makarim was only recalled from duty in East Timor several months after the first reports had been sent to the accused detailing Makarim's involvement with the militias.<sup>335</sup>

Wiranto's failure to alleviate the security crisis in East Timor and call back the militias became even more apparent after the imposition of Martial Law on 7 September 1999.

Bishop Belo recalled that on 5 September:

"... there was a meeting at the residence [of the Military Command in Farol] between Faisal Tanjung, General Wiranto and the Chief of Police ... Wiranto ... requested that the Church hold a reconciliation meeting between the pro-independence and pro-autonomy groups and hold a third dialog at Dare. Then he asked for questions from the floor ... I had two questions for Wiranto. First, since within ABRI there are a lot of intelligence officers and that they are sophisticated, can they determine who had been firing guns during the night? This had made the situation tense. I asked who had been firing guns in Dili preventing people from sleeping. Second, I asked the ABRI Commander Wiranto to clear the roads from Dili to Batugade and from Dili to Lautem of militia groups and the posts that they had set up in the roads. Wiranto did not answer those two questions."<sup>336</sup>

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<sup>332</sup> Paul Symon, p. 020130.

<sup>333</sup> [REDACTED]

<sup>334</sup> Maj. General Rezaqul Haider, p. 010210.

<sup>335</sup> 'Dirty Tricks General Recalled', The Age, 28/8/99, p. 200051-200052; 'Generals May Go As Wiranto Looks For Scapegoats', The Age, 14/9/99, p. 200077.

<sup>336</sup> Bishop Carlos Ximenes Belo, 010082-010083.

The decision to impose Martial Law was advertised as a measure to restore law and order but in fact, seemed to coincide with a worsening of the security situation.<sup>337</sup>

At no time did Wiranto take any measures to punish those responsible for the violence and destruction. Many of those most responsible were in fact promoted.

In 1999 Kiki Syahnakri was a major general in the TNI and was Assistant for Operations to the Army Chief of Staff. After the popular consultation he was the Commander of the Martial Law Operations in East Timor. From November 2000 until 1 May 2002 he served as Deputy Army Chief of Staff. He retired from the TNI on 11 November 2002.

In 1999 Adam Rachmat Damiri was a Major General in the TNI and was the Commander of Regional Military Command IX/Udayana, covering the Indonesian provinces Bali, East and West Nusa Tenggara and East Timor. In November 1999, he was appointed Assistant Operations to the Chief of the General Staff TNI. He is currently assisting with the TNI's military operations against the separatist movement in Aceh, Northern Sumatra, Indonesia.

In 1999 Suhartono Suratman held the rank of Colonel in the TNI and was the Commander of the Sub-Regional Military Command 164/Wira Dharma, East Timor until August 13, 1999. In August 1999 he was promoted to the rank of Brigadier General and appointed the Deputy Head of the TNI Information Center.

In 1999 Mohammad Noer Muis held the rank of Colonel in the TNI and was the Commander of the Sub-Regional Military Command 164/Wira Dharma, East Timor from August 13, 1999. Since then he has been promoted to the rank of

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<sup>337</sup> See 'Security Council Report of the Security Council Mission to Jakarta and Dili', 14 September 1999, p. 030120; 'Military Chief Overturned Cabinet Vote On Martial Law', The Age 9/9/99, p. 200065-200066; 'Martial Law Fails To Stop The Killing', The Age, p. 200067; MCV #100 & MCV #101.

Brigadier General and served as the Deputy Governor of the Military Academy in Magelang, Central Java, Indonesia.

In 1999 Yayat Sudrajat held the rank of Lieutenant Colonel in the TNI. During the popular consultation he was the Commander of Tribuana VIII Taskforce and Commander of the Intelligence Taskforce in East Timor. Since 1999, he has been promoted to the rank of Colonel and continues to serve with the TNI Special Forces KOPASSUS.

Despite the brutal murder of well over a thousand civilians and the massive destruction of East Timor in the presence of the overwhelming strength of the TNI and POLRI forces at Wiranto's command, the accused apparently has no complaints about the performance of his subordinates. He was asked at the trial of Timbul Silaen, "Did the Indonesian Regional Police Chief carry out his tasks well and to the maximum of his ability?" Wiranto answered:<sup>338</sup>

I evaluate all my subordinates, the Regional Police Chief (KAPOLDA), Regional Military Commander (PANGDA[M]) and from my observations from the reports I received, because they were chosen from the best people in the police and the army, they carried out the directives I had outlined.

These "best people" from the police and army tolerated and in some cases even participated in the violence unleashed against the East Timorese population in 1999. Wiranto's praise and acknowledgement that their performance fulfilled his directives constitutes unambiguous evidence of his own criminal responsibility under international law for the failure to prevent and punish these crimes against humanity.<sup>339</sup>

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<sup>338</sup> General Wiranto Witness Examination, p. 180391.

<sup>339</sup> MCV #102

## **VIII. SUMMARY OF SUBMISSION**

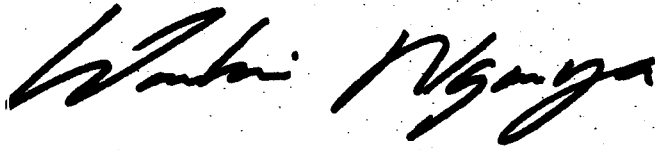
Pursuant to section 19A of UNTAET Regulation 2001/25, the Prosecutor submits that there is sufficient evidence in existence to find that there are reasonable grounds to believe that the accused has committed the crimes with which he is charged. When considered with the seriousness of the alleged crimes committed and their widespread and systematic nature, the Prosecutor claims a 'reasonable grounds' threshold is met.

### **THE PROSECUTOR SUBMITS THAT:**

1. There was a widespread or systematic attack against the civilians of East Timor carried out through the joint enterprise of the TNI and the pro-Indonesian militia groups whom they essentially controlled.
2. The Indonesian Police, subordinate to the accused, were often present during incidents of the attack and took no actions to prevent the crimes, apprehend the perpetrators, or gather evidence that would permit a prosecution.
3. The attack on the civilian population of East Timor was carried out systematically across the territory and with the intent to maintain East Timor within Indonesia and after the ballot, to punish the population for choosing independence.

4. The attack was directed against civilians of all ages, but predominantly against individuals who were believed to be independence supporters. It included an orchestrated campaign of violence, threats to life, intimidation, assault, torture, rape and the brutal slaughter of more than a thousand civilians. The attack also included the internal displacement and forcible transfer of approximately 200,000 people, a quarter of the population, to West Timor, and the widespread destruction of private and public property.
5. The attack occurred under the direction of many senior TNI officers, subordinate to the accused, including Major General Zacky Anwar Makarim, Major General Kiki Syahnakri, Major General Adam Rachmat Damiri, Colonel Suhartono Suratman, Colonel Mohammad Noer Muis and Lieutenant Colonel Yayat Sudrajat.
6. The attack occurred with the knowledge of the accused, who as Commander of TNI was superior to and had effective control over these forces.
7. The POLRI had ultimate responsibility for the security in East Timor at all material times in the lead up to and immediately after the popular consultation. The accused, as Minister of Defense and Security, was superior to and had effective control over the POLRI.
8. The accused failed to take reasonable and necessary measures to prevent the commission of the attack.
9. The accused failed to take reasonable and necessary measures to punish the perpetrators of the attack.
10. Accordingly, under section 16 UNTAET Regulation 2000/15 the accused is criminally responsible for the crimes of his subordinates as detailed in the indictment and outlined in this brief in support of the application for the issuance of an arrest warrant for Wiranto.

DATED at DILI this 19<sup>th</sup> day of March 2004

A handwritten signature in black ink, appearing to read 'Wambui Ngunya', written in a cursive style.

**Wambui Ngunya**  
**Prosecutor for Serious Crimes**

Diagram 1

Diagram 1: Structure of the Indonesian Armed Forces (ABRI) high command (until March 31, 1999)  
- (simplified version)

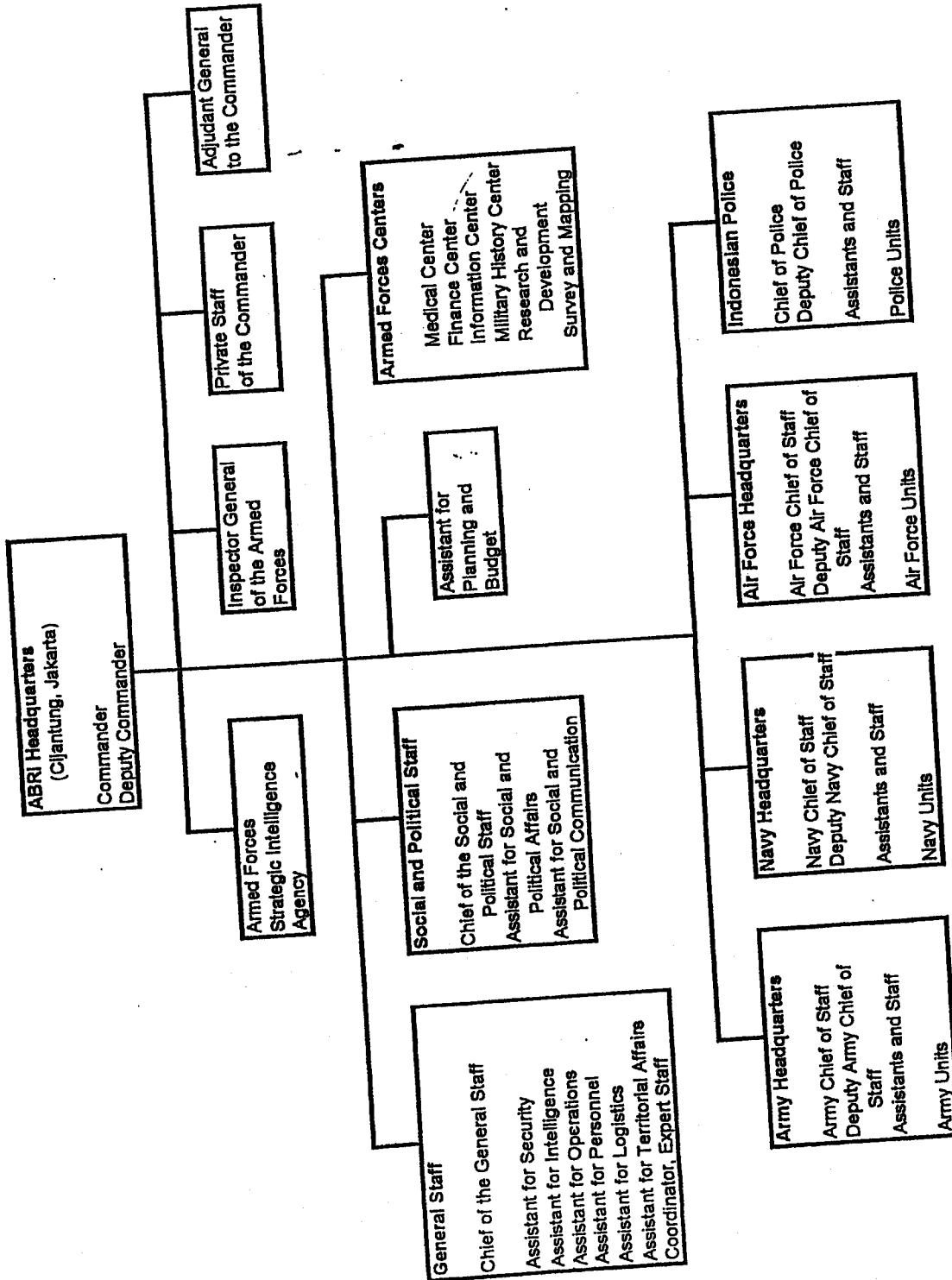
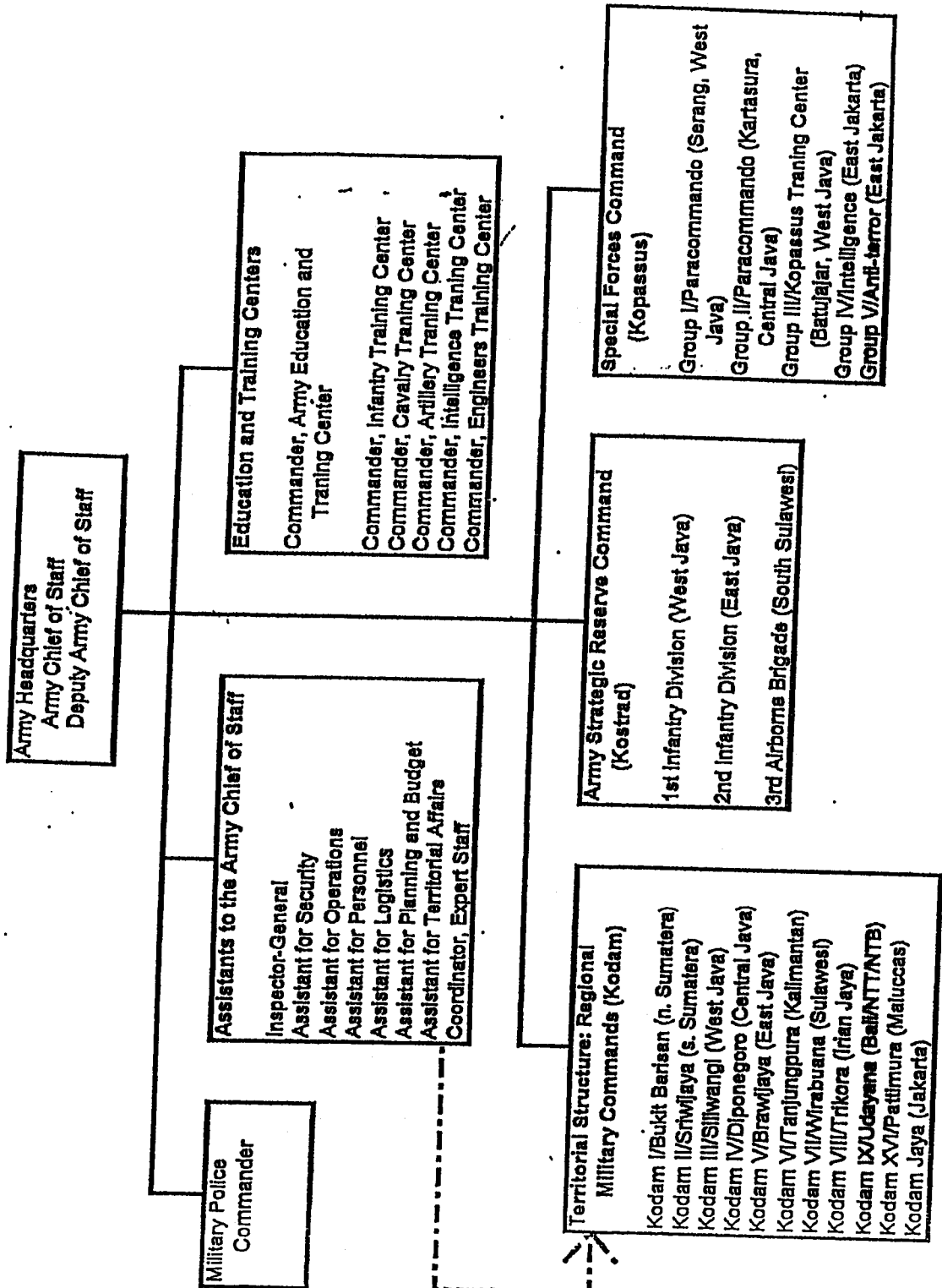




Diagram 2

Diagram 2: Structure of Army (Angkatan Darat)  
(simplified)



## **Glossary**

<b>ABRI</b>	<b>Angkatan Bersenjata Republik Indonesia</b>	<b>Armed Forces of Indonesia</b>
<b>BABINSA</b>	<b>Bintara Pembina Desa</b>	<b>Village Guidance (Non-Commissioned Officer)</b>
<b>BIA</b>	<b>Badan Intelijen ABRI</b>	<b>Armed Forces Intelligence Body</b>
<b>KABIA</b>	<b>Kepala Badan Intelijen ABRI</b>	<b>Head of the Armed Forces Intelligence Body</b>
<b>BRIMOB</b>	<b>Brigade Mobil</b>	<b>Police Mobile Brigade</b>
<b>BRTT</b>	<b>Barisan Rakyat Timor Timur</b>	<b>East Timor People's Front</b>
<b>BUPATI</b>		<b>District Administrator</b>
<b>CIVPOL</b>		<b>UN Civilian Police</b>
<b>CNRT</b>	<b>Conselho Nacional da Resistencia Timorese</b>	<b>National Council of Timorese Resistance</b>
<b>DANDIM</b>	<b>Komandan Distrik Militer</b>	<b>District Military Commander</b>
<b>DANRAMIL</b>	<b>Komandan Rayon Militer</b>	<b>Sub-district Military Commander</b>
<b>DANREM</b>	<b>Komandan Resort Militer</b>	<b>Sub-regional Military Commander</b>
<b>FALINTIL</b>	<b>Forcas Armadas de Libertacao Nacional de Timor Leste</b>	<b>Armed Forces for the National Liberation of East Timor</b>
<b>FRETILIN</b>	<b>Frente Revolucionaria de Timor Leste Independente</b>	<b>Revolutionary Front for an Independent East Timor</b>
<b>GADAPAKSI</b>	<b>Garda Penegak Integrasi</b>	<b>Guards who Uphold Integration</b>
<b>HANSIP</b>	<b>Pertahanan Sipil</b>	<b>Civilian Defence</b>
<b>ICC</b>		<b>International Criminal Court</b>
<b>ICRC</b>		<b>International Committee of the Red Cross</b>
<b>ICTR</b>		<b>International Criminal Tribunal for Rwanda</b>
<b>ICTY</b>		<b>International Criminal Tribunal for the former Yugoslavia</b>
<b>KAPOLDA</b>	<b>Kepala Polisi Daerah</b>	<b>Regional Police Chief</b>
<b>KAPOLRES</b>	<b>Kepala Polisi Resort</b>	<b>District Police Chief</b>

KODAM	Komando Daerah Militer	Regional Military Command
KODIM	Komando Distrik Militer	District Military Command
KOPASSUS	Komando Pasukan Khusus	Special Forces Command
KORAMIL	Komando Rayon Militer	Sub-district Military Command
KOREM	Komando Resort Militer	Sub-regional Military Command
KOSTRAD	Komando Cadangan Strategis Angkatan Darat	Army Strategic Reserve Command
KOTER	Komando Teritorial	Territorial Command
MUSPIDA	Musyawaharah Pimpinan Daerah	Regional Leaders Conference
PANG	Panglima	Commander
PANGAB	Panglima Angkatan Bersenjata Republik Indonesia	Commander of the Armed Forces of Indonesia
PANGDAM	Panglima Komando Daerah Militer	Regional Military Commander
POLDA	Polisi Daerah	Regional Police
POLRES	Polisi Resort	District Police
POLRI	Polisi Republik Indonesia	Indonesian Police
POLSEK	Polisi Sektor	Sub-district Police
PPI	Pasukan Pejuang Integrasi	Integration Fighters' Force
RATIH	Rakyat Terlatih	Trained Population
SCU		Serious Crimes Unit
SGI	Satuan Tugas Intelijen	Intelligence Taskforce
TNI	Tentara Nasional Indonesia	Indonesian National Army
UNAMET		United Nations Mission in East Timor
UNHCR		United Nations High Commissioner for Refugees
UNMISSET		United Nations Mission of Support in East Timor

UNTAET

WANRA

Perlawanan Rakyat

United Nations Transitional  
Authority East Timor  
Peoples Resistance