



DISTRICT COURT OF DILI

BEFORE THE SPECIAL PANEL FOR SERIOUS CRIMES

CASE NO. # 5/2003

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

DEPUTY GENERAL PROSECUTOR

v.

WIRANTO & OTHERS

For the Prosecutor:

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

<u>I. INTRODUCTION TO ARREST WARRANT APPLICATION</u>	5
<u>II. THE ELEMENTS OF CRIMES AGAINST HUMANITY</u>	
A. CONTEXTUAL ELEMENTS	7
B. WHAT IS MEANT BY "ATTACK"	8
C. "WIDESPREAD" ATTACK	9
D. "SYSTEMATIC" ATTACK	9
E. DEFINITION OF "ANY CIVILIAN POPULATION"	11
F. THE <i>MENS REA</i> OF CRIMES AGAINST HUMANITY	12
<u>III. ELEMENTS OF INDIVIDUAL CHARGES</u>	
A. MURDER	15
B. DEPORTATION OR FORCIBLE TRANSFER	15
C. PERSECUTION	16
<u>IV. EVIDENCE OF A WIDESPREAD AND SYSTEMATIC ATTACK</u>	
A. SUMMARY OF EVENTS	19
B. REPORTS OF KILLINGS COMMITTED IN EAST TIMOR IN 1999	20
C. EXAMPLES OF SPECIFIC CRIMES COMMITTED	21
1. <i>Bobonaro District</i>	21
2. <i>Dili District</i>	22
3. <i>Covallima District</i>	23
4. <i>Lautem District</i>	24
5. <i>Liquica District</i>	25
6. <i>Oecussi District</i>	26
7. <i>Withdrawal of TNI Battalion 745</i>	27
8. <i>Deportation or Forcible Transfer of Population</i>	30
9. <i>Destruction of Property</i>	32

D. EXPERT REPORTS ON THE 1999 VIOLENCE IN EAST TIMOR	32
E. ADJUDICATED FACTS FROM PRIOR SPECIAL PANEL CASES	35

V. COMMAND RESPONSIBILITY

A. ELEMENTS OF COMMAND RESPONSIBILITY	39
B. THE POSITIONS AND AUTHORITY OF THE ACCUSED	40
C. EFFECTIVE CONTROL OVER THE TNI	41
D. EFFECTIVE CONTROL OVER THE POLRI	43
E. EFFECTIVE CONTROL OVER THE MILITIAS	45
<i>1. Requirements to Prove de facto Control</i>	45
<i>2. Formation & Recruitment of Militias</i>	46
<i>3. Arms & Material Supplied to Militias</i>	53
<i>4. Funding of Militias</i>	54
<i>5. Training of Militias</i>	56
<i>6. TNI and POLRI Complicity in Militia Violence</i>	57
<i>7. Wiranto's Control over the Militias</i>	61
<i>8. Adjudicated Facts Showing Effective Control</i>	63

VI. MENS REA FOR COMMAND RESPONSIBILITY

A. "KNEW OR HAD REASON TO KNOW" STANDARD	67
B. STATEMENTS OF THE ACCUSED SHOWING KNOWLEDGE	67
C. THE WIDESPREAD NATURE AND LOCATION OF THE ACTS	67
D. THE LOCATION OF THE SUPERIOR AT RELEVANT TIMES	68
E. KNOWLEDGE FROM REPORTS RECEIVED	71
F. KNOWLEDGE THAT CRIMES WERE ABOUT TO OCCUR	73

<u>VII. FAILURE TO PREVENT OR PUNISH CRIMES AGAINST HUMANITY</u>	
A. FAILURE TO PREVENT OR PUNISH THE MILITIAS	76
B. FAILURE TO PREVENT OR PUNISH THE POLRI	79
C. FAILURE TO PREVENT OR PUNISH THE TNI	81
<u>VIII. SUMMARY OF SUBMISSION</u>	85
<u>Diagram 1</u>	88
<u>Diagram 2</u>	89
<u>Glossary</u>	90

I. INTRODUCTION TO ARREST WARRANT APPLICATION¹

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.***²

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 1999.³ 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

¹ 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.

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

³ 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.⁴ 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.⁵

In contrast to the statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia⁶ UNTAET Reg. 2000/15 section 5.1 does not require that the crimes occur within the context of an armed conflict.

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

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

⁶ Hereinafter ICTR and ICTY.

B. WHAT IS MEANT BY “ATTACK”

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

... 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.⁸

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.⁹ 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.¹⁰

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

⁸ 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.

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

¹⁰ 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:¹¹

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".¹²

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.¹³ The ICTY stated in *Blaskic*:¹⁴

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:¹⁵

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

¹¹ *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.

¹² See *Akayesu*, para. 580; *Rutaganda*, para. 67; *Kayishema*, para. 123.

¹³ See *Tadic*, para. 648.

¹⁴ *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*.

¹⁵ *Kunarac*, para. 429; See also *Kayishema*, para. 581.

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

- 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.¹⁷

The ICTR Trial Chamber formulated that: “[t]here is no requirement that this policy must be adopted formally as the policy of a state”.¹⁸ 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.”¹⁹ Nor is there a requirement that the policy or plan “necessarily be declared expressly or even stated clearly and precisely.”²⁰

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

¹⁶ *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*.

¹⁷ See *Tadic*, para. 653; *Blaskic*, paras. 204-5.

¹⁸ *Akayesu*, para. 580.

¹⁹ *Tadic*, para. 655. Confirmed in *Kupreskic*, para. 551.

²⁰ 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.²¹

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.²²

“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*.²³ 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.²⁴

²¹ See *Blaskic*, para. 204.

²² See *Tadic*, para. 635.

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

²⁴ 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.²⁵

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:²⁶

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

²⁵ See *Tadic*, para. 644.

²⁶ *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.²⁷ 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 Tribunals²⁸ 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*:²⁹

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".³⁰ The perpetrator needs to have knowledge of the attack.

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

²⁸ See *Tadic*, para. 659.

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

³⁰ 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.³¹ The perpetrator *knowingly* performed his acts in the context of a widespread or systematic attack.³² 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.³³

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.

³¹ See *Blaskic*, para 251.

³² See *Kordic*, para. 185-187.

³³ 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:³⁴

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.³⁵ 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.³⁶

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

³⁴ *Akayesu*, para. 589-590.

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

³⁶ 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:³⁷

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.³⁸

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

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.

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

³⁸ *Tadic*, paras. 704, 708-710.

³⁹ 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:⁴⁰

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".⁴¹

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;

⁴⁰ *Tadic*, para 715. See also *Blaskic*, para 219; See *Kupreskic*, para 622.

⁴¹ *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 TNI⁴² 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.

⁴² 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:⁴³

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.

⁴³ Serious Crimes Unit case files; [REDACTED]