

The East Timor

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[East Timor
Elects Assembly](#)

[Ashes to Ashes:
Reflections on
Terror](#)

[ETAN to
Kissinger](#)

[ETAN Marks
Anniversaries](#)

[September 11
Aftermath Brings
Shifts](#)

[Lobby Days
2001 Yields Info,
Action](#)

[Phillips
Petroleum &
Canberra Play
an Old Game](#)

[ETAN Tour
Spotlights
Refugee Crisis](#)

[President
Megawati: Bad
News for Timor](#)

Court Issues \$66
Million Judgment
Against
Indonesian
General

[A Letter from Dili](#)

[About East
Timor and the
East Timor
Action Network](#)

[Estafeta Winter
2001-2002](#)

[Estafeta
back issues](#)

[ETAN Home
Page](#)

Court Issues \$66 Million Judgment in Rights Lawsuit Against Indonesian General

by John M. Miller

In a strong statement on the seriousness of crimes committed against ordinary East Timorese, Judge Alan Kay ruled in early September to hold Indonesian General Johnny Lumintang accountable for \$66 million in damages for his role in systematic human rights violations following East Timor's vote for independence in 1999.

All six East Timorese plaintiffs or their estates were granted \$10 million each in punitive damages. Compensatory damages ranged from \$750,000 to \$1.75 million each.

"It has been established... that Lumintang has responsibility for the actions against plaintiffs and a larger pattern of gross human rights violations," wrote Judge Kay. "[H]e — along with other high-ranking members of the Indonesian military — planned, ordered, and instigated acts carried out by subordinates to terrorize and displace the East Timorese population ... and to destroy East Timor's infrastructure following the vote for independence."

The case against Lumintang is the only one to date anywhere in the world against a senior Indonesian commander for the systematic destruction following East Timor's 1999 referendum. General Lumintang chose not to defend himself in court.

Last March, Judge Kay presided over three days of testimony in a Washington, DC federal court by the plaintiffs, all victims of Indonesian military and militia violence, and expert witnesses (see *Estafeta*, [Spring 2001](#)).

The court judgment, however, is not likely to enrich the surviving plaintiffs. Collection of any damages depends on uncovering Lumintang's assets.

In 1999, Lumintang, as Vice-Chief of Staff, was second in command of the Indonesian army. In his ruling, Judge Kay cited the principle of command responsibility where "a commander may be criminally or civilly responsible for crimes committed by subordinates." He said that Lumintang is "both directly and indirectly responsible for human rights violations committed against" the plaintiffs. Evidence of direct involvement includes his signature on certain key documents calling for the use of torture and removal of large numbers of people in East Timor if the people voted for independence in the 1999 referendum. Lumintang was also found liable since, as a member of the TNI high command,

he knew or should have known that subordinates were involved in systematic rights violations in East Timor and he failed to act to prevent them or punish the violators.

Several of the plaintiffs traveled to Washington to give moving testimony in the proceedings. They included an East Timorese victim of Indonesian military and militia violence whose brother was killed and father injured in post-election attacks. The father testified via videotape. Two other East Timorese targeted by the Indonesian military in September 1999 during the scorched earth campaign from Indonesia also testified: a mother whose son was killed, and a man shot by Indonesian soldiers who subsequently had to have his foot amputated.

The Megawati administration's recently-amended decree establishing a special human rights court on East Timor in Indonesia falls far short of fully addressing the military's role in orchestrating the violence and devastation. It only covers crimes committed in April and September 1999 in three out of East Timor's 13 districts, excluding many atrocities that occurred outside of those time periods, including hundreds of cases of violence against women, large massacres in Maliana, Los Palos, and Oecussi, the mass deportation of hundreds of thousands of East Timorese to West Timor, and the systematic coordination of the scorched-earth campaign by senior-level security forces personnel, which were noted by both Indonesian and UN commissions of inquiry and Judge Kay.

General Lumintang was trained by the U.S. under the Pentagon's International Military Education and Training program and had been a commander in East Timor and West Papua.

In 1992, a judgment for \$14 million was issued in a similar case against Indonesian General Sintong Panjaitan for his involvement in the [November 12, 1991 Santa Cruz massacre](#) of over 270 East Timorese civilians. Panjaitan was sued by the mother of the only non-East Timorese person killed.

The Lumintang lawsuit, like the Panjaitan case, is based in part on the Alien Tort Claims Act of 1789, which allows non-citizens to sue for acts committed outside the United States "in violation of the law of nations or a treaty of the United States." The 1991 Torture Victim Protection Act reaffirms the 1789 law and gives U.S. courts jurisdiction over claims by citizens involving torture or extrajudicial killing occurring anywhere. Lawsuits can only go forward if the defendant is served legal papers while in the U.S.

Legal counsel for the case were the Center for Constitutional Rights in New York, the San Francisco-based Center for Justice and Accountability and the Washington, DC law firm of Patton, Boggs.

For the text of Judge Kay's "Findings of Fact and Conclusions of Law" and more information about the Lumintang and Panjaitan cases, see <http://www.etan.org/news/2000a/11suit.htm>.

Return to [Winter 2001-2002 Menu](#)

[ETAN/US Homepage](#) | [News](#) | [Urgent Actions](#) | [What To Do](#) | [Background](#) | [ETAN/US](#) | [Site Index](#)