

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

JANE DOE I, individually and on behalf of the estate of her son **JOHN DOE I**, **JOHN DOE II**, and **JOHN DOE III**, individually and on behalf of his father **JOHN DOE IV** and the estate of his brother **JOHN DOE V**,

Plaintiffs,

vs.

MAJOR GENERAL JOHNY LUMINTANG,

Defendant.

Civil Case No.:

COMPLAINT FOR SUMMARY EXECUTION, TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT, CRIMES AGAINST HUMANITY, WRONGFUL DEATH, ASSAULT AND BATTERY AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

JURY TRIAL DEMAND

PRELIMINARY STATEMENT

1. Plaintiffs Jane Doe (individually and on behalf of the estate of her son John Doe I), John Doe II and John Doe III (individually and on behalf of John Doe IV and the estate of John Doe V) bring this action for compensatory and punitive damages against Major General Johny Lumintang, an Indonesian military officer currently in the United States who -- in the position of Vice Chief of Staff of the Indonesian military and as a member of the Indonesian High Command -- designed, ordered, implemented and directed a program of systematic human rights violations in East Timor which resulted in abuses including the summary execution of Jane Doe's son, John Doe I, the torture and summary execution of Plaintiff John Doe III's brother and attempted summary execution of his father, and the beating and shooting of John Doe II.
2. Plaintiffs seek damages for summary execution; torture; cruel, inhuman or degrading treatment; crimes against humanity; and other violations of customary

international law, the laws of the United States, the laws of the District of Columbia, and the laws of East Timor.

3. Defendant Lumintang, acting singly and in concert with other members of the Indonesian High Command as well as other organized armed groups, directed, planned, instigated, conspired, aided, abetted, incited and failed to prevent and/or is otherwise responsible for the campaign of crimes against humanity and gross violations of human rights law set forth in this complaint, including the September 1999 summary execution, torture, cruel, inhuman or degrading treatment, and displacement of the Plaintiffs and/or their family members in East Timor.

JURISDICTION AND VENUE

4. This court has jurisdiction under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 78 (1992); the Alien Tort Claims Act, 28 U.S.C. § 1350; 28 U.S.C. § 1331; and the principles of supplemental jurisdiction. The Torture Victim Protection Act provides federal jurisdiction for acts of torture and summary execution, no matter where committed. The Alien Tort Claims Act provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Plaintiffs' causes of action arise under, among others, the following laws, agreements, resolutions and treaties:

- a. Customary international law;
- b. United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- c. Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- d. International Covenant on Civil and Political Rights, G.A. Res. 2220A(XXI), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
- e. Convention Against Torture;
- f. Common law of the United States of America;
- g. Laws of the District of Columbia, including but not limited to common law principles of wrongful death, assault and battery, and intentional infliction of emotional distress; and
- h. Laws of East Timor.

5. The United States District Court for the District of Columbia is the proper venue of this action pursuant to 28 U.S.C. § 1391.

PARTIES

6. **Plaintiff Jane Doe I** and her deceased son **John Doe I** are citizens of East Timor, but were recognized as citizens of Indonesia until mid-October 1999. Both Jane Doe I and John Doe I were activists who supported independence for East Timor. On September 6, 1999, John Doe I was shot in the family home; he died in the hospital four days later. Prior to his killing, militia members had come to the family home and threatened to "clean up" the supporters of independence.

7. **Plaintiff John Doe II** is a citizen of East Timor, but was recognized as a citizen of Indonesia until mid-October 1999. In September 1999, he was stopped in Dili, East Timor, by Indonesian soldiers in uniform who interrogated him, beat him with rifle butts and kicked him until he fell to the ground. As he attempted to flee, a soldier shot him, injuring him in the foot. The lack of available medical attention caused the wound to become infected and the foot subsequently had to be amputated.

8. **Plaintiffs John Doe III, John Doe IV and John Doe V** are citizens of East Timor, but were recognized as citizens of Indonesia until mid-October 1999. They are all political activists who worked for the independence of East Timor. Beginning in February 1999, family members were beaten and tortured and otherwise threatened. In July 1999, death threats against the family were intensified, and militia members repeatedly came to the family home at night. Soon family members went into hiding. In September 1999 Plaintiff John Doe V was killed in his hiding place, and there was an attempt to kill John Doe IV. John Doe IV is unable to sue on his own behalf or on behalf of his deceased son John Doe V, and John Doe III files on their behalf.

9. **Defendant Johnny Lumintang** is a citizen of Indonesia. During the time period relevant to this complaint, Defendant Lumintang was the Vice Chief of Staff of the Indonesian military, with command responsibility for troops located in East Timor. In that capacity, he was personally involved in the Indonesian military's ongoing program of massive human rights abuses in East Timor, which included the torture of John Doe II, John Doe IV and John Doe V, the summary executions of John Doe I and John Doe V, and the attempted summary execution of John Doe IV. Defendant Lumintang is currently travelling within the jurisdiction of this court.

STATEMENT OF FACTS

10. East Timor, a colony of Portugal from the year 1702 until 1975, declared independence on November 28, 1975. Indonesia invaded just 10 days later, on December 7, 1975, and unilaterally annexed East Timor the following year. The United Nations never recognized Indonesia's annexation, regarding East Timor as a "non-self-governing territory" under the administration of Portugal.

11. In order to maintain control over the occupied territory during the past twenty-five years, Indonesian military forces detained, tortured, executed and "disappeared" tens of thousands of East Timorese. Suspected opponents of Indonesian rule were sentenced to lengthy prison terms for political offenses. Forced relocations of the rural population led to tens of thousands of deaths due to starvation and disease. Social, political or

religious activities in East Timor which challenged the illegal Indonesian rule were ruthlessly repressed.

12. These gross and systematic violations of human rights resulted in the deaths of an estimated 200,000 people in East Timor since 1975, out of a pre-invasion population of 600,000.

13. On January 27, 1999, Indonesian President B.J. Habibie announced that the people of East Timor would be given a choice between greater autonomy within or total separation from Indonesia in a vote conducted by the United Nations.

14. From February through April 1999, the Indonesian military and its militia escalated a campaign of intimidation against the population of East Timor, driving tens of thousands of people from their villages, assaulting pro-independence activists and conducting several massacres.

15. During 1999, Defendant Lumintang served as the Vice Chief of Staff of the Indonesian military, with responsibility for training and deployment of Indonesian army troops in East Timor. In this position, Defendant Lumintang engaged in a series of actions to implement the Indonesian military's program of eliminating all social, political or religious activities in East Timor which in any way challenged the illegal Indonesian rule, particularly in the months leading up to the August 30, 1999 "popular consultation" on East Timor's independence.

16. On May 5, 1999, Indonesia, Portugal and the U.N. signed an agreement in New York describing procedures and a timetable for a "popular consultation" on East Timor's political status. The agreement left Indonesia responsible for security before and during the vote. The Indonesian military then acted to strengthen, expand and better coordinate the paramilitary militia groups.

17. Hours before the signing of the May 5 Accord, Defendant Lumintang sent a telegram (on behalf of General Subagyo, then Chief of Staff) to Regional Military commander Major General Adam Damiri and East Timor commander Colonel Tono Suratman, with orders to be prepared to take repressive actions after the ballot if the decision was in favor of independence.

18. In his position of Vice Chief of Staff in June 1999, Defendant Lumintang signed a Covert Operations Manual for Kopassus (*Buku Petunjuk Pembinaan tentang Sandhi Yudha TNI-AD*) which he described (in a foreword to the manual) as a guideline for education of Indonesian troops. The manual states that Kopassus intelligence troops were to be trained in propaganda, kidnapping, terror, agitation, sabotage, infiltration, undercover operations, wiretapping, photographic intelligence and psychological operations. Kopassus operatives have been linked to the surveillance, kidnapping, torture and extrajudicial killing of East Timorese independence activists both prior and subsequent to the independence "popular consultation".

19. In his position as Vice Chief of Staff, the Defendant and other members of the Indonesian High Command laid plans to withdraw Indonesian troops and forcibly relocate hundreds of thousands of East Timorese after the "popular consultation", in violation of the U.N. accord. Within a month after the "popular consultation", the plan was put into precise action.

20. On August 30, 1999, the day of the "popular consultation", an estimated 98.6% of the registered voters in East Timor went to the polls. During the five days of the U.N. ballot count, violence escalated, hundreds of East Timorese were killed and many fled their homes to the relative safety of the hills and mountains.

21. On September 4, 1999, U.N. Secretary General Kofi Annan announced that 78.5% of the population of East Timor had voted for independence. Violence further escalated as the Indonesian military and its militia began to systematically destroy buildings; threaten foreign observers, U.N. personnel and journalists; transport people to West Timor and other parts of Indonesia; and kill East Timorese. Earlier in the week, the U.N. began to evacuate its personnel from some towns due to militia threats and violence.

22. On September 6, 1999, John Doe I was shot in his family home; he died in the hospital four days later. Prior to his killing, militia members had come to the family home and threatened to "clean up" the supporters of independence -- which appeared to target both him and his mother, Jane Doe I.

23. On September 7, 1999, Indonesia, claiming it could control the violence, placed East Timor under martial law.

24. After death threats increased in 1999 against their family for their pro-independence activities, John Doe III, John Doe IV, and John Doe V were forced to flee their family home. On or about September 7, 1999, Plaintiff John Doe V was killed in his hiding place, and there was an attempt to kill John Doe IV. On information and belief, before killing John Doe V, soldiers shot and stabbed him, as they interrogated him about the whereabouts of his family.

25. On September 11, 1999, John Doe II was stopped in Dili, East Timor, by Indonesian soldiers in uniform who interrogated him, beat him with rifle butts and kicked him until he fell to the ground. As he attempted to flee, a soldier shot him in the foot. The lack of available medical attention caused the wound to become infected and the foot subsequently had to be amputated.

26. By September 15, 1999, the U.N. sent a multinational peacekeeping force to East Timor. Australian troops began arriving on September 20, and the Indonesian military announced its withdrawal.

27. On October 20, Indonesia's national assembly ratified the August 30 vote in East Timor, renouncing any claim to the territory, and the U.N. formally took over administration of the East Timorese government.

28. Subsequent investigations found that damage to private and public property ranged from 60 to 80 percent throughout East Timor and that one-half to three-quarters of the population were displaced following the "popular consultation". To date, the United Nations has recovered the bodies of 230 victims of post-referendum violence.

29. According to a January 31, 2000, report on a U.N Human Rights Commission inquiry into East Timor, during 1999, "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."

30. The Commission to Investigate Human Rights Violations in East Timor (KPP-HAM), set up by Indonesia's National Human Rights Commission, issued a report on January 31, 2000, citing evidence of crimes including systematic and mass murder, extensive destruction, enslavement, forced deportations and displacement and other inhumane acts committed against the civilian population. KPP-HAM further indicated that a planned, systematic and massive scorched-earth campaign was launched in various cities including Dili, Suai, Liquica and others. The scorched-earth campaign destroyed residences, crops and livestock, stores, shops, hotels, office buildings, places of worship, education facilities, hospitals and other public infrastructure, and military and police installations.

GENERAL ALLEGATIONS

31. The acts described herein were inflicted under color of law and under color of official authority, and were inflicted deliberately and intentionally.

32. The acts and injuries to plaintiffs and their deceased relatives described herein were part of a pattern and practice of systematic human rights violations designed, ordered, implemented and directed with the participation of the defendant and carried out by military personnel acting with his direction, encouragement or acquiescence.

33. This proceeding cannot be filed in East Timor, due to the legacy of the illegal military occupation of Indonesia. The Indonesian judiciary does not resolve cases of abuse filed by civilians against military officials, and any suit against the defendant in East Timor or Indonesia would be futile and result in serious reprisals against those raising the allegations.

FIRST CLAIM FOR RELIEF (Summary Execution)

34. Plaintiffs Jane Doe I and John Doe III, on their own behalfs and on behalf of the estates of their deceased relatives John Doe I and John Doe V, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 33 as if fully set forth herein.

35. The summary executions of John Doe I and John Doe V and attempted summary execution of John Doe IV were deliberate killings, not authorized as lawful punishment in accordance with due process of law.

36. These acts of summary execution were in violation of the Torture Victim Protection Act, customary international law, 28 U.S.C. § 1350, the common law of the United States, the statutes and common law of the District of Columbia, the laws of East Timor and the international treaties, agreements, conventions and resolutions described herein.

37. Plaintiffs' deceased relatives were placed in great fear for their lives and suffered severe physical abuse and agony and severe mental abuse prior to their deaths. As a result of the summary executions, Plaintiffs Jane Doe I, John Doe III and the estates of their deceased relatives have been damaged in an amount to be proven at trial.

38. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award to be determined at trial.

SECOND CLAIM FOR RELIEF (Torture)

39. The allegations set forth in paragraphs 1 through 38 of this complaint are realleged and incorporated by reference as if fully set forth herein.

40. The acts described herein, including the interrogation, beating and shooting of John Doe II, the attempted summary execution of John Doe IV and the shooting, interrogation and stabbing of John Doe V placed these plaintiffs and/or their family members in great fear for their lives and caused them to suffer severe physical and mental pain and suffering.

41. The acts described herein were inflicted deliberately and intentionally for purposes which included, among others, punishing the victim or intimidating the victim or third persons, and constitute torture in violation of the laws described herein.

THIRD CLAIM FOR RELIEF (Cruel, Inhuman, or Degrading Treatment)

42. The allegations set forth in paragraphs 1 through 41 of this complaint are realleged and incorporated by reference as if fully set forth herein.

43. The acts described herein had the intent and the effect of grossly humiliating and debasing the Plaintiffs or their family members, forcing them to act against their will and conscience, inciting fear and anguish, and breaking their physical and/or moral resistance.

44. Defendants' actions forced plaintiffs and/or their family members, against their will and under fear of harm, to flee their homes.

45. Plaintiffs and/or their family members were placed in great fear for their lives and forced to suffer severe physical and psychological abuse and agony. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the laws described herein.

FOURTH CLAIM FOR RELIEF (Crimes Against Humanity)

46. The allegations set forth in paragraphs 1 through 45 of this complaint are realleged and incorporated by reference as if fully set forth herein.

47. Defendant's human rights abuses against plaintiffs --including killing, attempted killing, torture, beatings, and other assaults --- were neither random nor occasional but widespread and/or systematic. These acts occurred under the direction, encouragement or acquiescence of the defendant.

48. The acts described herein constitute crimes against humanity, in violation of the laws described herein. Customary international law prohibits inhumane acts of a very serious nature such as willful killing, enslavement, deportation and other inhumane acts committed as part of a widespread or systematic attack against any civilian population or persecutions on political, racial or religious grounds. Leaders, organizers, instigators and accomplices participating in the formulation of these acts are responsible for all acts performed by any person in execution of such plan.

FIFTH CLAIM FOR RELIEF (Wrongful Death)

49. Plaintiffs Jane Doe I and John Doe III, on their own behalf and on behalf of the estates of their family members John Doe I and John Doe V, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 48 as if fully set forth herein.

50. Plaintiffs are the heirs of John Doe I and John Doe V, whose summary execution by military personnel acting under the direction and control of defendant is described herein.

51. The deaths of plaintiffs' next-of-kin were the result of the wrongful acts of defendant, who designed, ordered, implemented and directed a program of extrajudicial

executions by military personnel acting under his direction, encouragement or acquiescence.

52. As a proximate result of the summary execution of plaintiffs' family members, Plaintiffs Jane Doe I and John Doe III and the estates of their deceased relatives have suffered pecuniary loss to be determined at trial resulting from the loss of the society, comfort, attention, services and support.

53. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages to be determined at trial.

SIXTH CLAIM FOR RELIEF (Assault and Battery)

54. Plaintiffs on their own behalf and on behalf of the estates of their deceased relatives, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 53 as if fully set forth herein.

55. The shootings, stabbings, and threats against plaintiffs constitute assault and battery, actionable under the laws of the District of Columbia, the laws of the United States, and the laws of East Timor.

56. As a result of the defendant's acts, plaintiffs were placed in great fear for their lives and suffered severe physical and psychological abuse and agony. As a result of the assault and battery described above, Plaintiffs and the estates of their deceased relatives have been damaged in an amount to be proven at trial.

57. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages to be determined at trial.

SEVENTH CLAIM FOR RELIEF (Intentional Infliction of Emotional Distress)

58. Plaintiffs on their own behalf and on behalf of the estates of their deceased relatives, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 57 as if fully set forth herein.

59. The acts against plaintiffs constituted outrageous conduct in violation of all normal standards of decency and was without privilege or justification.

60. Defendant's outrageous conduct was intentional and malicious and done for the purposes of causing the plaintiffs and/or their family members to suffer humiliation, mental anguish and extreme emotional and physical distress.

61. Defendant's outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of the District of Columbia, the United States, and East Timor.

62. As a result of defendant's acts, plaintiffs were placed in great fear for their lives and were forced to suffer severe physical and psychological abuse and agony. As a result of the intentional infliction of emotional distress described above, Plaintiffs have been damaged in an amount to be proven at trial.

63. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages.

PRAYER FOR RELIEF

64. WHEREFORE, plaintiffs, individually and on behalf of the estate of their deceased relatives, pray for judgment greater than \$150,000 against the defendant as follows:

- a. For compensatory damages according to proof;
- b. For punitive and exemplary damages according to proof;
- c. For reasonable attorneys' fees and costs of suit, according to proof;
and
- d. For such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues.

Respectfully submitted,

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