

EAST TIMOR: REMEMBERING HISTORY
The Trial of Xanana Gusmao and a Follow-up on the Dili Massacre

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I. Introduction

In February 1993, the Government of Indonesia agreed to allow Asia Watch to send an observer to East Timor for the purpose of attending the trial of Xanana Gusmao, the leader of East Timor's armed independence movement, who was captured in November 1992. The Asia Watch observer was allowed to visit Indonesia from February 28 through March 16, and to travel to Dili during the period March 8-14. The Asia Watch observer conducted interviews in Jakarta and Dili with military officers and government officials, leaders of non-governmental organizations, and members of the press and the diplomatic community. She also spoke with two members of Xanana's family.

Indonesian officials were generally open and frank, sometimes surprisingly so. They were also generous with their time. The visit itself was an important demonstration of the government's desire to respond to its critics, and Asia Watch appreciates the intent, as well as all of the efforts made to ensure that the visit went smoothly. That the response was less than fully satisfactory, as indicated in this report, may reflect a still-tentative approach towards international human rights organizations and an uncertainty as to the value of full and unhindered access. Among some officials, it also seemed to reflect a conviction that if only the Indonesian case were presented fully and forcefully enough, criticism of Indonesia's human rights record would cease. While the criticism will continue as long as violations of internationally-recognized rights do, the fact that the government granted access to Asia Watch is to its credit, all the more so if it signals a willingness to allow fact-finding missions by international human rights organizations in the future in cases where allegations of grave human rights abuses have been made.

The trial of Xanana raised several important human rights issues. It should be noted at the outset that Asia Watch has never taken a position on the political status of East Timor nor on the jurisdiction of Indonesian courts there. Its concerns were focused on whether Xanana and those arrested at the same time were abused in any way; whether he would receive a fair trial in accordance with international standards; and how free the witnesses, many of them already detained, would be to testify truthfully. In addition, because the prosecution's charges against Xanana go back to 1976, Asia Watch was interested to see whether any new light would be shed during the trial on some of the human rights violations documented in earlier years.

This report summarizes the findings of the visit of the Asia Watch observer in March 1993, including the results of interviews conducted, direct observation of the trial, and an analysis of documents obtained. It addresses fair trial and human rights issues directly related to the trial of Xanana and associated detainees, weaknesses in the Indonesian justice system illuminated by the trial, and general human rights conditions in East Timor, including a follow up to the November 12, 1991 massacre

at the Santa Cruz cemetery.¹ The report was written before the verdict was announced.

II. Xanana Gusmao and the Charges Against Him

Jose Alejandro Gusmao, otherwise known as Xanana Gusmao, was born on June 20, 1946, the second of nine children, in Laleia, a village near Manatuto in the north central part of East Timor. He briefly attended Our Lady of Fatima seminary in Dare, outside Dili, a training ground for many of East Timor's political elite, before joining the Portuguese civil service. In 1969, he married Amelia Baptista Gusmao by whom he had two children, Eugenio Paulo Baptista, born in 1971, and Zenilda Emilia, born four years later.

In 1974, Xanana joined the *Associaçao Social Democratica Timor* (Timorese Social Democratic Association), a political party that had emerged the same year following the "Carnation Revolution" in Portugal. Inspired by the independence movements in Angola and Mozambique, the party changed its name to Fretilin (*Frente Revolucionara do Timor Leste Independente* or Revolutionary Front for an Independent East Timor) the following year, and Xanana became a member of its Central Committee, in charge of public relations. Two days after Fretilin proclaimed the independence of East Timor on November 28, 1975 and a week before the Indonesian invasion, Xanana left his house in Dili and began the life as a guerrilla fighter that he was to lead for the next 16 years.²

The Charges, 1976-1980

In the indictment (*surat dakwaan*) drawn up by the prosecutor on January 25, 1993, Xanana's offenses begin on July 17, 1976, the day after the Indonesian government formally annexed East Timor in a move that was never accepted by the United Nations. Throughout 1976 and 1977, according to the charges, Xanana held a number of positions for Fretilin in the eastern region of the territory, first as deputy secretary of the Viqueque region (mid-1976), then as chief (*pengawas*) of an area ranging from Quelicai in the north to Uatolari in the south (mid-1977), then as head of the Los Palos region, on the eastern tip of East Timor (December 1977).

In October 1978, the indictment continues, Xanana took part in a strategy meeting in Wada Boru, a village in the Quelicai subdistrict of Baucau, at which among other things, it was discussed how to fend off attacks by the Indonesian army.

The next incident mentioned in the indictment takes place in December 1979, but a key period in Xanana's involvement with Fretilin is thus ignored. On December 31, 1978, the head of Fretilin and commander of its armed wing, FALINTIL (*Forças Armadas de Libertação Nacional de Timor Leste*), Nicolao Lobato, was killed by the Indonesian army, and shortly thereafter, Xanana assumed de facto leadership of the resistance. The death of Lobato came in the midst of "Operation Clean-Up", one of the most intense of the military offensives launched by the Indonesian army. During this operation, some of the worst human rights violations recorded in East Timor took place, including widespread summary

¹ "East Timor: The November 12 Massacre and its Aftermath," *News from Asia Watch*, vol.3 no.26, December 1991.

² "Xanana's Wife and Son Speak Out," *TAPOL Bulletin No. 100*, August 1990, p.20-21.

executions and disappearances of people suspected of being sympathetic to Fretilin.³ Fretilin itself was nearly annihilated as an organization, but a few segments managed to recover and regroup, including the eastern command led by three members of the original Central Committee: Xanana Gusmao, Mau Hunu (captured in 1993) and Seraky (killed in 1979).

That regrouping is alluded to in the indictment, as Xanana is charged with conducting a meeting in December 1979 at Mount Laleno in Los Palos to divide the region into five military commands. One decision from the meeting, the indictment states, was to send Xanana to try to make contact with the military leader of the central zone.

The June 10, 1980 Attack

Six months later on June 10, 1980, in an incident that provided evidence of Fretilin's resuscitation, guerrillas based in Bazartete, west of Dili, launched an attack on an Indonesian television (TVRI) broadcasting station near Our Lady of Fatima seminary in Dare, and on the barracks of Battalion 745 of the Udayana Division of the Indonesian army in the area of Dili called Becora. According to the indictment, two members of the Mobile Brigade (*Brimob*) died, and two were wounded in the TVRI raid. The barracks reportedly housed locally recruited soldiers; the indictment does not say whether there were any casualties.

The June 10 attack was a daring raid and a humiliation for the army, and it led to massive reprisals. Amnesty International documented 73 cases of disappearances or executions, mostly in the neighborhood of the seminary. The killings were corroborated by the then Apostolic Administrator of Dili, Msgr. Martinho da Costa Lopes, in a letter dated July 12, 1980 to the Archbishop of Jakarta; several of the executions he cited were of former Fretilin members who had surrendered to the Indonesian army the year before. The aftermath of the June raid also marked the beginning of the transfer *en masse* of political detainees to Atauro Island; at the peak of its use as a penal colony in mid-1982, more than 4,000 were held there without charge. By mid-1987, all had been returned to the main island, many to "resettlement villages" which resembled strategic hamlets, under the strict control of the Indonesian army. Others were transferred directly to Dili to face trial after years on Atauro.

The indictment does not make clear what role, if any, Xanana played in the June 10 attack, save for implying responsibility because of his *de facto* leadership of Fretilin. That position was confirmed in the next incident cited, a national conference of Fretilin called by Xanana on March 3, 1981 in Mau Bai, Viqueque. At that meeting, the indictment states, a new organization, the National Revolutionary Resistance Council (*Concelho Revolucionara Resistencia Nacional*), was formed, with Xanana as head. He was also appointed commander of FALINTIL and National Political Commissar. Then, according to the charges, Xanana ordered his troops to undertake attacks and ambushes on the army in order to obtain arms and ammunition. He also ordered his forces to attack, burn and rob civilian houses in order to obtain food and clothing and to cause security disturbances, according to the prosecution. The phrase "attack, burn and rob" comes up repeatedly in witness testimony as reported in the Indonesian press, suggesting it may have been a response to a formulaic question asked by interrogators while taking the post-arrest depositions of witnesses. Only access to those depositions, which Asia Watch was unable to obtain, can provide clarification.

³ Amnesty International, *East Timor: Violations of Human Rights*, (London: 1985), pp. 29-34.

Peace Talks

The indictment then lists a series of Fretilin attacks on soldiers and civilians between 1981 and 1984. No mention whatsoever is made of the talks in March 1983 between Xanana and the Indonesian army that led to a brief ceasefire. The talks, apparently initiated by the then Defense Minister and Commander in Chief of the Indonesian Armed Forces, General Andi Mohammed Yusuf, began on March 21, 1983 in Bubu Rate, Viqueque. The Indonesian side was represented by Major Willem da Costa. Two days later, in the village of Lari Gutu, near Ossu, Viqueque, Xanana met with Colonel Purwanto, then the military commander in East Timor. Mario Carrascalao, then governor of East Timor, was also present. Xanana presented Purwanto with a letter to President Suharto outlining Fretilin's peace proposals, which were unlikely to be accepted since they included the complete and unconditional withdrawal of Indonesian forces from East Timor and the maintenance of FALINTIL troops in the mountains for security reasons. Nevertheless, Purwanto promised to convey the letter to Jakarta, and both sides agreed on a ceasefire.

But less than a week later, on March 28, General Yusuf was replaced as military commander by Leonardus Benyamin "Benny" Murdani, the first commander-in-chief ever to have emerged from the military intelligence wing of the army, and one of the key figures in plans for the 1975 invasion. Murdani was not disposed toward peace talks, and when the ceasefire broke down, he was quoted by an Indonesian paper as saying, "This time, no fooling around. We are going to hit them without mercy."⁴

The Kraras Massacre

The incident that led to the breakdown is mentioned in the indictment, although without any reference to the ceasefire. On August 8, 1983, Fretilin guerrillas killed 16 members, an entire squad, of an Indonesian army engineering battalion in the village of Kraras (spelled Klaras in all Indonesian documents), Viqueque. The Indonesian government said at the time that the killings were unprovoked. The indictment says that in addition to the 16 soldiers killed, 20 civilians were shot dead and one full platoon of civil defense guards (*hansip*) were captured, together with their weapons. To Asia Watch's knowledge, this is the first time the Indonesian government has alleged that Fretilin killed civilians in Kraras. Asia Watch is also unaware of other reports about the capture of *hansip* forces; earlier accounts say 84 men deserted after their officers were killed.

The attack led to a retaliatory massacre in the village of Kraras the same August. Survivors reportedly fled, with Indonesian troops in pursuit, to the mountains around Bibileu, where additional executions took place. No one knows for sure how many people died, but independent estimates range as high as 200.⁵ Even allowing for exaggeration, it seem likely that the death toll was higher than the Dili massacre of 1991. In contrast to the international reaction to the latter, no governments protested the reprisal killings, and no investigation ever took place.

The Kraras massacre became a focal point in the human rights history of East Timor, an event that shattered all government claims that "normality" had returned to the territory. Given the reference to Kraras in the indictment and its importance to the human rights debate more generally, Asia Watch was

⁴ *Sinar Harapan*, August 16, 1983.

⁵ Amnesty International, *op. cit.*, p.52.

particularly interested in an account of the Kraras incident given to the Asia Watch observer by an Indonesian government official who was monitoring events in East Timor at the time.

According to this account, when Benny Murdani made his first official visit to East Timor as Commander-in-Chief in July 1983, there were many hardliners in the army who disagreed with the peace process initiated the previous March. During his visit, Murdani reportedly gave civilian and military officials in East Timor three months to prove that the peace process was succeeding, with the implication that if it was not, their careers would be in jeopardy. One week later, without the knowledge of Colonel Purwanto, East Timor's military commander who supported the peace talks, military officers reportedly entered the forest near Kraras, a village known as a contact point between Fretilin and the local government. One member of the local *hansip* civil guard there was known as an intermediary between the two, and was known to have a particularly beautiful wife. This *hansip* was arrested on a pretext, held in custody for a week, and then allowed to return home, only to find that his wife had just been raped by soldiers. He went immediately into the forest to contact Fretilin and informed them of the rape. In response, Fretilin forces came down from the mountains and gunned down 16 soldiers. The official implied that the treatment of the *hansip* and his wife was designed as a provocation by hardliners within the army to ensure the peace process would fail. Following the Fretilin attack on the soldiers, some 3000 villagers fled to the forest to escape military reprisals. According to the official, the army was able to apprehend approximately 1,000, of whom 30 were executed immediately, and the rest detained in a "resettlement area" called Lalarek Mutin.

1984 to the Present

After its reference to Kraras, the indictment goes on to Xanana's reorganization of FALINTIL in April 1984, and lists a number of Fretilin attacks in the Manatuto, Viqueque and Baucau districts, the most serious of which was an ambush of an army vehicle on the road between Los Palos and Tutuala sometime in 1984 in which 10 soldiers died. The indictment cites seven specific attacks on the army or raids on villages in 1985, all but one in Viqueque and Baucau; four in 1986 in Los Palos, Viqueque and Ainaro; two in 1987 in Baucau and Ainaro; two in 1988 in Manatuto and Manufahi; three in 1990 in Baucau and Manufahi; and one in 1992. Of the above, only in one, the December 1988 ambush of soldiers at the Laclo River between Alas and Fatuberlieu in the district of Manufahi, is Xanana accused of being personally involved. The most recent attack cited is one on October 5, 1992. The Indonesian version is contested by many other accounts (see below, p.21).

After listing these attacks, the indictment goes on to Xanana's organizational activities, noting that on December 31, 1988, he formed the National Council of Maubere Resistance (*Concelho Nacional da Resistencia Maubere* or CNRM), with a Directing Committee (*Comicao Directivo*) as the political front, FALINTIL as the military front, and the Executive Committee (*Comite Executivo*) as the clandestine front.

The reorganization took place following Xanana's decision to leave Fretilin, a move he made in December 1987, according to an interview with him published in the Portuguese newspaper, *Publico*, on September 6, 1991. The creation of CNRM was in part a move to cement an alliance of Fretilin and Uniao Democratica Timorensa or UDT, the two parties that had fought a brief civil war in 1975 and whose partisans-in-exile in Portugal and Australia had remained bitter opponents despite periodic attempts at peace-making. It was conceived of as a non-party organization that would reach out to all East Timorese and perhaps be able to attract more international support.

Under CNRM, the prosecution charged, Xanana set up several other organizations, most of which were implicated by the Indonesian government in the November 12, 1991 demonstration. These included the two student organizations, RENETIL (Resistencia Nacional Estudantes Timor Leste, based in Denpasar, Bali and led by Fernando Araujo, and OJECTIL (Organisation Juven Estudantes Catolica Timor Leste) in Dili and in Baucau. All of the East Timorese sentenced to prison terms for their roles either in the Dili demonstration or the Jakarta protests a week later were affiliated with either these organizations or with CNRM's Executive Committee.

Xanana was also charged with setting up a clandestine communications network in Dili and overseas, with giving interviews to foreign journalists, and with instructing his deputy, Mau Hudo, and a man named Constancio Pinto, who went into hiding after the massacre and eventually escaped to Portugal, to organize the November 12 demonstration.

For all of these offenses, Xanana was charged with conspiring to commit rebellion with a view toward bringing about the secession of a part of Indonesian territory, under Articles 106 and 110 of the Criminal Code. The charge carries a penalty of 20 years to life in prison. Almost as an afterthought, the indictment includes the charge that from August 29 to November 20, 1992, Xanana illegally owned and stored two firearms (a .45 pistol and a Minimi gun) and 550 bullets at the house of Augusto Pereira in Lahane, Dili, where he was finally arrested. That charge carries a possible death penalty.

III. The Xanana Trial

The trial of Xanana began in Dili, East Timor on February 1, 1993. Asia Watch requested permission for an observer to attend at least two trial sessions scheduled for the period March 4-13. According to the trial schedule, this period would have included presentation of the prosecution's summary and the defense plea. Due to a slowdown in the pace of the trial (discussed below) and a limitation on the time the observer was allowed to spend in Dili, only one session, an examination of a witness for the prosecution, was held during the observer's visit to Dili. The findings presented below are based on attendance at the one trial session, interviews with judges, prosecutors, and defense attorneys, and interviews with domestic and international observers who had attended previous sessions of the trial. Supplementary information was provided by press reports and interviews with military officials and civilians in Jakarta and Dili.

Circumstances of Arrest and Detention

Xanana was arrested by the Indonesian armed forces (*Angkatan Bersenjata Republik Indonesia* or ABRI) in the early morning of November 20, 1992. The arrest, which took place at the site of a hidden, underground bunker in Dili, was recorded on videotape and received extensive coverage in the Indonesian media. ABRI officials state that information on the exact location of the bunker was provided by a civilian informant whose identity must be kept secret for his own protection. They state that military forces had been closing in on Xanana's whereabouts for several months prior to the arrest through a system of roadblocks and nightly identity card checks.⁶ Officials confirm that a special team was deployed and given a special briefing for the arrest, but deny that the arrest was staged or that any negotiations had been taking place with Xanana prior to the arrest.

⁶ "Sekarang Dokumen Ditemukan di Persembunyian Xanana" *Kompas*, November 23, 1992

According to ABRI officials interviewed, Xanana was first brought on the morning of the arrest to the home of General Theo Syafei, commander of the special military command in East Timor called *Komando Pelaksana Operasi (Kolakops)*.⁷ He was then immediately surrendered to the custody of the regional military command, KODAM IX, in Bali. After "one or two or three days" in Bali, Xanana was then transferred to the custody of the Indonesian special forces (KOPASSUS) in Jakarta. During this period (when, according to one official of the national intelligence agency BAIS interviewed by Asia Watch, Xanana was a "prisoner of war"), Xanana was interrogated by military officers to obtain information about Fretilin troop strength, planned attacks, and other information of military importance.

This chronology conflicts with statements made to the press at the time by military spokesmen that Xanana was transferred to Bali on November 25 and was interrogated there by police and justice officials, not by the military.⁸ During the first 17 days following his arrest, access to Xanana was denied to all outsiders, including family members, prospective defense lawyers, and representatives of the International Committee of the Red Cross (ICRC). Concerns that he might be subject to mistreatment were heightened by the broadcast of a video five days following the arrest, in which Xanana renounced the Timorese independence struggle and encouraged his followers to do the same.

On December 7, 1992, following an international outpouring of concern for Xanana's safety in custody, and high-level negotiations involving officials of the United Nations, ICRC, and the Indonesian Ministry of Foreign Affairs, an ICRC official was allowed to visit Xanana at the national police headquarters (*Mabes Polri*) in Jakarta. As of the writing of this report, no repeat ICRC visits have been allowed. Xanana's place of detention was unknown, although ABRI officials claim that he was transferred to police custody as soon as the military interrogation was over. The decision was made in early December to try him on criminal charges. On January 29, 1993, he is said to have been transferred to the regional police headquarters in Dili, where he has remained in custody during the trial. Members of Xanana's family have asked to visit him but have been told by the military that Xanana does not want to see them.

Military officials in Jakarta and Dili offered the Asia Watch observer the opportunity to visit Xanana at police headquarters in Dili. The observer was ready to accept the offer, on the condition that the ICRC also be given access, to ensure that someone could ascertain his well-being after the interview and minimize any risks Xanana might run in speaking freely to Asia Watch. Military officials in Dili were unwilling to meet this condition, and Asia Watch has no knowledge of the level at which this decision was taken. Although the visit did not take place, negotiations indicated that despite being in police custody, access to Xanana was still being controlled by military intelligence.

A wave of arrests in East Timor in October-November 1992, prior to the first anniversary of the Santa Cruz massacre, reportedly brought several hundred persons into detention, including approximately 40 in Baucau. More than twenty persons were arrested immediately before and after Xanana's arrest, including nine family members. The ICRC was allowed to visit some of these detainees in December 1992 and January 1993, but not all detainees had been visited by mid-March, and repeat visits have been restricted. The pattern of detention also restricts ICRC access: persons are often detained briefly,

⁷ General Syafei was promoted to commander of Region IX, the Udayana Command based in Bali, in April 1993.

⁸ "Xanana Diperiksa di Denpasar" in *Jayakarta*, November 26, 1993, and "Xanana Hanya Seorang Kriminal, Bukan Pahlawan Besar" in *Kompas*, November 26, 1992.

questioned, and then released, but must report regularly to authorities or risk rearrest. Although the ICRC requested permission to visit the Baucau detainees, they were released before a visit was arranged.

At the time of the visit of the Asia Watch observer in March 1993, ABRI officials claimed that only 30 persons detained through these arrests remained in military custody, all in Dili. Military officials provided Asia Watch with a list of names of the 30 detainees (attached as Appendix 1), all said to be held at either Colmera, Balide, or Satuan Gugus Intel (also known as Nusrabakti) detention facilities. The Asia Watch observer was allowed to visit Xanana's sister and brother-in-law, Armandina Gusmao dos Santos and Gilman Exposto dos Santos, at the Satuan Gugus Intel/Nusrabakti facility. Neither had been charged with any crime. Armandina and Gilman were perceptibly nervous during the interview with the Asia Watch observer. While it was conducted out of earshot of any officials, four or five intelligence agents in civilian clothes wandered in and out of the room as it went on.

Armandina and Gilman told the Asia Watch observer that they had been arrested at 7 a.m. on November 24 by the police in the presence of their village headman and were not told why, in violation of the Indonesian Criminal Procedure Code as well as international standards.⁹ They were taken to the regional police headquarters (*polwil*), held in separate cells and interrogated by military intelligence for three days. On November 27, they were moved to Nusrabakti. At the time of the Asia Watch visit, they had had two visits from the ICRC since their arrest. They were allowed to return home over Christmas for eight days and have been able to receive daily visits from family members. They had not been informed of any charges against them and had been given to understand that they were unlikely to be tried. They had been told that they would not be called as witnesses in the Xanana trial.¹⁰ They said they and other family members would like to see Xanana but had been told that he does not want to see them.¹¹ Asia Watch received reports that Armandina and Gilman were released prior to the visit of United Nations envoy Amos Wako on April 5, 1993, but it has not been able to independently confirm the report or learn what ongoing restrictions they may be under in terms of movement or reporting to the police.

All judges and attorneys for the prosecution and defense in the Xanana trial interviewed by the Asia Watch observer denied any knowledge that family members of the defendant were being detained.

During the course of the trial, Xanana has confirmed the testimony of prosecution witnesses regarding his leadership of the independence movement and participation in attacks on ABRI, stating that he accepts responsibility for the actions of his men. Xanana's apparent "change of heart" about independence for East Timor, and his behavior in court, accepting everything that every prosecution

⁹ Article 9 of the International Covenant on Civil and Political Rights states, "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall promptly be informed of any charges against him."

¹⁰ Calling family members as witnesses would be in violation of the Criminal Procedure Code.

¹¹ Whatever the truth of the assertion in this case, Asia Watch is aware of several political cases in which prison officials have made such claims that turned out not to be true. Several years ago, the family of a death row prisoner in Bandung was told that he did not want to see them, only to find out shortly before he was executed that it was only a tactic used by the army to discourage family visits.

witness said without comment, prompted much speculation among domestic and international observers. Many feared that the statements made on the videotape were coerced, and that at minimum, Xanana was subjected to extreme psychological pressure, especially as many family members were in military custody. The Asia Watch observer spoke to several people, including both government and non-governmental representatives, who had had direct access to Xanana or had observed him in court; none provided any evidence to support allegations of physical torture. Nevertheless, in view of the fact that he was held incommunicado during the first 17 days following his arrest, the allegations cannot be ruled out until Xanana is in a position to speak freely.

There were other possible explanations for Xanana's behavior. Some observers suggested that Xanana reached some sort of "deal" with Indonesian authorities, promising cooperation in exchange for leniency. Others discarded the idea as being out of character. Some believed that cooperation is Xanana's own strategy to take responsibility upon himself in order to spare his followers and family members, many of whom remain in detention, from harsh treatment. Still others felt that Xanana had to have some larger objective in mind that would only be revealed later.

Why not subversion?

The fact that Xanana was charged under the rebellion and secession provisions of the Criminal Code rather than the anti-subversion law more commonly used against political detainees is being interpreted by some observers as a positive development. It shows, they say, that the Indonesian government is increasingly sensitive to domestic and international criticism of the anti-subversion law as too broadly worded, too indiscriminately applied, and too lacking in basic safeguards against abuse of those detained under it. (Suspected subversives are usually held in military, rather than police custody before trial and there are no set limits on pre-trial detention, for example.)

If the Indonesian government were responding to criticism of the anti-subversion law by charging Xanana under the Criminal Code, one might have expected other developments as well: a moratorium on the use of the law more generally, for example, or a review of the draconian sentences imposed on unarmed East Timorese who organized marches in Dili and Jakarta in November 1991.¹² This has not happened.

There are other explanations for why the secession/rebellion charges were used in the Xanana case. The first is precedent. No one accused of active insurgency in East Timor has ever been charged with subversion. In the first trials of East Timorese by Indonesian courts beginning in December 1983, six years after the invasion, suspected Fretilin guerrillas were also charged with rebellion/secession. To Asia Watch's knowledge, Fernando de Araujo, the student leader charged with masterminding the November 19, 1991 protest march in Jakarta, was the first East Timorese ever charged with subversion.

¹² Gregorio da Cunha Saldanha and Francisco Mirando Branco were tried in Dili on subversion charges for their role in planning the November 12 march; they received sentences of life imprisonment and 15 years respectively. Fernando de Araujo and Joao Freitas da Camara received nine and ten years in prison respectively for their roles in a demonstration in Jakarta on November 19. For a full description of the trials, see *Tragedy in East Timor: Report on the Trials in Dili and Jakarta*, International Commission of Jurists, Geneva, Switzerland, 1992. For a discussion of the subversion law, see *Broken Laws, Broken Bodies: Torture and the Right to Redress in Indonesia*, Lawyers Committee for Human Rights, New York, NY, February 1993.

He was tried in 1992.

The second (and official) reason, first articulated by Attorney General Singgih¹³ and repeated by most, but not all, military and court officials, is that the subversion charge is reserved for underground activities, while Xanana's rebellion was out in the open. This explanation is in apparent conflict with the indictment, which devotes several pages to describing Xanana's leadership of "clandestine" activities and communication networks. Officials explained that while Xanana's crimes were linked to underground activities, those were not the crimes for which he was being tried. Conversely, Asia Watch was told, the demonstrators in Dili and Jakarta convicted of subversion were tried and convicted not for their open protests, but rather for the more dangerous underground activities used to plan the demonstrations. Many officials were at pains to assure the observer that the lack of subversion charges did not imply leniency; like subversion, the firearms charge carries a maximum penalty of death. Officials interviewed were unable to explain how the Xanana case differed from those of individuals recently charged and convicted of subversion for affiliation with armed separatist movements in Aceh and Irian Jaya.

A senior official of the prosecutor's office in Dili dismissed the "open" versus "underground" explanation for the lack of subversion charges against Xanana, and explained that the choice was purely a question of available evidence. Subversion charges, he explained, are used when prosecutors do not have sufficient evidence to meet the stricter requirements of criminal law, or when it is necessary to detain a suspect when authorities need time to determine his or her position in a clandestine organization. In Xanana's case, since there was sufficient evidence to bring charges without relying on the broad and vague provisions of the subversion law, it was deemed unnecessary. (The fact that a prosecutor admitted the standards of evidence are low in subversion cases should be additional reason to dispense with it in the interests of justice.)

Access to and Adequacy of Legal Defense

Four days after Xanana's arrest, the Indonesian Legal Aid Institute (*Yayasan Lembaga Bantuan Hukum Indonesia* or YLBHI) sent a letter to General Try Sutrisno, then Commander of the Indonesian Armed Forces, now Vice President of Indonesia, that called on the military to respect the provisions of the Indonesian Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* or KUHAP) during Xanana's interrogation. In particular, the letter stressed, the suspect should be entitled to counsel of his own choosing.¹⁴ YLBHI subsequently received oral, and later written, power of attorney from members of Xanana's family in Australia to represent him. According to YLBHI attorneys, in such circumstances police officials are required by law to allow prospective legal counsel access to the detainee. The Criminal Procedure Code provides for the right to contact counsel and the right to be provided counsel when the charge carries a penalty of at least 15 years or death.¹⁵

¹³ See "Xanana Didakwa Makar" *Jayakarta*, December 7, 1992, "Xanana tak Dituduh tetapi Diduga Makar" *Kompas*, December 7, 1992

¹⁴ "YLBHI: Luar Negeri: Tak Usah Meributkan Pembelaan Xanana", *Suara Pembaharuan*, November 25, 1993. The right to counsel of one's choice is also set forth in the International Covenant on Civil and Political Rights, Article 14(3)(b).

¹⁵ Articles 55-57, as cited in *Broken Laws, Broken Bodies: Torture and the Right to Redress in Indonesia*, *Lawyers Committee for Human Rights*, New York, NY, February 1993.

YLBHI requested permission from the officials at police headquarters in Jakarta on December 17, 1992 to meet with their prospective client, but were refused by Police Colonel Ahwil Lutan (head of police intelligence, *Kasubdit Reserse Polri*) on the grounds that Xanana had already chosen a lawyer.¹⁶ Denied direct access to Xanana, YLBHI attorneys sent a letter to Xanana dated December 18 in care of police officials. Two weeks later, Colonel Ahwil produced a three-sentence handwritten letter purportedly from Xanana dated December 30, thanking YLBHI for their offer of assistance, but stating that he would not be needing their services, with no further explanation. The police also provided a translation of the letter into Indonesian.¹⁷ Government officials claim that Xanana himself decided that he did not want YLBHI's services, and that by respecting his wishes not to meet with YLBHI, officials were honoring his "rights."

In the meantime, Colonel Ahwil had allowed his friend Sudjono, a prominent Jakarta attorney, to meet with Xanana in mid-December. According to Sudjono, Xanana had previously stated that he did not need legal representation until the trial itself, but that Sudjono was able to win his confidence over the course of four meetings in December and January. On January 26, 1993 Sudjono was officially appointed to represent Xanana.

Sudjono's appointment to defend Xanana provoked controversy in the Indonesian legal community.¹⁸ In interviews, Sudjono stresses his leadership role in and support from the Indonesian Bar Association (IKADIN), yet several leaders of IKADIN privately expressed grave doubts about the circumstances and ethics of his selection. Sudjono's friendly relations with the police and prosecutors, his secretiveness during the period following his first meeting with the defendant in mid-December through the announcement of his selection at the end of January, and his failure to cooperate with YLBHI were all cited as cause for concern.

An interview Sudjono gave to a Jakarta magazine was revealing in its details on how he was given the case. Colonel Ahwil had been Sudjono's student at Pancasila University in Jakarta and they were close friends. When Sudjono saw Colonel Ahwil on television, accompanying the ICRC to see Xanana, he rang him up, and Colonel Ahwil said, "How would you like to handle the Xanana case?" Sudjono said it would be difficult, but Ahwil pressed him. Sudjono wavered, but he ran into a prosecutor who also urged him to take the case, and then Colonel Ahwil rang him again. He finally agreed to take it. (This was all presumably done without consultation with Xanana.) When the interviewer said, "You're known as a lawyer famous for being close to the police and bureaucracy," Sudjono responded, "What's wrong with that? Why should they be my enemy? Hey, that's how I make my living."¹⁹ Sudjono later said the magazine article was factually correct but he was unhappy with the way he was portrayed.

In an interview with the Asia Watch observer, Sudjono admitted that he had not inquired into the

¹⁶ "Jose Xanana Gusmao Tolak Tawaran Tim Pengacara LBH" *Media Indonesia*, January 5, 1993, and "YLBHI tidak kecewa gagal mendampingi Xanana" *Harian Terbit*, February 2, 1993.

¹⁷ "Xanana Tolak Tawaran Bantuan Hukum YLBHI" *Kompas*, January 5, 1993

¹⁸ See "'Don't Worry', Saya Pengacara Profesional" *Kompas*, February 2, 1993.

¹⁹ Este Ade, "Sudjono SH," *Jakarta, Jakarta*, No.346, February 13-19, 1993, pp.30-35.

circumstances of Xanana's arrest and initial detention, even though the questioning resulting in the defendant's interrogation deposition (*Berita Acara Pemeriksaan* or BAP) was substantially complete by the time of their first meeting.²⁰ He stated that he did not feel that his and Xanana's lack of a common language was a significant barrier to communication, suggesting that Xanana's ability to speak and understand Indonesian was improving. When asked by a journalist whether there were any cultural obstacles in handling the case, since Xanana only spoke Portuguese, Sudjono said, "I'm used to dealing with foreigners. I once took on the case of a Canadian slapped with a heroin charge."²¹

As of the date of his interview with the Asia Watch observer (March 12, six weeks after the start of the trial), Sudjono admitted not yet having discussed strategy with his client. As part of an explanation why he was unwilling to share copies of the interrogation depositions, Sudjono mentioned that he was planning to write a book on the trial, providing support for the contention that publicity was his primary motivation in taking on the Xanana defense.

In any Indonesian trial, the first chance that the defense has to object to the charges brought against the accused is immediately after the indictment is presented by the prosecution, when the defense can present a demurrer called *eksepsi*. In political cases, the *eksepsi* is used to raise any issues about violations of the Criminal Procedure Code in the accused's arrest and detention, any problems with the jurisdiction of the court or the application of specific laws under which the accused is charged.

The *eksepsi* prepared by Sudjono is an odd document. It ignores completely, for example, the violations of the Criminal Procedure Code involved in Xanana's arrest and that neither family nor counsel was allowed access to him for more than two weeks after his arrest. The main argument raised in the document is that because certain groups in East Timor never relinquished their desire for independence, they never acknowledged the legitimacy of Indonesian courts. The argument is not couched in terms of Indonesian courts not having jurisdiction over East Timor in any objective sense, and no international laws or United Nations General Assembly resolutions on self-determination are cited. Rather, Sudjono stresses that because Xanana's own organization never *perceived* Indonesian courts as legitimate on East Timorese soil, therefore the organization does not *consider* the courts to have jurisdiction.

One of the elements of a fair trial is the adequacy of time for preparation of the defense. Sudjono's *eksepsi* is a short document, nine pages compared with the 36-page *eksepsi* that the lawyers of Fernando de Araujo prepared. Length is not necessarily a virtue, particularly in legal documents, but in this case, the *eksepsi* appears perfunctory. The court, however, was not at fault. In the interview in the magazine *Jakarta, Jakarta*, cited above, Sudjono boasts that on the first day of court, the judges gave him a week to prepare the *eksepsi* and he countered with five days. Eventually they agreed on three, but Sudjono said it was no problem, as he had mastered the issues, and anyway, the *eksepsi* was not particularly important.²²

Sudjono's closeness to the police and the lack of effort apparent in the *eksepsi* raise concerns

²⁰ According to the Lawyers Committee report (op. cit.), access to counsel is routinely denied throughout the period of interrogation in political cases where the suspect is in military custody.

²¹ Este Ade, *op.cit.*, p.30.

²² Este Adi, "Sudjono SH", *Jakarta, Jakarta*, No.346, February 13-19, 1993, p.31.

about whether in fact he would have been Xanana's counsel of choice had Xanana been free to choose. In spite of these concerns, many observers, including most government officials and some members of the diplomatic community, praised Sudjono's defense of Xanana. Sudjono and his supporters suggest that his motivation springs from a commitment to the law (rather than any political motivation), and stress his willingness to foot the considerable bill for the defense out of his own pocket. Sudjono has also brought reputable legal scholars -- Dr. Loeby Loekman of the University of Indonesia in Jakarta and Prof. J. E. Sahetapy of Airlangga University in Surabaya -- onto his defense team.

He has also raised serious issues in the course of his defense. He publicly complained of the difficulty of identifying defense witnesses willing to testify, implying that they fear for their safety.²³ In an interview with the Asia Watch observer, he explained that several potential witnesses that he had identified declined, asking "*siapa jamin saya?*" ("who will guarantee [my safety]?"). The new Governor of East Timor, Abilio Jose Osorio, publicly declined to serve as a defense witness, and stated that he would not allow other provincial government officials to testify.²⁴ The lack of security for defense witnesses, and the governor's unilateral prohibition are clearly fair trial issues, and a commentary on the status of civil society in East Timor.

Observers point out that given his client's failure to contest the charges, the only strategy available to Sudjono is to discredit the prosecution witnesses, and one that he has pursued with apparent diligence and skill. He has been quick to point out during cross-examination, for example, when prosecution witnesses are relying on second-hand information and is also likely to stress this in the defense plea. It is also likely that in the defense plea, Sudjono will make a case for leniency based on the defendant's honorable behavior in taking responsibility for the actions of his men and his cooperation in the courtroom.

The Role of the Interrogation Depositions

The interrogation deposition or *berita acara pemeriksaan* (BAP) is the trial document that contains the sworn depositions of the defendant and witness obtained by the police during interrogation. In the trial of Xanana and more generally in trials in Indonesia, the BAP serves as a reference for judges and attorneys for the defense and prosecution in their examination of witnesses. In the Indonesian justice system, judges participate in the examination of witnesses, and lead off the questioning. During the session of the Xanana trial attended by the Asia Watch observer, judges prompted and corrected the witness regarding dates and times of events recorded in the BAP. One judge stated in an interview that it would be "impossible" for a witness to contradict the BAP in court, since both testimonies are taken under oath. Nevertheless, if lawyers are not present during the interrogation recorded in the BAP or if the witness is being held incommunicado, there is always the possibility that the witnesses will tell their interrogators what they want to hear out of fear of the consequences if they do not.

Heavy reliance on the interrogation depositions is significant since many of the witnesses in the Xanana trial are themselves detainees (discussed below), and did not have access to legal counsel at the

²³ "No Timorese willing to testify for Xanana" Jakarta Post February 24, 1993, "Pengacara Xanana Kewalahan Temukan Saksi a Decharge" *Kompas*, March 2, 1993.

²⁴ "Penasehat hukum Xanana Gusmao: Saksi `a de charge' sulit!," in *Suara Timor Timor*, February 24, 1993.

time of their interrogation. One witness for the prosecution, Mariano Da Silva, reportedly became very confused under questioning in court related to statements he had made in the BAP. It became apparent that the witness was illiterate, and was not sufficiently fluent in the Indonesian language to understand the BAP sworn statement that he had signed following his interrogation.

At the trial session previous to the one attended by the Asia Watch observer, Saturnino da Costa Belo, convicted and sentenced to nine years imprisonment in connection with the Santa Cruz demonstration, was brought out as a witness for the prosecution. He entered the courtroom, greeted Xanana, shouted "*Viva Timor Leste!*", and was hastily removed from the courtroom. At the next session of the trial, the prosecution produced a letter from a police doctor stating that Saturnino was unfit to appear in court due to "mental instability." In lieu of his testimony, the prosecution read into the record excerpts from his deposition recorded in the BAP. At the motion of the defense, the entire statement was deemed to have been read into the record. In subsequent interviews, judges stated that this testimony would be given equal weight to that provided by witnesses in the courtroom. This is in accordance with the Criminal Procedure Code, which states that such sworn testimony "shall be considered equal in value to the testimony spoken by a witness under oath at a trial"²⁵, even though the defense is precluded from examining such witnesses.

The role of translation is another feature of the Xanana trial. Two court-appointed translators have served alternately during the trial, translating between Indonesian language and Portuguese or Tetum, the local Timorese language. Judges encouraged witnesses to speak in Indonesian as much as possible. During the session attended by the Asia Watch observer, the translator was used for communications between the judge and the defendant, but other court proceedings were not routinely translated. The defendant had to request that the excerpts from Saturnino's testimony read into the record be repeated and translated; the testimony of the session's one witness, Akuiliong, was not translated. Portuguese speakers who have attended other sessions of the trial have noted inaccuracies in the translation, including a rendering of "*a principio*" (in the beginning) as "*secara princip*" (as a principle).

Significance of Detained Witnesses for the Prosecution

The fact that several of the prosecution witnesses in the Xanana trial are themselves detainees raises concern for their safety and fair trial issues, both for this particular case and for the Indonesian justice system generally. Of the 30 names provided by ABRI of persons in military custody in Dili, three have appeared as witnesses in the Xanana trial. A fourth was scheduled for the March 11th session, but did not appear. Several others are reported by other sources to be detained. Since these detainees are in military custody and have not been charged with any crime, officials contend that they are not entitled to legal counsel. However, it is likely that these detained witnesses will eventually be charged with offenses related to the substance of their testimony in the Xanana trial. (Asia Watch was told, for example, that a prosecution witness named Oscar Lima, a businessman suspected of assisting Fretilin who was arrested in Jakarta on November 27, 1992, would be brought to trial.) An important weakness in Criminal Procedure Code is that it fails to protect witnesses from self-incrimination through testimony that they are compelled to give in the trials of others.²⁶

²⁵ Article 162 (2) as quoted in *Tragedy in East Timor: Report on the Trials in Dili and Jakarta*, International Commission of Jurists, Geneva, Switzerland, 1992.

²⁶ See also ICJ report, op. cit.

Indeed, since the Criminal Procedure Code does not recognize the right of the military to arrest or detain civilians, persons in military custody are easily denied its procedural protections that do exist.²⁷ In the words of a defense attorney, "*kalau di luar polisi, tidak ada hukumnya*" ("If [the detention] is outside of the police, there is no law").

Some of the detained witnesses were visited once by the ICRC in December 1992 or January 1993. Oscar Lima, the businessman mentioned above, has never been visited. Indonesian officials gave various explanations for restrictions on ICRC access. The Minister of Foreign Affairs suggested that visits were restricted during the Muslim fasting month, which lasted from late February to late March in 1993. A senior military official suggested that the ICRC was being punished for violating the terms of its agreement with the Indonesia government, but did not offer any evidence to substantiate the charge. Other military officials stated that the ICRC would not be allowed to visit these detainees while the trial was ongoing, although there is no known basis for such a restriction on law or policy. Indeed, while the trial is underway is precisely the time when access is most critical, given the detainees' vulnerability to pressure attempting to influence courtroom testimony.

While many of the detained witnesses were arrested in late 1992 around the time of Xanana's arrest, one witness, Jose da Costa (Mau Hudu, an assistant to Xanana), has been in custody since January 23, 1992. Observers who attended the February 22, 1993 session of trial at which he testified described the witness as appearing weak and fragile. Although he bore no visible signs of mistreatment, his appearance was contrasted to the more robust demeanor of Xanana.

The Asia Watch observer questioned judges and prosecutors in the Xanana case regarding the status of testimony of detained witnesses. Might their testimony be affected by the fact that they are in custody and potentially subject to coercion, and/or the fact that they themselves are likely to be subsequently charged and brought to trial on charges related to their testimony in the current case? Incredibly, the judges and prosecutors involved in the Xanana trial denied knowledge of the witnesses' status as detainees. Further, they stated that it was not their responsibility to know whether or not witnesses were detainees, and that detainee status would not influence the weight given to their testimony. Judges went on to say that even if they were to suspect that a witness was in detention and perhaps subject to mistreatment, it would be inappropriate for a judge to take the initiative to investigate unless a specific complaint were lodged by the detainee, legal counsel, or a family member.²⁸ Two judges reported that while allegations of torture in custody had been raised by defendants on several occasions during their careers, the defendant had always withdrawn the charges when faced with the accused official. Their conclusion was that the allegations were thus demonstrated to be false.

Concerns have also arisen regarding the vulnerability to coercion of witnesses who are serving sentences resulting from prior convictions. Following the brief court appearance of Saturnino da Costa Belo, the witness who shouted out "*Viva Timor Leste!*" on March 4, it was reported that access to him and other convicted prisoners, including Gregorio Da Cunha Saldanha and Francisco Miranda Branco, had been restricted. Gregorio and Francisco were convicted of subversion in earlier trials stemming from the Santa Cruz demonstration, and had been included on the prosecution's list of prospective witnesses in

²⁷ See Lawyers Committee report, *op. cit.*

²⁸ See Lawyers Committee, *op.cit.* on the likelihood of such parties petitioning successfully for redress.

the Xanana trial. As of the visit of the Asia Watch observer, they had not yet testified, but were expected to appear on March 18. As of mid-April, they had yet to appear.

Pace of the Trial

The original schedule for the Xanana trial projected four court sessions per week and up to three witnesses per session. Based on those assumptions, a wrap up of the prosecution was projected for the end of February, the defense plea by first week of March, and a verdict by March 20. According to prosecutors in Dili, this scheduling of a verdict just prior to the Muslim holiday of Idul Fitri at the end of March would have enabled all parties to make use of the traditional asking and granting of forgiveness associated with this holiday.²⁹

However, after the first week, the trial schedule began to lag. By the time of the Asia Watch observer's visit, trial sessions were being scheduled only one day per week, and even then only one or two witnesses appeared per session. Court officials provided various explanations for the slowdown of the trial. The chief judge claimed that the rescheduling was due to his poor health -- specifically his vulnerability to attacks of malaria -- and due to the crowded court calendar and need to keep other trials moving along simultaneously. It should be noted these considerations must have emerged after January 29, when the chief judge himself signed the original trial schedule. Observers did not believe that the Muslim fasting month was a factor, since none of the judges were Muslim, and most agreed that the concurrent meeting of the national parliament (MPR) in Jakarta in early March was not a factor.

Another court official alluded to a more troubling explanation for the slowdown, i.e., that the prosecution was having trouble producing its scheduled witnesses. This explanation is consistent with events during the week of the Asia Watch observer's attendance at the trial. Henrique Belmiro Da Costa was scheduled to appear in court on March 11 as a prosecution witness, but was reported to have been unable to attend (*berhalangan*), and no specific reasons were given.³⁰ At the same court session, as mentioned above, a letter from a police doctor was produced stating that a second appearance in court by Saturnino Da Costa Belo was precluded by the witness's health. Similarly, the scheduled court appearance of Oscar Lima, a detainee who has never been visited by the ICRC, was postponed twice without a clear reason being given.³¹ Finally, the failure of Gregorio da Cunha Saldanha and Francisco Miranda Branco to appear as scheduled conformed to the troubling pattern. Recalling that many of these witnesses were in military custody at the time of their scheduled appearances in court, one wonders what, other than attempts by authorities to influence their testimony or concern about the nature of that testimony, could be hindering their attendance.

The slow pace of the trial has had a differential impact on various parties. Scheduling trial sessions at the rate of one per week prevented trial observers from the diplomatic and human rights

²⁹ also alluded to by Gen. Theo Syafei, in "Xanana Lambaikan Tangan, Mengerti Isi Dakwaan" *Suara Karya*, February 2, 1993.

³⁰ "Sidang Xanana Gusmao: Hari ini Belmiro dan Akuiliong beri Kesaksian," *Suara Timor Timor*, March 11, 1993, and "Akuiliong: Saya bantu Xanana karena takut dicegat!" *Suara Timor Timor*, March 12, 1993.

³¹ "Xanana siap menanggung dosa; Oscar Lima baru akan diperiksa Kamis besok," *Suara Timor Timor*, February 17, 1993.

communities and members of the press, both domestic and international, from continuously covering more than short portions of the proceedings; few organizations have the resources to post an observer in Dili for months at a time. Similarly, Xanana's defense counsel Sudjono has a private legal practice in Jakarta, and has had to bear the expense and opportunity cost of shuttling his team between Jakarta and Dili. He moved from a hotel into a government guest house in Dili in order to cut costs.

Despite the inconveniences posed by the slowdown of the trial, observers in the Indonesian human rights community agree that a slow pace is preferable to the "marathon" sessions that characterized subversion trials in Aceh last year. Those rushed proceedings, during which defense counsel hardly had time to consult with their clients, were criticized in a report by YLBHI later banned by the Indonesian government.³²

Openness of the Trial

The Xanana trial has been open to international observers from Asia Watch, the International Commission of Jurists, and members of the diplomatic community. Representatives of the domestic and international press, including journalists from Portugal, have also been allowed to attend the trial, and a journalist from the Australian Broadcasting Company was even allowed to film proceedings in the courtroom. It is thus the most closely monitored trial of any Indonesian political trial in recent memory. If the Indonesian government's decision to open its legal system to close scrutiny of this kind is a precedent, it is unquestionably a welcome one.

Access provided to international observers and the press has not been unrestricted, however. A request from Amnesty International to send an observer to Dili to observe the trial was denied.³³ The Asia Watch observer's time in Dili was limited to six days (rather than the ten days requested), thus limiting attendance at the trial to only one court session. Outside of the courtroom, the Asia Watch observer was under surveillance by military intelligence, and was accompanied at all times by a representative of the Indonesian Ministry of Foreign Affairs. Indonesian journalists are limited to one per news organization, and have to present their credentials one day in advance.³⁴ The trial has received extensive coverage in the new local newspaper in Dili, *Suara Timor Timor* (STT). An observer reported that journalists leaving the courtroom on March 4 were warned not to cover the incident of the witness shouting "*Viva Timor Leste*"; an article in the next day's STT mentioned a "small incident" in which the witness yelled out, but did not report what was said.³⁵

Access to court documents is a critical factor influencing the quality of trial observation. Copies of the indictment (*surat dakwaan*), demurrer (*eksepsi*), and the prosecution's response to the demurrer

³² Yayasan Lembaga Bantuan Hukum Indonesia, *Hasil Observasi Proses Peradilan Kasus Aceh* (Jakarta: 1991).

³³ "Sidang Xanana akan Berlangsung Secara Marathon" *Jayakarta*, February 1, 1993.

³⁴ "Xanana Gusmao, Pentolan Fretilin Mulai Diadili" *Suara Karya*, February 1, 1993, and "Xanana Diadili 1 Februari" *Kompas*, January 30, 1992.

³⁵ "Sidang Xanana Gusmao: Kami bantu Fretilin karena takut mati; Xanana tolak salam Saturnino" *Suara Timor Timor*, March 5, 1993.

were easily obtainable from the diplomatic community in Jakarta. The indictment had also been serialized in *Suara Timor Timor* in early February. No officials of the court were willing to provide a copy of the *Berita Acara Pemeriksaan* (BAP) to the Asia Watch observer, although judges and prosecution officials suggested that Xanana's defense lawyer could provide access to the document. As mentioned above, Sudjono declined to provide a copy of the BAP to the Asia Watch observer.

The Xanana trial has not been open to the general public.³⁶ Persons wishing to attend court sessions must pass through two checkpoints at which their names are compared against a prepared list. On March 10, at least two Indonesian citizens whose names were not on the list were turned away, even though there was room in the courtroom. Knowledgeable observers indicated that other than members of Xanana's family, diplomats, international observers, and the press, the courtroom was filled with government officials, military intelligence officers in plainclothes, and informers.

Security in and around the courtroom was heavy, but not heavy-handed. Some 50 uniformed policemen guarded the exterior and interior of the courtroom, while plainclothes officers, some wearing sophisticated communications equipment, assisted in processing prospective observers. Persons attending the trial had to exchange their identification cards for a pass, be frisked, and sit in assigned seats. One observer indicated that a local taxi driver was sufficiently intimidated so as not to want to drive near the courthouse.

Speculation about the Verdict

In an interview with the Asia Watch observer, Xanana's defense lawyer, Sudjono, stated that he would consider any sentence less than life in prison to be a victory. Various Indonesian civilian and military officials interviewed by the Asia Watch observer hinted that Xanana's sentence would be lenient, less than that given to Gregorio da Cunha Saldanha, the man charged with masterminding the peaceful November 12, 1991 demonstration, who was sentenced to life imprisonment. Several non-government observers shared the same expectation. (All observers assume that a guilty verdict is a foregone conclusion.) Some speculate that a relatively lenient sentence would represent an attempt to placate the Timorese, and an implicit acknowledgement on the part of the government that previous harsh sentences for subversion were inappropriate. As mentioned above, other observers assume that Xanana has entered into some sort of "deal" with the authorities. Still others believe leniency toward Xanana would give the *appearance* of a deal, which would lead to the demoralization of remaining Fretilin troops and sympathizers.

IV. East Timor: Sixteen Months after Santa Cruz

The Search for the Disappeared

In interviews with the Asia Watch observer, ABRI officials indicated that the search for the some 66 persons who "disappeared" following the Santa Cruz massacre continues. According to those officials, responsibility for the search has been turned over to the police. However, the military is cooperating in the current strategy to locate the disappeared, which is to work with village heads to identify residents who may have "come down from the hills" or otherwise "reappeared". The strategy implies a presumption that the disappeared are still alive, which appears unlikely given estimates that at

³⁶ "PN Dili tak Berwewenang untuk Mengadili Xanana" *Kompas*, February 4, 1993.

least 100 persons were killed and only 19 bodies have been officially acknowledged as discovered so far.³⁷ ABRI officials reported that "three or four" additional individual graves had been found, but that forensic tests could not conclusively tie the remains to the Santa Cruz massacre.

Military officials in Dili provided the Asia Watch observer with a list of 84 names, including the 66 persons for whom they are still searching as well as the 18 found buried but never identified. (The body of a New Zealander killed in the massacre, Kamal Bamadhaj, was also buried but later exhumed and returned to New Zealand.) The list is attached as Appendix 3. An army officer told the Asia Watch observer that the list does not include any names of persons who have "reappeared," but in fact, one name on the disappeared list, Afonso Maria, also appears on the list of people detained in connection with the capture of Xanana Gusmao.

Asia Watch compared the army list, which gives only name and place of residence, with two other lists, one of 112 names from an Indonesian source which must remain anonymous, and one from the database compiled by the Portuguese advocacy organization, *A Paz e Possivel*, of all those reported as missing, killed, wounded or arrested in connection with the shooting. We were interested to see which of the 84 appeared on all three lists and whether such a comparison might help identify the 18 people who were buried by the army. The Asia Watch observer heard speculation in Dili, impossible to verify, that the 18 were selected for burial by the army because they were actively working with the military and thus could be positively identified. This is only one possible explanation. There are many others, but such speculation could be prevented by a full and open inquiry in which experienced human rights organizations and forensic experts would work with the military and the families of the missing to piece together what happened to the "disappeared." Such an inquiry would include the exhumation by forensic experts of the 18 graves and analysis of clothing fragments and skeletal remains.

A few of the names on the list provided by the army are described by the other sources as having been wounded and hospitalized, which, if true, would strengthen reports that bodies were taken from the military hospital and disposed of on the night of November 12. One official told Asia Watch that there was a power outage that night in Dili which may have been used as a cover to remove the bodies. None of the various inquiries undertaken by the Indonesian government has adequately addressed the question of what happened to the missing.

Demonstrators Still in Detention

Following the Santa Cruz massacre of November 1991, 32 persons were arrested in connection with the demonstration. Of those, eight were brought to trial in Dili in June 1992, and received sentences ranging from five years and eight months to life in prison.³⁸ According to military officials in Dili, "Jakarta decided" that only 8 of the 32 should be brought to trial. The remaining 24 have been designated *tahanan pembinaan*, or persons "detained for guidance". Those 24 persons have been given over to the custody of territorial military units in their own or other villages in rural areas, where they work under the supervision of soldiers in rural development projects. Such labor is the Indonesian equivalent of what the Chinese call re-education-through-labor, since the purpose of this extended

³⁷ U.S. Department of State, "Indonesia", *Country Reports on Human Rights Practices for 1992*, U.S. Government Printing Office (Washington: 1993), p.570.

³⁸ ICJ report, op. cit.

detention is to change their attitudes, as well as teach them skills that will enhance their employment prospects. According to General Theo Syafei, there is no time limitation to this kind of detention, although supervising soldiers are given "targets" for completing the reeducation of detainees in their care. When asked whether these detainees would be charged and brought to trial, a senior military intelligence officer replied, "*tidak usah*" (it's not necessary).

Disciplining the Military

A response of the Indonesian government to the Santa Cruz massacre that drew international commendation was the convening of a Military Honor Council (*Dewan Kehormatan Militer* or DKM) to determine whether or not military officers should be held accountable for the tragedy. Based on the DKM report, eight soldiers were tried in May-June 1992 on charges of disobeying or exceeding orders and given sentences ranging from eight to 18 months.³⁹ In addition, the military announced that internal disciplinary actions had been undertaken, including the discharge or transfer of senior commanders. Although the Indonesian military did not release the names of the officers so disciplined, domestic and international observers were able to figure out who they must be. Nevertheless, it is significant that senior military intelligence officials provided the Asia Watch observer with a list of the names, ranks, and dispositions of 19 officers determined to have been "involved" in the November 12 incident. This list is attached as Appendix 3.

All ABRI officials interviewed by the Asia Watch observer denied the existence of the "uncontrolled troops" (*pasukan liar*) mentioned in the preliminary report of the National Commission of Inquiry, troops not in uniform who allegedly initiated the firing on the demonstrators.⁴⁰ They explained that those individuals were regular troops who happened to be at home or exercising when they heard of the violence and rushed to the scene. Regarding the question of who, then, started the shooting, General Syafei explained that the demonstrators, who were armed with knives, grenades, and firearms, had initiated the violence. He stated that this information had been revealed in the trials of the demonstrators. (Asia Watch is unaware of any evidence, in the trial documents or elsewhere, to support that assertion.)

In addition to the disciplinary actions mentioned above, a variety of sources interviewed by the Asia Watch observer concurred that military discipline had improved under the leadership of General Syafei, who assumed his position as the Commander of Kolakops in January 1992.⁴¹ General Syafei stated that some 330 soldiers in East Timor had been disciplined over the last year for infractions ranging from assault to fighting. When questioned about allegations of rape of female detainees by soldiers, General Syafei acknowledged one incident that had come to his attention, and reported that the soldier involved had been disciplined. General Syafei also reported that he had invited representatives of the ICRC to address his officers to explain their role in carrying out international humanitarian law.

Reports of an incident that occurred in Baucau on October 5, 1992, indicate that there is still room for improvement in military discipline in East Timor. In Xanana's indictment, the prosecution

³⁹ Asia Watch, "*East Timor: The Courts Martial*", Vol.4 No.19, p.5

⁴⁰ Asia Watch, "Asia Watch Criticizes Commission Report on East Timor," Volume 4, Number 1, January 2, 1992.

⁴¹ Also mentioned in Department of State report

states, "An attack was made upon ABRI at the Sri Lestari foodstall, in the city of Baucau, district of Baucau, led by David Alex, causing one soldier named Ici Sudani to die from shooting and one M-16 to be captured." In this official version of the incident, the gunman then mistakenly fired on another Fretilin soldier outside the tea shop, and fled. The wounded Fretilin soldier was taken to a military hospital where he later died. This version was recounted with minor variations by witnesses in the Xanana trial and by military officials in interviews with the Asia Watch observer. Unofficial accounts contend that the October 5 incident was not a Fretilin attack at all, but rather the result of a dispute over a woman involving ABRI soldiers which took place around 9 p.m. in front of the office of the district head (*bupati*) in Baucau near an exhibition on development. In the course of the dispute, at least one soldier was shot and killed. The soldiers wanted to cover up their involvement in the shooting, according to this version, and so turned on a number of East Timorese, including a young man named Dominggus Aikarak, the younger brother of Saturnino da Costa Belo (the witness who shouted "*Viva Timor Leste!*" at Xanana's trial). Dominggus was severely injured but managed to get himself to the general hospital in Baucau. Later the same night, soldiers came to the hospital and took Dominggus out, over the objections of doctors. He was beaten to death just outside the hospital. The next day the army told the head of the village where Dominggus lived (Kaibadak, Baucau) that he had been killed in a Fretilin attack on the army. The next day, the army brought Dominggus's body back to the village, but the villagers refused to accept it because they did not believe the explanation given for Dominggus's death. The army then buried the body elsewhere.

The U.S. State Department appears to accept the unofficial version: "In Baucau, East Timor, two East Timorese were shot on October 5. One was killed outright by ABRI forces. A credible source believes the other, who was taken to a military hospital, was beaten to death while in the hands of ABRI."⁴² The official version of the incident is widely discounted, but no serious investigation of the deaths has taken place.

Disciplining the Timorese

By the same token, General Syafei's regime has also been characterized by tighter control over civilians in East Timor, including severe restraints on freedom of expression and association. In an interview with the Asia Watch observer, he stated that demonstrations and making of banners were acts of political rebellion, and that he had made clear that such activity would not be tolerated. He stated that while he would attempt to deal with problems by persuasive means, he would not hesitate to utilize repressive means, including "*yang paling keras*" (the most severe). He went on to say that first in line for punishment would be members of the Timorese "elite", who in his opinion had advance knowledge of and instigated the events of November 1991. General Syafei told Asia Watch that it was impossible that neither Bishop Carlos Ximenes Belo of Dili nor Governor Carrascalao knew about the plans for a demonstration on November 12, 1991. (Presumably many other people, including the military, knew as well; the march to the Santa Cruz cemetery on November 12 had been announced over the radio.)

Catholic church officials have been suspected by the military of sympathizing with the demonstrators, and have also been subject to subtle and not-so-subtle forms of intimidation. East Timorese priests have been detained briefly, foreign-born priests are held hostage to their tenuous immigration status, and the lay Timorese staff who work with them are subject to harassment. ABRI

⁴² Department of State, "Indonesia", *Country Reports on Human Rights Practices for 1992*, U.S. Government Printing Office (Washington: 1993), p.570.

officials interviewed by the Asia Watch observer went out of their way to undermine the moral authority of the church by alleging immoral and illegal conduct on the part of the clergy. The church, said Syafei said, used "humanity, democracy, human rights and freedom" as a cover for illicit activities.

Families of activists have also been subject to intimidation. Gabriela Lopes da Cruz Pinto, the wife of Constancio Pinto, the man named in the indictment against Xanana as head of the Executive Committee of the resistance in 1991 and who later fled to Portugal, was called in for interrogation on April 12, 1993, and several times thereafter. She was reportedly questioned about the activities of her husband, who during the period she was interrogated was in the United States on a speaking tour. Pinto is a supporter of self-determination in East Timor.

The Territorial Operation

ABRI officials interviewed by the Asia Watch observer stressed the reorientation of the military presence in East Timor from combat to a territorial operation. The territorial operation, dubbed OpTer, is a "hearts and minds" strategy of placing soldiers in the villages to work on development projects. General Syafei stated that only eight battalions were now stationed in East Timor, compared to 12 in 1991, of which six were combat, and that departing combat troops were being replaced with territorial troops. He predicted that by September 1993 the total troop strength would be reduced to six battalions, all territorial.

Knowledgeable observers report that the primary role of soldiers assigned to villages is to monitor Timorese residents, and that if anything, OpTer represents an increase in oppression in rural areas. The "development" projects in which those soldiers are engaged are of dubious value. In Aileu, soldiers observed by the Asia Watch observer were engaged in constructing decorative traditional houses and monuments for the city square, while road repairs were being undertaken by civilian workers.

OpTer soldiers have reportedly been involved in arranging *upacara sumpah darah* (blood oath ceremonies) in the villages. At these ceremonies, alleged former Fretilin sympathizers symbolize their change of heart by drinking a mixture of their blood with a local alcoholic beverage. According to Timorese, the ceremony is a perversion of a local tradition used to symbolize a truce between two conflicting parties, and now being inappropriately used to symbolize surrender. Reliable reports indicate that many young people who have never been involved with Fretilin have been coerced into participating in these ceremonies, which are similar to the ones orchestrated by the military in Aceh. ABRI officials in Dili interviewed by the Asia Watch advisor claimed that the blood drinking ceremonies were at the initiative of the participants, and that the role of the army was limited to assuring their safety from other villagers who remain Fretilin sympathizers.

V. Remembering History

On her last full day in Dili, military officials arranged for the Asia Watch observer to take a day trip to Aileu, a small city less than two hour's drive south of Dili, to visit "sites of historic interest". Accompanying the observer were an official from the provincial information office, a representative from the Ministry of Foreign Affairs, and a reporter from a Jakarta newspaper. Upon arrival in Aileu, the party was greeted in the Regent's office by a delegation of some 20 regency-level officials, including the ranking military and military intelligence officers, the head of the local police, the head of the local representative assembly, and two "eye-witnesses" to atrocities committed by Fretilin forces in 1975.

The eye-witnesses were prompted by officials to tell their stories in gory detail, and then the entire entourage, in caravan, visited the sites of four mass graves of detainees allegedly executed by Fretilin forces. At each site, the stories were retold, events reenacted, and photographs taken. The party was joined by a senior military intelligence official from Dili, who recorded the visits with snapshots of his own. Throughout the morning, escorts reminded the Asia Watch observer of the importance of truth and remembering history, how outrageous it was that the perpetrators of the atrocities were not punished and remain free, and how fortunate it was that eye-witnesses survived to tell the story.

Upon the group's return to Dili, the Asia Watch observer requested a stop at the Santa Cruz cemetery, site of the November 1991 massacre. As the group got out of the vehicle, an OpTer soldier approached, questioned the group regarding its intentions, and informed them that taking photographs at the cemetery was prohibited without a special letter of permission. The Asia Watch observer asked for a description of the events of November 12, 1991. The OpTer soldier said he only knew what he had read in the newspaper. The official from the provincial information office, who during the morning visit to Aileu had provided extensive commentary, said he knew nothing about it. There were no eyewitnesses, no stories, no reenactments, no photographs, and no lectures on the importance of remembering history.

IV. Conclusion

The Indonesian government has taken a number of steps to respond to international criticism of its human rights record in East Timor. In opening the Xanana trial to outside observers, it has tried to demonstrate its compliance with domestic and international legal norms. There is still some way to go toward meeting those norms, but the openness itself is a positive step. The willingness of foreign ministry and military officials to meet with the Asia Watch observer and to provide documents about internal military discipline, persons in military detention, and the "disappeared" are also appreciated. If the decision to try Xanana under the Criminal Code rather than the anti-subversion law represents a recognition by the Indonesian government of the shortcomings of the latter, that would also be a positive development.

Many concerns, however, remain. From the brief glimpse Asia Watch had of the trial proceedings, they fell short of international standards in several key respects. As indicated above, questions remain about how free Xanana was in his choice of counsel. There are also serious concerns about possible government attempts to influence the testimony of prosecution witnesses. These concerns arise from the delay in presenting key witnesses, the similarity of some of the witness testimony, and the inability of Asia Watch to obtain a copy of the interrogation depositions. International standards call for the accused to be able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him. The blanket refusal of the Governor of East Timor to allow local government officials to testify, and the inability of the government to guarantee the safety of witnesses who are fearful of reprisals undermine that right. While the trial was technically open, the government in fact imposed tight controls on who was allowed into the courtroom. And while Xanana had the assistance of interpreters at all times, not all of the proceedings were translated, and translations were not always accurate.

There were also important violations of the Indonesian Criminal Procedure Code, in terms of the refusal of the Indonesian military to allow any access whatsoever to Xanana for 17 days after his arrest and for its refusal to inform the family as to his place of detention. Both actions only fuel fears of torture. In this case, as well as others, the Indonesian government would advance the protection of human rights if it ensured immediate and frequent access by family and counsel to all detainees and fully implemented

the provisions of the Criminal Procedure Code.

Asia Watch remains concerned about the safety of Xanana and those detained in connection with the arrest of Xanana. The ICRC has not been able to visit Xanana since its first visit in December. It has had no access whatsoever to Oscar Lima, a businessman, since his arrest in November, and its access to many other detainees, including witnesses in the Xanana trial, remains severely limited. As with family and counsel, early and regular access by the ICRC or other humanitarian organizations to these detainees -- and others, such as Mau Hunu, arrested since the Asia Watch visit -- would be an important safeguard against mistreatment.

The visit to East Timor also gave Asia Watch an opportunity to assess the follow-up to investigations of the Santa Cruz massacre. If the prosecutions of some soldiers and disciplinary actions against others were unprecedented in a human rights case, there are still far too many questions left unanswered. The most important of these is what happened to the missing. It is clear that no serious effort has been made to identify the bodies of the 18 people buried; even resolving those 18 cases would shed important additional light on what happened on November 12. The strategy of trying to identify disappearance victims by having village heads report to the army on who has "reappeared" not only presumes that most of the missing are alive; it also lessens the responsibility of the military to account for their actions.

There has also been too little attention to how the shooting started. General Syafei's remarks notwithstanding, there is no evidence whatsoever that the demonstrators started the firing, and yet none of the military or police who were court-martialled were at the scene when it began. Who then was responsible?

The willingness of the Indonesian government to allow outside observers to attend sessions of the Xanana trial is welcome, and Asia Watch reiterates its hope that this signals an increased readiness of the government to open charges of human rights violations to outside scrutiny. It does not, however, resolve the urgent need for improved human rights safeguards in East Timor, in-depth investigations of human rights violations by competent and independent investigators, and far more accountability on the part of the Indonesian military.

COURT SESSION/WITNESSES

DATE	NAME	POSITION	TESTIMONY
1 Feb	Ketut Suwara	Prosecutor	Reading of Surat Dakawaan
3 Feb	Sudjono	Defense	Reading of Eksepsi
5 Feb	Ketut Suwara	Prosecutor	Response to Eksepsi
11 Feb	Godang	Judge	Rejection of Eksepsi
15 Feb	Agusto Pereira	(Detained) Witness: bunker homeowner	construction of bunker
15 Feb	Joao Ant. de Jesus Costa	Witness: Army corporal	X arrest
15 Feb	Kadiyo	Witness: policeman	wounded in 1980 TVRI attack
15 Feb	I Made Maja	Witness: policeman	wounded in 1980 TVRI attack
16 Feb	Islamet Widodo	Witness: Guru SMTA Baucau	June 1990 attack on SGO that killed his daughter
16 Feb	Marsinah alias Rahayu	Witness: Warung owner	Oct 5 1992 incident in Baucau
16 Feb	Aminullah	Witness: TNI-AD	Oct 5 1992 incident in Baucau
16 Feb	Martinho Fernandez	Witness: childhood friend of X	1983 Klaras incident
18 Feb	Husein Hafel	Witness: TNI-AD	X arrest
18 Feb	Oscar Lima	(Detained) Witness: businessman	aid to Fretilin; plans for attack in Oct 1991; video
18 Feb	Antonio Soares da Silva alias Mau Kalo	(Detained) Witness: Fretilin commander	attacks on ABRI and villagers
22 Feb	Mauhudu Jose Da Costa alias Hondu Rangkadalak	(Detained) Witness: Wakil Panglima Fretilin	Communications with Horta; X's command, Klaras incident
22 Feb	Antonio Campos	Witness: Operations asst.	Attacks against Indonesian army; communications with Australia
25 Feb	Rui de Oliveira alias Oan Fuik	Witness: courier	Klaras incident; saw X shoot at ABRI

25 Feb	Mariano Da Silva	Witness: courier/cook	acted as a double agent
4 Mar	Luis Cardoso	Witness:	
4 Mar	Saturnino Da Costa Belo	(In custody) Witness: convicted of KUHP 154/5	yelled "Viva Timor Leste" and was escorted from court
11 Mar	Akuiliong alias Francisco Lui	(Detained) Witness: driver	transport of X from Dili to Same pp
	Gregorio Da Cunha Saldanha alias Giri	(In custody) Witness: convicted of subversion	
	Fransisco Miranda Branco	(In custody) Witness: convicted of subversion	
	Henrique Belmiro Da Costa	(Detained) Witness: driver	

APPENDIX 1: LIST OF UNTRIED DETAINEES AS OF MARCH 1993

The following list was provided by the military:

1. Mauhudu (Jose DaCosta), 30
Occupation: ex-deputy secretary of CDF GPK
Address: Fatuhada, East Dili
2. Vasco Da Gama, 27
Occupation: student in agriculture faculty, University of East Timor, Dili
Address: Becora, behind the Dili prison
3. Francisco S. Luy alias Akuiliong, 30
Occupation: businessman
Address: Audian, near the tire factory Pres Mas Yanto, Dili
4. Henrique Belmiro DaCosta/Damai, 40
Occupation: taxi driver
Address: Caicot I, Bairopite, RT II/RK III
5. Domingus Oliveira/Mariano, 39
Occupation: self-employed
Address: Motael, RT IV, RK II, Dili
6. Jose Ramos asal Ainaro, 35
Occupation: self-employed
Address: Taibesse, RT XV, Dili
7. Jorge Serrano, 22
Occupation: unemployed
Address: Lahane Barat, Taibesse, Dili
8. Jose Tilman/Akasio, 36
Occupation: farmer
Address: Bairopite
9. Miss Regina Serrano, 17
Occupation: farmer
Address: Bairopite
10. Mrs. Aliansa Araujo, 38
Occupation: teacher, SDN II, Dili
Address: Lahane Barat, Taibesse

11. Miss Legia Araujo, 26
Occupation: unemployed
Address: Lahane Barat, Taibesse
12. David Miguel Arcando/Paulino Montero, 29
Occupation: self-employed
Address: RT I, Poeiete, Ermera
13. Daniel Sarmiento, 35
Occupation: Teacher, SMPK, Viqueque
Address: Carabalau, RT I/RK I, Viqueque
14. Antonio Da Costa alias Aitahan Matak, 35
Occupation: self-employed
Address: Santa Cruz, RT 13/RK 05, Dili
15. Benio de Fatima, 23
Occupation: farmer
Address: Holao, RT 3, Same
16. Oscar Lima, 40
Occupation: director, PT Surio Mas, Lorosai
Address: Jl. Bisbau Medeiros, Dili
17. Cosme Camilo da Costa, 32
Occupation: farmer
Address: Vila Verde, RT 8/RK 4, Dili
18. Atino, 30
Occupation: auto mechanic at "My Friend garage, Dili
Address: Taibesse, Dili
19. Vicente Fd Ximenes, 38
Occupation: director, CV Colega Timor
Address: Vila Verde, Dili and Bahu, city of Baucau
20. Francisco Martins, 48
Occupation: village head, Balibar
Address: Balibar, West Dili
21. Abel da Costa, 33
Occupation: farmer
Address: Bare, RT 4/RK 2, West Dili
22. Delvin da Silva, 21
Occupation: student
Address: Kuintal Arbiru, RT 04/RK 11, East Lahane, Dili

23. Agustino da Silva, 32
Occupation: unemployed
Address: Kuintal Arbiru, RT 04/RK 11, East Lahane, Dili
24. Alexandre dos Santos, 38
Occupation: farmer
Address: Kamea, Bidau, RT 2/RW VI
25. Pedro Sarmiento dos Santos, 44
Occupation: civil servant, BKPM (coordinating body for village development), Dili
Address: Jl. Doalessu Cotareal, Dili
26. Faustino Freitas da Silva, 39
Occupation: civil servant, BP-7, Dili
Address: Bedois, Camea, RT II/RK IV, Dili
27. Fernando Benevides, 26
Occupation: civil servant, BAPEDEA, Tingkat 1, Dili
Address: Lahane Barat, RT 6/RK 1, Dili
28. Afonso Maria, 37
Occupation: Unemployed
Address: Santa Cruz, Dili
29. Mrs. Armandina, 37
Occupation: civil servant
Address: East Lahane, Dili
30. Gilman do Santos, 36
Occupation: employee, CRS, ETADEP, Dili
Address: East Lahane Dili

APPENDIX 2: OFFICERS DISCIPLINED AFTER THE SANTA CRUZ MASSACRE

The following is a translation of a memo given to the Asia Watch observer by the Indonesian military.

Military Personnel Involved in the Dili Incident of November 12, 1991

1. FIRST GROUP

a. Three officers were dismissed from their military duties:

1. Kolonel Inf Gatot Purwanto (Asintel Kolakpos Tim-Tim).
2. Kolonel Inf Binsar Aruan (Dan Sektor "C").
3. Brigjen TNI Rudy Warouw (Pangkolakops Tim-Tim).

b. Two people were not placed in positions within the structure of the Indonesian army but are still on active duty:

1. Kolonel Inf Sepang (Wapangkolakops Tim-Tim merangkap Dan Rem 164/WD).
2. Letkol Inf Wahyu Hidayat (Dan Dim 1627/Dili).

c. one person has, for the moment, not been given a position within the Indonesian army structure but is still on active duty, namely Major General Sintong Panjaitan, Pangdam Udayana IX)

2. SECOND GROUP

The following went beyond the bounds of appropriate behavior verging on criminal actions and were brought before a military tribunal:

<u>Name</u>	<u>Sentence</u>
a. Letda Inf Mursanib	1 year 2 months
b. Letda Inf J.H. Aritonang	1 year
c. Letda Inf H.E. Sunaryo	1 year
d. Letda Inf Y.A. Penpada	8 months
e. Serka P. Paul Meda	1 year
f. Sertu Udin Syukur	1 year 6 months
g. Sertu Alosyus Roni	1 year 2 months
h. Koptu Pol Martin Alou	1 year 5 months
i. Prada Mateus Maya	8 months
j. Prada Al de Yesus	8 months

The above were also dishonorably discharged.

3. **THIRD GROUP**

Three officers were investigated and received administrative sanctions in the form of not being given positions because they did not take actions that they should have taken.

- a. Kepala Staf Korem Wira Dharma: Letkol Art Cheri Bolang.
- b. Asisten Operasi Kolakops Tim-Tim: Kolonel Inf Dolgi Rondonuwu.
- c. Asisten Teritorial Kolakops Tim-Tim: Kolonel Inf Michael Suwito.

Jakarta, March 7, 1993

APPENDIX 3: OFFICIAL LIST OF DISAPPEARED

The Indonesian army provided a list of 84 names to Asia Watch. In the following list, the information from the army appears first in bold; information from an Indonesian source which must remain anonymous follows in regular print, preceded by the initials (IS); and information from a database compiled by the Portuguese organization, *A Paz e Possivel*, appears in italics, preceded by (PP). All spellings are as they appeared in the original lists. An asterisk (*) before a name indicates some uncertainty as to whether the person is the same as the one on the army list. The problem arises in part because most East Timorese have three or four names, all of which are common, and someone named Gregorio Paulo Araujo da Costa Pereira could be listed as Gregorio da Costa, Gregorio Paulo, Paulo Araujo da Costa P. and so on. A second problem is caused by the Indonesian misspellings of Portuguese names. One of the most obvious on the army list is No.33 where "Perpetua" in Portuguese becomes "Frefetus" in Indonesian. Many of the names on this list do not sound like Timorese names and may reflect misspellings, making it all the harder to identify or trace the missing person.

1. **Fernando Gregorio Martins, Bairopite**

IS: Fernando Gregorio Martinz Pincheiro
 Age: 18
 Place of residence: Bairo Pite
 Profession: high school student, SMPN IV
 Status: disappeared, 11.12.1991

*PP: Fernando Gregorio Martins Pinheiro
 Age: 20
 Place of residence: Bairo Pite
 Status: disappeared, believed killed*

2. **Dionico Marques, Bidau Mota Claran**

IS: *Deonisio da Silva
 Age: 19
 Place of residence: Bidau-Lacidere, Dili
 Profession: high school student, SMPN III
 Status: disappeared, believed shot and killed, 11.12.91

*PP: Dionisio Marques
 Age: 20
 Place of Residence: Bemori
 Profession: student
 Status: wounded and hospitalized*

3. **Leovigildo de Araujo Carmo, Bemori**

*PP: Leovigildo Araujo Carmo
 Father: Manuel de Araujo
 Place of residence: Bemori*

Status: wounded and hospitalized

4. **Joanico de Deus Soares, Fatumeta**

PP: Joanico Santos Soares

Age: 23

Place of Residence: Bairro Pite

Profession: Student

Status: wounded

5. **Cornelio Lemos, Hospital**

PP: Cornelio Lemos

Age: 20

Place of residence: Hospital

Profession: Student

Status: wounded and hospitalized

6. **Nelio Hermenegildo Ximenes, Kintal Mascaren**

IS: Nelio Armindo Dias Ximenes

Age: 16

Place of residence: Mascarinhas

Profession: student, SMPK, St. Jose

Status: disappeared, 11.12.91

PP: Nelio Hermengildo Ximenes

Place of residence: Mascarenha

Profession: student, SMPK

Status: wounded and hospitalized

7. **Macito, Becora**

8. **Alfredo da Conceicao Ribeiro, Colmera**

PP: Alfredo Conceicao

Age: 21

Place of residence: Vila Verde

Profession: student

Status: killed

9. **Alceides da Camara, Vila Verde**

10. **Vicente Isabel Viegas, Vila Verde**

11. **Domingos Soares de Fatima, Bairro Pite**

*PP: *Domingos Fatima Pereira*

Age: 20

Place of residence: Bairro Massaur

Profession: student

Status: wounded

12. **Eldo Dorte Da Silva, Santa Cruz**

IS: Eldo Suardi da Silva
 Age: 20
 Profession: student, University of East Timor
 Status: disappeared, 12.11.91

PP: Eldo Duarte Silva
Profession: student
Status: arrested, detained in polwil, after massacre

13. **Dominggos Guterres, Bidau Lecidere**14. **Basilio da Costa, Haslaran**15. **Joanico De Cham, Becora**16. **Jose Hendrique, Becora**17. **Manuel da Silva Freitas, Becora**

IS: Manuel da Silva Freitas
 Age: 20
 Place of residence: Becora, Massau Bawah
 Profession: student, SMPN III, Dili Timur
 Status: disappeared, 11.12.91

PP: Manuel Silva Freitas
Age: 16
Place of residence: Becora
Profession: student
Status: disappeared, believed killed

18. **Vitorino da Silva Lopes, Becora**

IS: Vitorina da Silva Lopez
 Age: 22
 Place of residence: Becora, Massau Bawah
 Profession: high school student
 Status: disappeared, 11.12.91

PP: Vitoriano Nicolau Silva
Age: 19
Place of residence: Becora
Profession: student
Status: disappeared, believed killed

19. **Jose Francisco da Soares, Bemori**20. **Fredi Martins da Costa, Bemori**

IS: Fredi Martinz da Costa
 Age: 20 (born 3 February 1972)
 Place of residence: Audian
 Profession: student, SMAK, St. Jose

Status: disappeared, 11.12.91

PP: Fredy Costa

Age: 17

Place of residence: Bemori

Status: disappeared

21. **Celio Pascual da C. Alexio, Bairro dos Grilos**

IS: Celio Pascual

Age: 21

Place of residence: Bairro-Central

Profession: high school student, SMAN I, Dili

Status: disappeared, 11.12.91

PP: Celio Pascoal Aleixo

Age: 18

Place of residence: Bairro dos Grilos

Profession: student

Status: disappeared, believed killed

22. **Jose Rodrigues Rego, Bemori**

IS: Jose Rodrigues Rego

Age: 24

Address: Becora

Profession: self-employed

Date disappeared: 11.12.91

PP: Jose Rodrigues Rego

Age: 25

Address: Becora

Profession: student, STM

Status: arrested

23. **Nuncio Thomas P. Mestre, Vila Verde**

24. **Andriano Pereira alias Alito, Becae**

IS: *Alerto

Age: 17

Place of Residence: Bairro Central

Profession: student

Status: disappeared, 11.12.91

*PP: *Aluto*

Age: 17

Place of residence: Bairro Central

Profession: student

Status: disappeared

25. **Abel Amaral, Becae**

26. **Florencia Rego, Aitularan**

27. **Caetano Jeronimo, Fatuhada**

PP: Caetano Ximenes

Age: 18

Place of Residence: Fatuhada

Status: disappeared

28. **Briato Pereira Nestre, Vila Verde**

29. **Julio Sarmento Borges, Vila Verde**

IS: Julio Sarmento Borges

Age: 20

Place of residence: Vila Verde

Profession: student, SMEAN

Status: disappeared

PP: Julio Sarmento Borges

Age: 18

Place of residence: Vila Verde

Status: killed

30. **Emilia Leila Boavida, Vila Verde**

31. **Thomas Ximenes, Railaco**

IS: Thomas Ximenes

Age: 31

Place of residence: Vila Verde

Profession: elementary school teacher, SDN I, Kailalio and university student, Dili

Status: disappeared, 11.12.91, believed murdered at time of incident

PP: Tomas Carlos Ximenes Belo

Age: 33

Place of residence: Vila Verde

Profession: teacher

Status: disappeared

32. **Abelito Amaral, Audian**

33. **Adelia Frefetus Sabu Araujo, Taibesi**

IS: Adelia Perpetua Savo de Araujo (F)

Age: 20

Place of residence: Taibesse

Profession: student, SMAK, St. Jose

Status: disappeared, 11.12.91

PP: Adelia Perpetua Savo Araujo

Age: 18
Place of residence: Ailoklaran (originally from Oecussi)
Profession: student, St. Jose
Status: disappeared, believed killed

- 34. **Jose M. Tang, Bemori**
- 35. **Jose Augusto, Bemori**
- 36. **Januari da Conceicao, Santa Cruz**
- 37. **Afonco Maria, Beto Barat**

IS: Alfonso Maria
 Age: 33
 Place of residence: Santa Cruz
 Profession: farmer
 Status: disappeared, 11.12.91

PP: Afonso Maria
Age: 33
Place of residence: Fatu Hada
Profession: farmer
Status: disappeared

- 38. **Duarte Jeronimo, Santa Cruz**

- 39. **Andre Soares, Santa Cruz**
 IS: Andre Soares
 Age: 22
 Place of residence: Santa Cruz, Bemori
 Profession: student, SMAK, St. Jose
 Status: disappeared, believed killed in incident

PP: Andre Soares Larak
Age: 20
Profession: Student, SMAK
Status: disappeared, believed killed
PP also lists Andre Escurial Soares who is probably the same person.

- 40. **Americo Santana, Kintal Boot**
- 41. **Paulo Martins, Becora**
- 42. **Regina Batista, Becora**
- 43. **Agusto Goncalves, Taibesi**
- 44. **Elda Alves, Kuluhun**
- 45. **Paulino Mones F., Bidau Lecidere**
- 46. **Paulino da Costa F., Bidau Mota Klaran**
- 47. **Victoria Soares, Mascarenhas**
- 48. **Abril, Kintal Boot**
- 49. **Emilia Ximenes, Dare**
- 50. **Mariana Periera, Metiaut**
- 51. **Antoni Basilio G, Bidau Masao**
- 52. **Olina Soares, Kintal Boot**
- 53. **Alexandrino da Costa, Comoro**

54. **Thomas Mendez Pereira, Bidau Lecidere**

PP: Tomas Mendes Pereira

Age: 16

Place of residence: Dili

Status: killed

55. **Joao Batista Nunes, Mascarenhas**56. **Julio Fernando, Vila Verde**57. **Reonizio da Silva, Bidau Lecidere**58. **Eka, Lahane Barat**

PP: Rosmaninho Costa (Eka)

Age: 21

Status: arrested, detained in Polwil Dili

59. **Nelson Araujo de Jesus, Vila Verde**60. **Eurico Jeronimo, Becora**61. **Paulio Luis, Ailoclaran**62. **Carlos Agustino D., Lahane Barat**63. **Rojeno Ximenes, Becora**64. **Rogério Sequiera, Dili**

PP: Rogério Sequiera

Age: 21

Place of residence: Akadiruhum

Profession: student

Status: wounded

65. **Simon Husafnesi, Motael**66. **Nicael Lopes, Motael**67. **Ameco da Costa, Audian**68. **Matius Lemos, Aituilaran**69. **Francisco Duarte, Bidau Santana**70. **Laurencio Alves, Akadiruhun**

PP: Lourenco Alves

Age: 20

Place of residence: Dili

Profession: student

Status: disappeared, believed killed

71. **Thomas Menedez, Akadiruhun**

PP: Tomas Mendes

Age: 21

Place of residence: Lahane (originally from Maliana)

Profession: student

Status: disappeared

72. **Manuel Soares Carvalho, Bidau Lecidere***PP: Manuel Soares Carvalho**Age: 20**Place of residence: Kuluhun**Status: disappeared, believed killed*73. **Matius Goncalves alias Mila, Becora**74. **Matius Carvalho, Becora**

IS: *Matius C. Araujo

Age: 21

Place of residence: West Lahane, Dili

Profession: Student

Status: disappeared, November 11, 1991

*PP: *Matias C. Araujo**Age: 21**Place of residence: West Lahane, Dili**Profession: Student*75. **Jose, Becora**76. **Manuel Vicente, PT. Batara Indra**77. **Paulo de Jesus, PT. Batara Indra**78. **Apoli Alves, PT. Batara Indra**79. **Francisco Oliveri, PT. Denok**80. **Joao Leo, PT. Denok***PP: Joao Leao**Age: 22**Place of residence: Dili, Bekussi**Status: killed*81. **Manuel Metan, PT. Denok**82. **Dominggus Mariano, PT. Denok**83. **Pedro, Lahane**84. **Joao da Silva, Bidau***PP: Joao Silva**Age: 18**Place of residence: Kuluhun**Profession: student**Status: killed*

APPENDIX 4: OTHER REPORTED DISAPPEARANCES

The following names appear on **both** the Indonesian list and the Portuguese list of those missing from the November 12, 1991 massacre, but do not appear on the army list:

- | | |
|--------------------------------|---------------------------------|
| 1. Afau | 43. Pedro Espirito Santo |
| 2. Agostinho Freitas | 44. Pedro Freitas |
| 3. Alberto Gutteres | 55. Pedro Ribeiro |
| 4. Alberto Maria Rota | 56. Ulisses Conceicao Goncalves |
| 5. Alvaro Soares Silva | 57. Vicente Paulo Madeira |
| 6. Ameu | |
| 7. Antonio Mau Rica | |
| 8. Balbina Ximenes | |
| 9. Carlos Silva | |
| 10. Celestino Maia | |
| 11. Claramundo Coimbra | |
| 12. Daniel de Jesus | |
| 13. Domingas Goretti Pacheco | |
| 14. Domingos Correia | |
| 15. Emilio Jorge | |
| 16. Ernesto Castro | |
| 17. Estevao Costa Matos | |
| 18. Fabio Silva | |
| 19. Fernando Ramos | |
| 20. Filomena Soares | |
| 21. Francisco Amaral | |
| 22. Francisco Araujo | |
| 23. Francisco Belo | |
| 24. Francisco Fernandes Garcia | |
| 25. Francisco M. de Jesus | |
| 26. Francisco Silva | |
| 27. Germano Silva | |
| 28. Innocencio Gama | |
| 29. Joao Mendes | |
| 30. Joao Rego Lemos | |
| 31. Jorge Pinto | |
| 32. Jose Monteiro | |
| 33. Jose Quintao Sarmiento | |
| 34. Manuel Costa | |
| 35. Manuel Goncalves | |
| 36. Manuel Kelapa | |
| 37. Maria Cutela | |
| 38. Mario Santos | |
| 39. Marita Alau | |
| 40. Marcal Maia | |
| 41. Moises Araujo | |
| 42. Paulo Gutteres | |

APPENDIX 5: LIST OF OFFICIALS MET BY ASIA WATCH

Jakarta:

Minister of Foreign Affairs Ali Alatas
 Mario Carrascalao, Ministry of Foreign Affairs, Jakarta
 Irawan Abidin, director, American affairs, Ministry of Foreign Affairs
 Rusmaldi "Pit" Dawanie, American affairs, Ministry of Foreign Affairs

Commodore A.A. Kustia, Director, External Affairs, BAIS
 Brig. Gen. Hendro Priyono, Director, Internal Affairs, BAIS (as of April 1993, the Jakarta regional commander)

Baharuddin Lopa, director general of corrections, Ministry of Justice

Dili:

Gen. Theo Syafei, operations commander, (Komando Pelaksana Operasi or *Kolakops*); as of April, commander of KODAM IX Udayana, the regional command based in Bali.
 Col. Supit, assistant for intelligence, Kolakops

Heronymous Godang, Chief Judge
 Pandapotan Sinaga, judge
 A.B. Radjah, judge
 Firman Simanjuntak, court official

Jakob Saleh, deputy high prosecutor
 Endang Supardi, prosecutor

Faustinus Soares, information department
 various district-level civilian and military officials in Aileu