



BLAMING THE VICTIMS:

**The 12 November 1991 Massacre in
Dili, East Timor, and the Response
of the Indonesian Government**

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Introduction

From 50 to 200 people were killed and many others wounded on the morning of 12 November 1991 when Indonesian Security forces fired automatic weapons for several minutes at a crowd of approximately 3000 people gathered at Santa Cruz cemetery in Dili, East Timor. Scores were severely beaten and stabbed during the attack. Those present had participated in a procession to the grave of Sebastio Gomes Rangel, a young Timorese man killed on 28 October 1991 when security forces attacked the Motael parish church where he and a number of Timorese had taken refuge.

This report summarizes the testimony of eyewitnesses to the 12 November 1991 Santa Cruz massacre in East Timor, including witnesses living outside Indonesia interviewed by the ICJ, and film footage of the incident. (Despite two requests to the Indonesian authorities, the ICJ was not granted permission to enter East Timor in order to carry out an on-site visit or interview witnesses.) The report also reviews official accounts of the incident provided by the Indonesian authorities. It then analyzes the findings and methodology of the National Commission of Inquiry established by the Indonesian Government, which issued its Advance Report on 26 December 1991.

Each of the witnesses interviewed by the ICJ emphatically stated that the demonstration remained peaceful and controlled until, without warning or provocation, Indonesian security forces fired on the crowd. None saw the demonstrators carrying weapons. The witnesses further reported that security forces acted in a seemingly premeditated and disciplined manner throughout the incident.

The ICJ finds statements by the Indonesian Government and military authorities regarding the massacre differ drastically from eyewitness accounts and other evidence. The ICJ further concludes that the National Commission of Inquiry, formed to investigate the incident, failed to meet internationally recognized standards of impartiality, credibility and technical competence. Finally, the ICJ concludes that the Commission's Advance Report, which accepts the government's

version of events and contradicts that of all eyewitnesses interviewed by the ICJ, is not credible.

Given the sharply contrasting accounts of the massacre provided, on the one hand, by all the eyewitnesses interviewed by the ICJ, and on the other hand, by the National Commission's Advance Report, the ICJ recommends that the Indonesian Government immediately initiate an independent investigation of the 12 November 1991 Santa Cruz massacre under the auspices of the United Nations. Allegations of extrajudicial executions on 15 November 1991 should also be investigated. Furthermore, independent observers should be allowed to monitor the conditions and trials of political prisoners held for participating in the 12 November 1991 demonstration or in protests following the incident.

Lead Up to the Santa Cruz Massacre

Indonesian forces invaded East Timor in 1975 after Portugal withdrew from its former colony. In the first five years after the invasion, human rights groups estimate that more than 100,000 Timorese out of a population of 700,000 were killed. Since 1980, it is estimated that another 100,000 have died. Such organizations have documented human rights violations by Indonesian security forces, including extrajudicial executions, torture, disappearances and political imprisonment.

According to Amnesty International, a pattern of short-term detention, ill-treatment and torture of political detainees has worsened in the last year. More than 200 pro-independence activists have been detained since early 1990. At least 30, and possibly many more, were killed by Indonesian Security Forces in 1990 and early 1991 in apparent extrajudicial executions, and there are hundreds of unresolved cases of "disappearance".¹

In this climate of intimidation, the East Timorese made clandestine preparations for the long-awaited visit of a Portuguese Parliamentary delegation which was scheduled to arrive on 4 November 1991, but which was ultimately postponed. A diary entry from the journal of Kamal Bamadhaj, a New Zealander killed in the 12 November 1991 massacre, described the atmosphere in Dili as the date approached:

It has been a tense past two weeks in East Timor. A kind of lull before the storm has prevailed as Timorese prepared themselves for the visit of the Portuguese Parliamentary delegation scheduled to have started tomorrow. Some saw the visit as a first step towards a referendum in East Timor, some hoped that Portuguese would somehow bring about immediate independence while others saw the visit as a long-awaited opportunity for an uprising against the Indonesian occupiers. After 15 years of integration with Indonesia, and all the methods that Indonesians have used to persuade the Timorese to accept their rule, everyone here seems to have

¹Amnesty International, *East Timor: The Santa Cruz Massacre*, 14 November 1991, ASA 21/23/91, pp. 5-6.

roughly the same aspiration--independence.

Youths in Dili and other towns in East Timor have been secretly painting pro-independence banners, organizing demonstrations and, as many admitted to me, preparing to die for their people if the Indonesians try to stop them. Timorese of all ages and walks of life have been signing up to be on the list of interviewees for the Portuguese fact-finding mission. Considering that talking to any foreigners about the situation in East Timor is risky, there are large numbers who have decided to take the plunge and talk to the Portuguese when they come.

Prior to the 12 November 1991 demonstration, the army, Intel (Indonesian Intelligence Service), the police and paid informers (referred to by the local Timorese as "buffos" or "clowns") stepped-up their campaign of intimidation and arrests.

1. Intelligence agents reportedly let it be known that lists of names were being prepared for torture or extermination.²
2. Reports indicated that the army doubled its normal garrison shortly before the visit planned by the Portuguese delegation.³
3. On 28 October 1991, in the "dead hours" of the night (midnight until 4 am) when East Timorese believe that only military and security agents are safe in the streets, two people were killed. Reports indicate that security forces attacked the Motael Church with stones and later opened fire on those who were staying inside. Sebastio Gomes Rangel who, according to witnesses, had taken refuge in the church, was killed. Another man named Alfonso was also killed.

While officials claimed that the victims had died during a clash between pro-independence activists and "passers-by", witnesses stated that the "passers-by" were in fact military intelligence agents who had come to arrest political activists who were staying in the church because they feared for their lives if they slept at home.⁴

4. On 28 October 1991 the senior local administrator of Dili called three schools together to inform them that anyone who spoke to the Portuguese or approached them "would end up in Tasitolo". Residents of Dili reported that there were three sites at which graves had been prepared: Tasitolo, Be-musi and Areia Branca.⁵ One eyewitness filmed a large hole in Tasitolo.

²Max Stahl, "Massacre Among the Graves", *The Independent*, 17 November 1991.

³*Ibid.*

⁴Amnesty International, *East Timor: The Santa Cruz Massacre, supra*, at note 1, p. 5.

⁵Max Stahl, "Massacre Among the Graves", *The Independent*, 17 November 1991.

5. The pattern of intimidation reached into the countryside. A civilian from the village of Nahareka in the Venilale region reported that on 18 September 1991, the senior officer of battalion 406 had called a meeting of all villagers and warned them that if they were seen to make contact with visiting foreign delegations, everyone between the ages of 10 and 45 would be executed.⁶

Kamal Bamadhaj also wrote:

Less than a week before the delegation was supposed to arrive, news started filtering in that the Portuguese were not coming. Hearts sank. People cannot believe it. The disappointment here today is not only the deflating of so many high expectations but, more worrying still, the indefinite delay gives the Indonesian military the perfect opportunity to eliminate all those Timorese who had exposed their identity while preparing for the visit.

When the Portuguese postponed their visit, the East Timorese planned instead a demonstration to coincide with the visit of the United Nations Special Rapporteur on Torture who had been invited to Indonesia and East Timor by the Indonesian Government.

The Massacre: Eyewitness Accounts

The Procession

On the early morning of 12 November 1991, between 6 and 7 am, a memorial mass was held at Motael church in Dili for Sebastio Gomes Rangel who had been killed on 28 October 1991. Because the church could not hold all the people that came, the priest said the mass outdoors. Afterwards, a large procession began moving towards the Santa Cruz cemetery.⁷

Exuberant young people were seen jogging along the streets in front of the mass of demonstrators shouting "Vive Timor Leste", "Vive Independencia", "Vive Xanana" and other pro-independence slogans. People carried banners painted with slogans such as "Indonesia, why you shoot our church" and "Portugal we are your responsibility". Flags of the nationalist movement, Fretilin, were displayed. Hidden T-shirts worn by participants were uncovered.

Throughout film footage of the demonstration reviewed by the ICJ, the procession appeared

⁶East Timor's Forgotten Tyranny", *New Statesman Society*, 22 November 1991.

⁷The procession's route is marked on the attached map of Dili.

orderly and well-controlled. Marshals with megaphones guided the movement and pace of the participants, yelling "Disciplina! Disciplina!" They banded together, arm-in-arm to contain those enthusiastically waving banners and others who were trotting along the route. Eyewitnesses claim, and the film appears to confirm, that the demonstrators were in no way threatening or out of control. They moved peacefully, albeit with some excitement, towards the Santa Cruz cemetery.

Along the route, security personnel from the 700th and 303rd Indonesian battallions, police (BRIMOB) and intelligence agents, wearing both uniforms and civilian clothes were present in large numbers. The film footage shows little interaction between the demonstrators and security authorities who watched silently. One eyewitness stated that on 12 November 1991 many more security troops stood along the route than had at the time of Sebastio Gomes Rangel's funeral. Another eyewitness recognized Intelligence Chief Gatot Purwanto as he drove past the demonstration in a jeep.

Resende New Inn Hotel Incident

Near the Resende New Inn Hotel, across from the Governor's Office, on the route followed by the procession, demonstrators banged a road sign marking a street crossing about 10 times as they passed. Marshals called to them and quickly ran to the spot, remaining there to make certain no one else hit the sign.

It was also reported that near this location Major Gerhan Lantara, Deputy Commander of Battalion 700 intelligence officer for military sector-C, bounded up to a group of Timorese who were proudly displaying a flag. When he grabbed the flag, a brief scuffle ensued. It was also reported that an army private was injured. Two eyewitnesses recalled a brief scuffle lasting less than a minute and one witness saw an unidentified civilian man being dragged away by security personnel. According to one eyewitness, a few marchers threw stones and shouted. By the time this eyewitness could return to the scene from a short distance away, the event was over and the people had continued to proceed along the road without further incident. The altercation occurred approximately 1½-2 kilometers away from and at least 5 to 10 minutes, and, according to one estimate, 30 minutes before the first shots were fired at the Santa Cruz cemetery.

A third account of the incident, reported in the Jakarta political weekly "Editor" was given by a local government official who wished to remain anonymous:

I was at the KODIM (district military command). I saw a group carrying posters and shouting. I couldn't hear what they were shouting. Then someone dressed in brown with short sleeves started punching as he tried to grab a flag from one of the women demonstrators. Then the other demonstrators became very excited. I could see him hitting out, left and right, and he was surrounded by a crowd of people. I can't say exactly how he was stabbed because he was in the midst of a crowd. Anyway, my attention was distracted by the yells of the crowd. In my opinion, if he had not started punching, and grabbing their banners, I don't think the stabbing

would have happened.⁸

Santa Cruz Cemetery

By the time the procession reached the cemetery, the crowd had swelled to 3000 (with estimates ranging from 800 to as high as 5000-6000). In the first 5 to 10 minutes after arriving at the cemetery, certain members of the group crawled up on a 2-3 meter high wall which bordered the front of the cemetery. They hung banners, waved flags and shouted slogans. Approximately 50 people proceeded into the cemetery grounds and began saying prayers near the grave of Sebastio Gomes. The majority of people stood in the street outside the gate leading into the Santa Cruz cemetery. Some had begun drifting away.

At the time security forces opened fire on the crowd, witnesses interviewed by the ICJ stood in four locations amongst the demonstrators.⁹ All the eyewitnesses firmly stated that none of the people they saw carried knives, machetes, sticks or other objects that could be viewed as weapons. They stated that the procession remained peaceful and very well controlled until Indonesian security forces fired into the crowd without warning or provocation. They further reported that security authorities acted in a seemingly premeditated and disciplined manner throughout the course of the incident.

1. Between the demonstrators and the approaching soldiers

Two United States journalists, Amy Goodman and Allan Nairn, who stood between the demonstrators and the security forces at the time the troops opened fire on the people, stated that although no military were present for the first 5-10 minutes after the crowd arrived at the cemetery, a truck pulled up carrying about 20 men, possibly members of the paramilitary Police Mobile Brigade (BRIMOB). The attention of the eyewitnesses was soon diverted when they observed a large contingent of armed soldiers estimated to number 10-15 abreast, wearing brown uniforms, moving along the same route followed by the demonstrators towards the cemetery. They "marched in disciplined formation, and they held M-16's before them as they marched. As the column kept advancing, seemingly without end, people gasped and began to shuffle back." The journalists purposely moved to stand between the oncoming troops and the East Timorese.

As Westerners with headphones, tape recorder, microphone and camera in full view, we thought the soldiers would be less likely to do anything rash. We were wrong. As the soldiers rounded the corner, 12 to 15 of them lined up in front of the crowd and, without missing a beat, began firing into the crowd, their automatic weapons

⁸"Witnesses of the 12 November Affair", *Editor*, 7 December 1991.

⁹The locations of eyewitnesses at the time the Indonesian troops opened fire are noted on the attached map of the cemetery and its surroundings.

spraying bullets from right to left and back again, mowing everyone down in front of them.

The Timorese were trapped. With the high walled Santa Cruz cemetery to their left and the walled military cemetery to their right, they had nowhere to go. When they saw the soldiers coming, some people started to back up, others began to turn around and run. The only thing I heard just before the soldiers opened fire, were some terrified whimpers which soon became screams as the crowd was riddled with bullets.

After the soldiers rounded the corner and began firing, some began to focus on the journalists.

A few seconds after the Indonesian soldiers began shooting, others soldiers began surrounding me. One grabbed my microphone and shook it in my face, then pushed me onto the ground. Others ripped off my bag and equipment and began kicking me in the sides and stomach. At that point, Allan, who had been right behind me when the troops had opened fire, threw himself over me as I was being beaten, protecting me from further injury. We were just behind the line of fire and they just beating and kicking Allan in the head and chest and sides until his shirt was drenched in blood.

At one point, Allan's hands and legs went into spasm and he couldn't protect himself anymore. The soldiers continued to beat his head with rifle butts until they fractured his skull. They then put M-16's to our heads. We kept shouting "We are from America, America." After a few minutes they decided not to execute us. Instead, they focussed on an old Timorese man next to us who they beat into a sewer ditch. Every time he picked up his head, a soldier would mercilessly kick it or punch it down with his rifle butt.

Allan Nairn reported:

I saw soldiers aim and shoot women in the back. They shot young men who were backpedaling trying to raise their hands up high. The soldiers would vault the bodies and pursue the fleeing people, picking off those still standing as the street grew wet with blood.

2. Within the cemetery walls

An eyewitness described the scene within the walls of the cemetery as follows:

When the demonstration arrived at Santa Cruz cemetery people massed outside its walls preparing to pay homage to Sebastio. The scene was an array of flags and waving people excitedly [forming] an orderly procession to enter the cemetery led by girls bearing flowers. People began to enter the cemetery. Shortly after entering we reached a small crypt approximately a third of the way in. Within minutes of

prayers beginning there was an almighty burst of gunfire. There was total panic as people fled in all directions, screaming in terror. There were bodies lying everywhere within seconds as the sound of automatic gunfire continued uninterrupted for between 2-3 minutes. Bullets ricocheted off graves and the walls of the crypt. I was forced into the crypt with dozens of people, children as young as six or seven laid piled on top of each other cowering, people fell to their knees reciting the Lord's prayer over and over. The following 30 minutes that I remained trapped in the crypt [I] saw people drag themselves in and being shouldered by friends splattered in blood, dying and mortally wounded young girls with blood pouring from their heads, old women full of terror. The crypt became crowded with people expecting to die.

After being discovered by soldiers, he was taken from the cemetery:

I left the crypt with at least 10 people bleeding profusely and several dead. All the way to the entrance to the cemetery I was confronted by soldiers brandishing knives and bayonets and thrusting them towards my face. I was kicked and beaten and had guns put to my head while they screamed at me.

Another eyewitness, interviewed by the ICJ, stated that the military surrounded the cemetery and proceeded to sweep the area in a disciplined manner, beginning at the periphery and gradually moving in towards the center where people were huddled in the crypt. He estimated that it took over an hour for the wounded to be taken to the military hospital, and that those taken prisoner were transferred before the Indonesian security forces took care of the wounded. He further stated:

They took me behind the chapel and they held me there [for] half an hour or so. And in that time I had a grandstand view of what they were doing: they were assembling the people and stripping them to the waist, tying their hands behind their back if they were able to move. If they were wounded they were piling them up....drap[ing] them over tombstones and they were proceeding to beat them if they should any signs of any reaction.

I saw the military officers come in: there was a phalanx of about a dozen, led by senior officers, who walked in, inspected what was being done, and then walked out again, and the operation continued just as it had before.

3. Along the road behind the demonstrators

Another eyewitness, Bob Muntz (Australia), stood behind the majority of the people on the street as the soldiers arrived:

The first sign I saw of any Indonesian military presence outside the cemetery was after the rally had been there for about 10 minutes. I had a look inside the cemetery and I had moved further down the road. The bulk of the demonstration was in this area outside the gates of the cemetery. I think its numbers had declined slightly by that time. It was fairly tightly knotted around the entrance to the cemetery but it

would have stretched perhaps 20 or 25 meters either side of the gates to the cemetery and spread across the road, which is about 20 to 25 meters wide. I should emphasize that there is absolutely no cover of any sort in that road except for a small number of trees down either side....

I noticed a military truck. This was a tray truck with five foot high sides and probably about 20 feet long. I could see in the back of that truck what I would estimate to be 20 soldiers in uniform who all had riot helmets on. From looking at the number of riot helmets, I would say that there were about 20 of them.

As soon as I saw [the truck] I paid pretty close attention to it because of my fear of what was going to happen. The truck stayed stationary for 2-3 minutes at this point, then drove...to midway along [the] road where the entrance to the military cemetery is located. It stopped there for two or three minutes, turned around, came back and parked.After a minute or so, the back of the truck opened and the 20 people inside it began to get out. [T]hey had riot shields, which appeared to be full-length riot shields about five feet long.

After a number of them, two or three of them, got out of the truck, I anticipated the rally would be dispersed. I began walking [away from the demonstration and] was about 30 meters short of the corner of the cemetery ...when, with absolutely no warning of any sort, there was very suddenly sustained automatic weapons fire. This was not a case of a number of guns firing off single shots, it had to be automatic weapons fire from the intensity of it.

4. In the midst of the crowd

Eyewitness, Russell Anderson (Australia), was walking away from the crowd at the time the soldiers opened fire. Interviewed by the ICJ, he stated:

Suddenly a few shots rang out which sounded like an automatic weapon. It was immediately followed by an explosive volley of automatic rifle fire that persisted for 2-3 minutes. It sounded like the whole fifteen in the front row had their fingers pressed firmly on the trigger. They were firing directly into the crowd.

I ran like everybody else. I took a quick glance around and saw people falling. I realized that I would be shot in the back if a bullet lodged into my body. Most people, especially in that initial burst of fire would have been shot in the back running away. The initial burst of fire was two to three minutes, but the firing didn't stop after that: it went on and on.

Shooting in Other Areas

After the initial round of gunfire, the shooting continued sporadically for another 30 minutes. Single shots were heard for several hours thereafter. Two witnesses reported sporadic

automatic weapons fire for half an hour in the housing area just north of the Santa Cruz cemetery. As they ran through the yards of houses and climbed fences in an effort to escape the violence, bursts were heard every minute or so to both their left and right as distinguished from any firing that may have continued at the cemetery itself.

Bob Muntz reported as follows:

I noticed a uniformed soldier appear around the corner of a brown house about 30 meters in front of me. He was wearing a light brown uniform similar to a POLRI one. I turned and fled and he immediately fired a burst of automatic weapons fire in my direction. At this time I was in a house yard with about 6 children aged about 5-7 years, three women, presumably their mothers, and 4-5 teenage youths who were also fleeing from the demonstration. I do not know if people were killed or injured in the episode, but is quite possible. I escaped out the front door of this house, together with the youths, and continued to flee through the housing area.

Immediate Aftermath

After the shooting stopped, one witness at the cemetery reported as follows:

"The shooting stopped--I was in front of my jeep. Then soldiers without guns came carrying knives. There was an old man near me who was still alive. A soldier came and stabbed him twice. Dead. Two or three people near the cemetery gate, also, were not dead. The soldiers took knives and stabbed them to death, too.¹⁰

Those who were arrested were dealt with very harshly. I happened to see one person who had probably only fainted, but as soon as these fellows saw his head move, they immediately struck him with a stone. Someone else I saw was still alive, on the truck which was full of corpses; then a fellow dragged him off and struck him on the head. After that, he was loaded onto the truck again.¹¹

Later in the morning one witness who had escaped through the housing area on the north side of Santa Cruz cemetery returned to the area on a motorcycle. He reported seeing three bodies lying in a yard with a soldier standing next to them as he passed by on the street.

Security authorities took one eyewitness to a police station where he was held for about 9 hours but not harmed. He reported:

[F]rom those I saw being brought into the police station--because I was being held within yards as they came by---there were probably three or four hundred. Some

¹⁰BBC, World at 1, Radio 4, 23 December 1991.

¹¹"Eyewitnesses of a Tragedy", *Jakarta, Jakarta*, 4-10 January 1992.

of those who were arrested--about 200 or so--were also released later on that evening--about 10 o'clock.

Among the dead was Kamal Bamadhaj, a New Zealander, who, according to eyewitnesses, was standing in the first row of demonstrators when the security forces opened fire. When he was found on the road, he had been stripped of all valuables except his New Zealand passport. Although the International Red Cross made an attempt to transport him to a hospital shortly thereafter, repeated stops by the military, including one for half an hour, may have caused him to bleed to death.¹²

Number of Killed

Estimates of those killed vary widely. Most sources number the dead from 50 to over 200. Amnesty International has published a list of at least 60 individuals either dead or missing and feared dead. A fact finding team from the Bishop's Conference of Indonesia reported that over 100 demonstrators were killed.¹³ Unconfirmed reports of the extrajudicial killing on 15 November 1991 of between 60 and 80 more people involved in the Santa Cruz demonstration were also received by Amnesty International.¹⁴

The United Nations Special Rapporteur on Torture, Mr. Peter Kooijmans who was in Dili on the day of the massacre, requested, and was denied, permission to visit the wounded in the hospital on 13 November 1991.¹⁵

According to Amnesty International, at least 42 and possibly as many as 300 people were detained for participating in the demonstration. More than 60 remain in custody in East Timor and Indonesia and 18 have been formally charged with subversion.¹⁶

In Jakarta, Indonesian officials also detained a group of 70 young Timorese who protested the Santa Cruz massacre on 19 November 1991. Of this group, 22 remain in custody. Four have reportedly been charged with subversion, which carries a maximum penalty of death. The Indonesians may also try three East Timorese detained elsewhere in Indonesia since November 1991 for human rights and political activities.¹⁷

¹²Raymond Whitaker, "Death Fails to Silence Timor Witness: Kamal Bamadhaj kept a Diary of His Visit to Dili", *The Independent*, 30 November 1991.

¹³Ghafur Fadyl, "Bishops' Conference Say More Than 100 Died in East Timor Violence", *The Associated Press*, 29 November 1991.

¹⁴Amnesty International, *East Timor: After the Massacre*, 21 November 1991, ASA 21/24/91 at p. 5

¹⁵UN Doc. E/CN.4/1992/17/Add.1, para.64.

¹⁶Amnesty International, *East Timor-Santa Cruz: The Government Response*, February, 1992, ASA 21/03/92 at p. 3.

¹⁷*Ibid.*, at p. 10.

Current Situation

Recent reports from Dili indicate military controls have intensified since the 12 November massacre. Government authorities have acknowledged holding 32 political detainees in connection with the incident, at least 8 of whom will be tried for subversion which carries a maximum penalty of death.

Untold numbers of East Timorese political activists, including many young people, Catholic priests and those who have spoken to foreign tourists and journalists are reportedly being subjected to arbitrary arrest, incommunicado detention, beatings and death threats.

This pattern of ongoing repression becomes especially significant in the context of the Indonesian Governments' claim that the massacre was a spontaneous reaction to a "brutal mob" Prior to 12 November 1991, security forces had made it clear that any expression of dissent could and would result in extreme measures against the East Timorese.

Indonesian Government and Military Response

In a series of public statements, the military and government authorities have tried to justify the incident and shift blame for the massacre onto the political opposition and the demonstrators. However, the accounts of the incident given by the Government contained many inconsistencies.

On 12 November 1991, in its first acknowledgement of the massacre, Indonesia's military authorities said that several people had been killed or injured in rioting in the East Timor capital of Dili. The Government reported that there had been "unrest in Dili by people who had been incited and influenced by remnants of (the separatist) [GPK] in East Timor".¹⁸

On 12 November 1991, subsequent to the massacre, the military searched the Motael Church. The government claimed to have found some weapons, including a grenade. "From the results of this search, it is very clear that their movement is extremely dangerous" stated General Try Sutrisno, Commander in Chief of the Armed Forces of Indonesia (ARBI).¹⁹ But a priest denied that banners, Fretilin flags, stones or machetes had been confiscated from the church by security officers. These items were shown to him when under interrogation. "When officials came to search the church, I did not see them taking these things from the church," he said. "So, I was

¹⁸"Timor: Army Confirms Killings", *AFP*, 12 November 1991. The term "Gerombolan Pengacau Keamanan" [GPK] is referred to in the Advance Report as "Security Disrupter Perpetrators" [SDP].

¹⁹"General Try: They Must Be Exterminated", *Jayakarta*, 14 November 1991.

amazed when, during the interrogation, they showed me my own kitchen knife."²⁰

The military said it only moved in after "persuasive" attempts to break up a demonstration failed and the soldiers were attacked.²¹ General Sutrisno referred to the demonstration as "brutal" and the demonstrators as "hysterical".²² He reported that at the most 50 people died and 20 wounded and blamed the violence on Timorese separatists.²³ He further stated that ABRI would never allow itself to be ignored. "In the end, they had to be shot", he said, reiterating his words that such disrupters had to be shot. "And we will shoot them," he stressed.²⁴

Jakarta newspapers quoted an Indonesian army spokesman for the Udayana Military Command in Bali, Lt. Col. Anton Tompodung, as saying the soldiers were ordered to shoot because about 100 armed members of the East Timor Independence movement, including the movement's leader, Xanana Gusmao, were among the crowd.²⁵ He further stated that the soldiers began shooting when they realized that some of their own members had been wounded and their commander killed.²⁶

In remarks to a meeting of Lemhanas (National Defense Institute) Graduates on 13 November 1992, General Try Sutrisno referred to the demonstrators by saying, "they are people who must be crushed. These despicable people must be shot."²⁷ The General went on to describe gangs of people spreading chaos by unfurling posters with slogans discrediting the government. According to the General they also shouted "many unacceptable things" while members of ABRI held themselves back.²⁸ When the "patience" shown by the officers was not "appreciated" and the disrupters became even more "brutal", some shots were fired into the air.²⁹

On 14 November 1991, however, East Timor military commander Brigadier General Rudolf Warouw admitted that his men were at fault in opening fire on a crowd of mourners.³⁰ Likewise, Major General Sintong Panjaitan told reporters that the "world is pointing a finger at us. I accept

²⁰*Jawa Pos*, 26 November 1991

²¹Jonathan Thatcher, "Indonesia Condemned for Timor Shooting, Death Toll Unclear", *Reuters*, 13 November 1991.

²²Ghafur Fadyi, "Army Account of Massacre Doubted", *The Associated Press*, 13 November 1991.

²³"Indonesian Army Claims About 50 Killed in Dili Shootings", *Kyodo News Service*, 13 November 1991.

²⁴"Armed Forces Commander in Chief: They Must Be Exterminated", *Jayakarta*, 14 November 1991.

²⁵"Indonesian Army Claims About 50 Killed in Dili Shootings", *Kyodo News Service*, 13 November 1991.

²⁶Jonathan Thatcher, "Indonesia Condemned for Timor Shooting, Death Toll Unclear", *Reuters*, 13 November 1991.

²⁷"General Try Speaks His Mind", *Jayakarta*, 14 November 1991.

²⁸*Ibid.*

²⁹"Armed Forces Commander in Chief: They Must Be Exterminated", *Jayakarta*, 14 November 1991.

³⁰Moses Manoharan, "Indonesia Admits It Erred in Timor, Says New Zealander Dead", *Reuters*, 14 November 1991.

that. I am very sorry. I regret this."³¹ But he then insisted that there would be no court martials and repeated army statements that the troops had no choice in the end but to fire, even if it was a mistake.³²

"The only order is: kill or be killed," the daily *Media Indonesia* quoted Regional Army Commander Brigadier Sintong Panjaitan as saying.³³ He also stated that 19 people had died and 91 had been wounded in the incident.³⁴ When pressed by reporters about the Government's downward revision of the death toll, General Sutrisno said that it was Indonesia's internal affair.³⁵ General Sutrisno further rejected criticism about human right violations by saying, "Indonesia is a member of the UN Human Rights Commission. There is no doubt about human rights in Indonesia."³⁶

The conflicting reports continued. On 26 November 1991, Indonesian Foreign Minister Ali Alatas blamed the demonstrators saying that they ignored warning shots and threw a hand grenade before troops opened fire.³⁷ As noted above, none of the eyewitnesses interviewed by the ICJ supported this version of events.

The Commission's Advance Report

The 12 November 1991 massacre, as well as the vast disparity between official Indonesian and eyewitness accounts, brought sharp criticism both domestically and internationally. Several governments threatened to suspend foreign aid unless a credible investigation into the events were undertaken and those responsible punished. In response to this mounting international pressure, the Indonesian Government, in Presidential Decree No. 53/1991, on 18 November 1991, announced the formation of a seven-member National Commission of Inquiry.

On 26 December 1991, the National Commission of Inquiry issued a nine-page Advance Report of its investigation. The Commission stated that it had "strong reasons and grounds" to arrive at the following conclusions:

³¹ *Ibid.*

³² *Ibid.*

³³Jonathan Thatcher, "Indonesia Condemned for Timor Shooting, Death Toll Unclear", *Reuters*, 13 November 1991.

³⁴"Only 19 Killed in East Timor: Indonesian Army", *AFP*, 14 November 1991.

³⁵"General Try Speaks His Mind", *Jayakarta*, 14 November 1991.

³⁶Adam Schwartz, "Over the Edge: Massacre Deals Blow to East Timor Integration", *Far Eastern Economic Review*, 28 November 1991, p. 28.

³⁷"Indonesia: Infiltrators Provoked Timor Massacre, Says Minister", *Inter Press Service*, 26 November 1991.

1. The 12 November 1991 incident in Dili is the culmination of a series of earlier demonstrations/incidents perpetrated by the anti-integration group/Fretilin SDP. ["Security Disrupter Perpetrators"-ed.]

The Fretilin/SDP, which are being increasingly isolated, have shifted their mode of operations from rural guerilla to urban guerilla, thereby abusively capitalising on the development policy in East Timor based upon affection and prosperity and taking advantage of the situation, condition as well as the restive mood among the young people to instigate them to oppose integration as well as to attract world attention to their existence.

2. The 12 November 1991 Incident in Dili which caused a number of deaths and other casualties was clearly not an act ordered by or reflecting the policy of the Government of the Armed Forces, be it in the Capital or in the Province of East Timor. The 12 November 1991 Incident was essentially a tragedy which should be deeply regretted.
3. The 12 November 1991 demonstration in Dili showed elements of pre-meditated provocation by a group of anti-integration/Fretilin SDP and was not an orderly and peaceful demonstration dedicated to commemorate the death of Sebastiao Gomes.
4. The demonstrators, who mostly consisted of young people acting beligerently, emotionally and destructively, partly as a result of agitation by the anti-integration group/Fretilin SDP by whom they have been influenced for quite some time. Furthermore, they consciously exhibited Fretilin and Falentil flags, pictures of Fretilin SDP leader Xanana and banners and chanted anti-integration yells and insults at the members of the security apparatus.
5. A number of foreigners took an active part in that demonstration.
6. The tense atmosphere reached a boiling point, started by the stabbing of an Armed Forces officer and the wounding of a private, and aggravated by the provocative belligerence and aggressive attitude assumed by the crowd which was perceived by the security personnel as posing a threat to their arms and to their safety, a spontaneous reaction took place among the security personnel to defend themselves, without command, resulting in excessive shooting at the demonstrators, causing deaths and wounded. At the same time, another group of unorganized security, acting outside any control or command, also fired shots and committed beatings, causing more casualties.
7. In the handling of the riotous condition during the 12 November 1991 incident, despite the presence of riot-control units, the Commission did not observe the optimal implementation of proper riot-control procedures. The actions of a number of security personnel exceed acceptable norms and led to the casualties, be it in terms of deaths, gunshot wounds, stabbing wounds, or wounds by blunt instruments. Although the casualty toll until now was set at 19 dead and 91 wounded, the Commission feels that there are sufficiently strong grounds to conclude that the death casualties totalled about 50 while the wounded exceed 91.
8. There was careless handling of those who died, because although the visum et repertums were performed the deceased were not properly identified. Little opportunity was given to the families/friends of the victims to identify bodies.
9. The Commission is of the view that in order to uphold justice, action must be taken

against all who were involved in the 12 November 1991 Incident in Dili and suspected of having violated the law, and they must be brought to trial in accordance with the Rule of Law, Pancasila and the 1945 Constitution upon which the Republic of Indonesia is based.

Epilogue

In undertaking its task, the NCI received full support from all sides, be it from the Government, the Armed Forces, Church Officials and community leaders. It has to acknowledge, however, that the NCI faced obstacles because a number of prospective witnesses were not willing to give their account of the event because of doubt and concern that they would be directly incriminated in the 12 November 1991 Incident in Dili, or out of fear they would be regarded as belonging to the anti integration group.

The National Commission of Inquiry Investigation

The composition and working methods of the National Commission of Inquiry deprived it of the necessary impartiality and technical competence to conduct a proper investigation. Its Advance Report, by accepting the government's version of events and rejecting that of all the eyewitnesses interviewed by the ICJ, is not credible.

Impartiality of the Investigative Body

In 1989, the United Nations Economic and Social Council established Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions to effectively investigate situations such as that which occurred on 12 November 1991 in Dili, East Timor.³⁸ According to the Principles, when established investigative procedures are inadequate and a special commission of inquiry is formed, the commission members "shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry". The membership of the National Commission of Inquiry does not satisfy these requirements.

The chairman of the Commission, retired General Muhammad Djaelani SH, is a member of the Indonesian Supreme Court. He graduated from the Military Academy of Law (AHM) in 1970. According to a 1991 report by the ICJ's Centre for the Independence of Judges and Lawyers, "the judiciary in Indonesia is dependent on the executive. Judges are structurally and administratively under the supervision of the Minister of Justice, and under the technical supervision of the Chief Justice of the Supreme Court."³⁹ Retired Major-General Hari Sugiman

³⁸See, Annex.

³⁹Centre for the Independence of Lawyers and Judges of the International Commission of Jurists, "Attacks on Justice: The Harrassment and Persecution of Judges and Lawyers" (June 1990-May 1991), p. 49. See also, The International Commission of Jurists, Indonesia and the Rule of Law (1987), p.61.

has been the Director for Social-Political (Sos-Pol) Affairs at the Interior Ministry. Sos-Pol directorates are present in all ministries and government offices and can exercise control over political parties and social organizations. Vice-Admiral Sumitro is Inspector General of the Armed Forces (ABRI). It was his subordinates who opened fire on the demonstrators in Dili. Anton Suyata is Inspector General of the Justice Ministry and a also a graduate of the Military Academy of Law. Hadi Wayarabi is head of International Organization Affairs at the Foreign Ministry. He represented Indonesia at the United Nations General Assembly's Third Committee on Humanitarian Affairs in New York and served three years as Political Counsellor at the Indonesian mission in Geneva.

The remaining two Commission members are civilians. Ben Mang Reng Say is deputy-Chairman of the President's Supreme Advisory Council. Clementino dos Reis Amaral, an East Timorese, is a member of the government party (GOLKAR).

Instead of being able to provide an independent assessment of events on 12 November 1991, members selected to serve on the Commission therefore did not possess the requisite independence and impartiality.

In choosing the Commission members, the government rejected the suggestion made by the UN Special Rapporteur on Torture that international monitors be invited as observers to strengthen the credibility of the investigation. (See U.N. Doc. E/CN.4/1992/17/Add.1, para. 55.) A similar suggestion was made by the ICJ, which offered to act as monitor.

The Advance Report also uses terminology indicative of bias. The Indonesian Government and armed forces require their representatives and the media to refer to all liberation movements, Fretilin/Falintil in East Timor, Aceh Merdeka in Aceh North Sumatra and the Organisasi Papua Merdeka in West Papua as "Security Disrupter Perpetrators" (SDP). Reference to this pejorative designation in the Advance Report suggests the Commission's ties to the Government as members of Fretilin/Falintin would, in all likelihood, never refer to themselves as SDP.

Credibility of the Findings

Two vastly different versions of events exist to explain the 12 November 1991 massacre at the Santa Cruz cemetery. Eyewitness accounts, provided to the ICJ and reported elsewhere, uniformly state that security forces, acting in an organized and premeditated manner, fired on unarmed peaceful demonstrators without warning or provocation.

The Advance Report, however, concludes that "after fighting erupted an attempt was made to seize arms, accompanied by the tossing of a hand-grenade at the security forces by the crowd". The ICJ was unable to find independent evidence to support this version of events.

The Advance Report also concludes that the soldiers acted "spontaneously" when they fired on the demonstrators. No adequate explanation is given for this assertion. As noted above, journalist Amy Goodman, for one, reported that "as the soldiers rounded the corner, 12 to 15 of them lined up in front of the crowd and, without missing a beat, began firing into the crowd". The conclusions refer obliquely to the incident which occurred in front of the Resende New Inn Hotel when one and possibly two men were stabbed. Although demonstrators threw some stones before

resuming their march to the cemetery, there were no reports of gunfire at this time. The scuffle occurred approximately 2 kilometers away from and up to 30 minutes prior to the troops opening fire at the cemetery. If this incident is viewed as the precipitating event, as suggested in the Advance Report, it would be difficult to argue that the shooting later at the cemetery was "spontaneous". Indeed, adequate time elapsed after the incident to allow security officials to march troops to the cemetery with orders to use arms against the demonstrators. There is no discussion of this issue in the Advance Report.

The Advance Report found that some soldiers acted "outside any control or command" and that the massacre was "clearly not an act ordered by or reflecting the policy of the Government or the Armed Forces."

Available evidence suggests otherwise. Eyewitness reports firmly describe the movement of the marching troops as disciplined, stating that they did not break stride, did not even consult each other, but fired directly into the crowd. This evidence suggests that the incident was premeditated, fully-organized and that the troops were fully in control.

The immediate responses of Indonesian authorities, and, in particular, the repeated statements of Armed Forces Chief, General Try Sutrisno, that such demonstrators "must be shot", also undermine the finding that the shootings did not reflect government policy.

Security officials were reportedly present at the scene. One eyewitness interviewed by the ICJ saw the Head of Intelligence, Gotot Purwanto, riding by the procession in his jeep. Another watched as officers inspected activities in the cemetery during the course of the incident. According to the eyewitness, these officers observed soldiers beating demonstrators and rounding up prisoners and allowed the operation to continue. Eyewitnesses also reported that the soldiers were meticulously directed by their superiors to encircle the cemetery and gradually moved inward in an orderly fashion, rounding up those trapped inside.

It is also significant that when Milena Carrascalao, the wife of the governor, arrived at Santa Cruz at 11am, three hours after the gunfire stopped, she saw 18 people still injured--some mortally wounded--still languishing in the cemetery. "When she asked a soldier why they had not been taken to [the] hospital," recounted the governor, "she was told that there was no transportation. They gave priority to the transport of the arrested people over the wounded."⁴⁰

The Principles require that Governments ensure that extrajudicial executions such as occurred on 12 November 1991 are "recognized as offenses under their criminal laws" and that persons identified as having participated...are brought to justice. Likewise, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, requires that "arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offense under [the] law.

Although the Advance Report concludes that "action must be taken against all who were involved" in the massacre, actions by the Indonesian Government suggest that investigation of those

⁴⁰Dennis Schultz, "Only Ghosts and Guards Walk the Night", *The Bulletin*, 17 December 1991, p. 29.

involved will not include military and other security personnel. Press reports further indicate that courts martial were not to be expected and the troops were right to fire even if it was a mistake.⁴¹ Since the incident, only two officers have been transferred from their posts. Major General Sintong Panjaitan, commander of the Udayana military command which covers East Timor and Brigadier General Rudy Warouw, Commander of KOLAKOPS, the special army command in East Timor. They have not, however, been dismissed, although they must appear before an Honorary Military Council. No other soldiers involved in the shooting have been arrested or dismissed for opening fire on unarmed civilians or for stabbing the wounded. In sharp contrast, many demonstrators have reportedly been detained, tortured, and formally charged with criminal offenses. Rather than bring those responsible for the killings to justice, the Advance Report suggests that the demonstrators are the ones to blame.

Lack of Technical Expertise

According to the Principles, the purpose of an independent investigation is "to determine the cause, manner and time of death, and the person responsible" and it shall include "adequate autopsy, collection and analysis of all physical and documentary evidence."

When discussing casualty figures, the Commission concluded that "about 50" persons died. This seemingly arbitrary figure is arrived at despite mention of the fact that eyewitness and other sources reported that the death count exceeded the previous official count of 19 and that new figures "varied from 50, 60 to over 100". No explanation is given for why the Commission chose the lowest of these figures. The identities of the dead are not provided.

In concluding that 91 people are still missing, the Commission does not mention if any further action will be taken to determine their identities or how many of the 90 are "dead, wounded, in good health, in the forest or have taken refuge".

At Hera cemetery, where 18 persons killed in the massacre are buried, the Commission had only one body exhumed. Apparently, no effort was made to determine the cause of death or the identity of the body. The Principles require that the body of the deceased "not be disposed of until an adequate autopsy is conducted." While the Commission states that it could not determine the identity of the dead due to "the careless handling of those that died," it fails to explain why the body was buried for a second time without asking a forensic pathologist to perform an autopsy. Failure to make every effort to properly identify and determine the cause of death of each individual is in conflict with the Principles. Even in situations in which burial has preceded these procedures, the Principles require that an autopsy be performed at the earliest available opportunity.

The Commission stated that it interviewed 132 eyewitnesses during the course of its investigation. By its own admission, the Commission "faced obstacles" because a number of prospective witnesses were not willing to give their account of the event because of doubt, concern and fear. As Chairman M. Djaelani advised the press: "Our main problem was that [the East

⁴¹Moses Manoharan, "Indonesia Admits It Erred in Timor, Says New Zealander Dead", *Reuters*, 14 November 1991.

Timorese] were all afraid to talk."⁴²

Such fear appears quite reasonable given the statement of General Sutrisno, who said, "Once the investigation mission is accomplished, we will wipe out the separatist elements who have tainted the government's dignity."⁴³ No mention is made of the eyewitness to the 15 November 1991 extra-judicial executions who requested that his safety be guaranteed before giving a statement. The inability of witnesses to testify freely is, of course, a major obstacle to a proper investigation. The Principles provide that "complainants, witnesses...and their families shall be protected from violence, threats of violence or any other forms of intimidation."

The Advance Report does not detail how many of those interviewed were members of the security forces. Given that civilian eyewitnesses were afraid to talk, it is unlikely that people chose to speak to the Commission of their own volition. The testimony of injured witnesses visited by Commission members in the hospital would also be suspect. Military authorities prevented relatives from visiting the wounded in hospital and those detained by military and police. Likewise, the Red Cross could not conduct independent and confidential visits to prisons and hospitals. On 20 November 1991, Brigadier General Warouw said that observers would be allowed to visit the wounded at the military hospital but that they "...will not be able to talk to them until our interrogations are over because the sight of foreigners could make them start talking about wild rumors."⁴⁴

The Commission also did not interview non-Timorese eyewitnesses who could testify more freely for lack of fear. None of the foreign eyewitnesses interviewed by the ICJ and whose testimony directly contradicts the Advance Report's findings had been contacted by the Commission.

Conclusions

Each of the eyewitnesses interviewed by the ICJ stated that the 12 November 1991 demonstration remained peaceful and controlled until, without warning or provocation, Indonesian security forces fired automatic weapons into the crowd. The level of discipline and methodical manner in which the troops reportedly proceeded suggests that the operation was premeditated and under the control of the Indonesian authorities.

The ICJ concludes that the National Commission of Inquiry, formed to investigate the incident of 12 November 1991, failed to meet internationally recognized standards of impartiality, credibility and technical competence as set forth in the Principles for the Effective Prevention and

⁴²Amnesty International, *East Timor-Santa Cruz: The Government Response*, *supra* at n. 13. p. 7.

⁴³Mark Baker, "Dili Colonel May Win Promotion", *The Age*, 11 December, 1991.

⁴⁴*See*, Moses Manoharan, "Children's Schoolbooks and Dried Blood Mark Timor Shooting", *Reuters*, 13 November 1991; Ghafur Fadyl, "Bishop's Conference Says More Than 100 Died in East Timor Violence", *The Associated Press*, 29 November 1991; Adam Schwartz, "Over the Edge: Massacre Deals Blow to East Timor Integration", *Far Eastern Economic Review*, p. 18. *See also*, Amnesty International, *East Timor: After the Massacre*, *supra*, at n. 15, pp. 4-5, 8.

Investigation of Extra-Legal, Arbitrary and Summary Executions.

From the outset, the Commission, with strong ties to the Indonesian Government and military, was unable to act independently and impartially. As admitted in the Advance Report, witnesses were unwilling to testify for fear of retribution. The Commission also used biased terminology in its references to the demonstrators.

The National Commission of Inquiry gave undue weight to inconsistent statements made by the Indonesian government and military authorities. The Commission made no attempt to interview non-Timorese eyewitnesses who could testify without fear, and whose accounts contradict the findings of the Advance Report on every key issue.

Failure to bring to justice those responsible for the deaths indicates that deadly force is an acceptable response to peaceful political dissent. The ICJ is concerned for the well-being of those presently detained or identified as "elements" which have tainted the government's dignity", which at least one military official has indicated will be "wiped-out" once the investigation is completed.⁴⁵

The National Commission's lack of technical competence was demonstrated throughout the course of its investigation. It failed to perform exhumations and autopsies or utilize forensic expertise. It failed to identify the names and number of dead or cause of death. It failed to identify those missing or detained.

Recommendations

In view of the failure of the National Commission of Inquiry to adequately investigate the 12 November 1991 Santa Cruz massacre, the ICJ recommends that the Indonesian authorities:

- immediately initiate an independent and impartial investigation, in accordance with United Nations standards. The credibility of such an investigation would be enhanced if independent foreign experts formed part of the investigation commission;
- bring to justice all officials responsible for committing human rights violations during or connected to the 12 November massacre;
- promptly release all those detained for peacefully participating in the 12 November procession or in protests thereafter;

⁴⁵*Ibid.*

- allow international observers to independently investigate the 12 November massacre and to observe any trials held in connection with the massacre.

The ICJ also urges the international community in general, and the United Nations Commission on Human Rights in particular, to press for the implementation of the above recommendations.

1989/65. ~~Effective prevention and investigation of extra-legal, arbitrary and summary executions~~

The Economic and Social Council,

Recalling that article 3 of the Universal Declaration of Human Rights¹⁰⁶ proclaims that everyone has the right to life, liberty and security of person,

Bearing in mind that paragraph 1 of article 6 of the International Covenant on Civil and Political Rights¹⁰⁷ states that every human being has the inherent right to life, that that right shall be protected by law and that no one shall be arbitrarily deprived of his or her life,

Also bearing in mind the general comments of the Human Rights Committee on the right to life as enunciated in article 6 of the International Covenant on Civil and Political Rights,

Stressing that the extra-legal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights,

Mindful that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 11 on extra-legal, arbitrary and summary executions,¹⁰⁸ called upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty and to take all other measures necessary to prevent those practices,

Mindful also that in its resolution 1986/10, section VI, of 21 May 1986, it requested the Committee on Crime Prevention and Control to consider at its tenth session the question of extra-legal, arbitrary and summary executions with a view to elaborating principles on the effective prevention and investigation of such practices,

Recalling that the General Assembly in its resolution 33/173 of 20 December 1978 expressed its deep concern about reports from various parts of the world relating to enforced or involuntary disappearances and called upon Governments, in the event of such reports, to take appropriate measures to search for such persons and to undertake speedy and impartial investigations,

Noting with appreciation the efforts of non-governmental organizations to develop standards for investigations,¹¹²

Emphasizing that the General Assembly, in its resolution 42/141 of 7 December 1987, strongly condemned once again the large number of summary or arbitrary executions, including extra-legal executions, that continued to take place in various parts of the world,

Noting that in the same resolution the General Assembly recognized the need for closer co-operation between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat and the Committee on Crime Prevention and Control in efforts to bring to an end summary or arbitrary executions,

Aware that effective prevention and investigation of extra-legal, arbitrary and summary executions requires the provision of adequate financial and technical resources,

¹¹²See E/AC.37/1988/NGO/4.

1. *Recommends* that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions annexed to the present resolution should be taken into account and respected by Governments within the framework of their national legislation and practices, and should be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Governments and the public in general;

2. *Requests* the Committee on Crime Prevention and Control to keep the above recommendations under constant review, taking into account the various socio-economic, political and cultural circumstances in which extra-legal, arbitrary and summary executions occur;

3. *Invites* Member States that have not yet ratified or acceded to international instruments that prohibit extra-legal, arbitrary and summary executions, including the International Covenant on Civil and Political Rights,¹⁰⁷ the Optional Protocol to the International Covenant on Civil and Political Rights¹⁰⁷ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹¹³ to become parties to these instruments;

4. *Requests* the Secretary-General to include the Principles in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*;

5. *Requests* the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to give special attention in their research and training programmes to the Principles, and to the International Covenant on Civil and Political Rights, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials,¹⁰² the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁰⁰ and other international instruments relevant to the question of extra-legal, arbitrary and summary executions.

15th plenary meeting
24 May 1989

ANNEX

~~Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions~~

PREVENTION

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehen-

¹¹³General Assembly resolution 39/46, annex.

sion, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

INVESTIGATION

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons. Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

LEGAL PROCEEDINGS

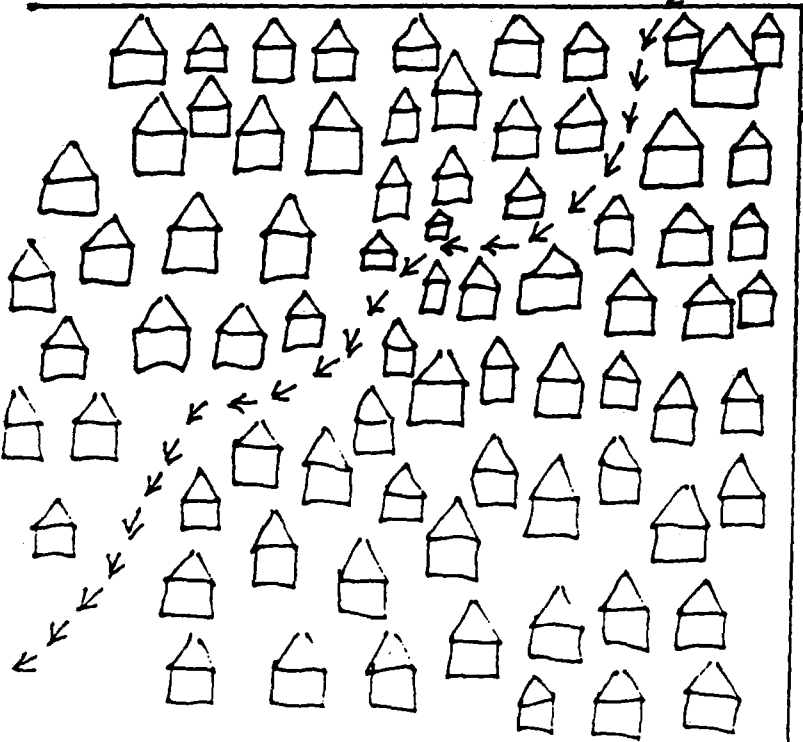
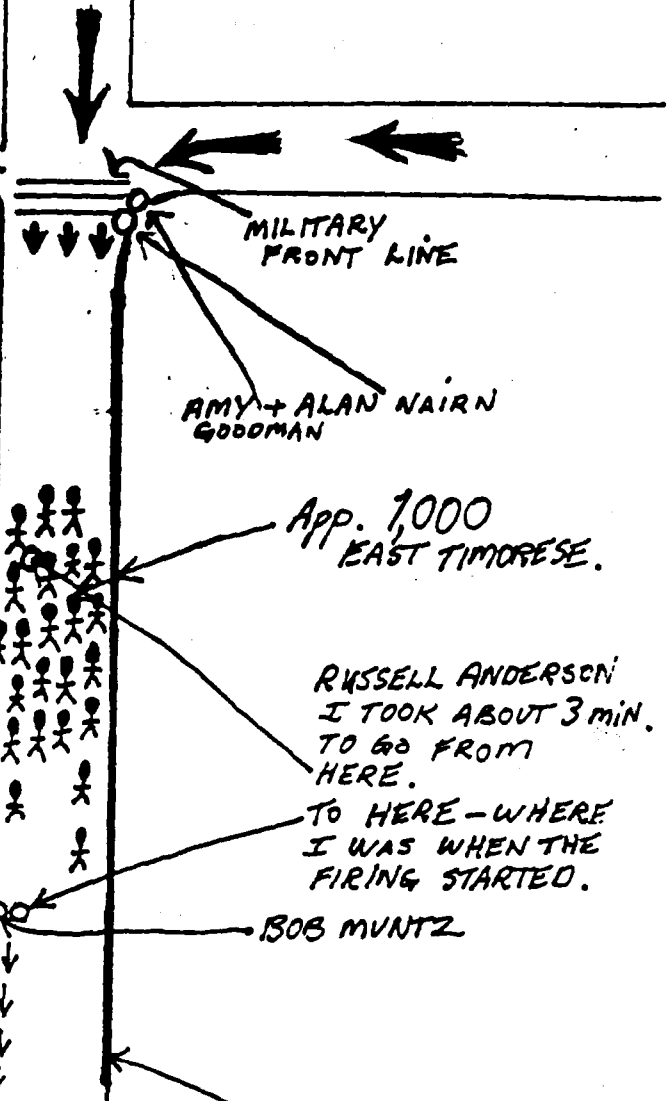
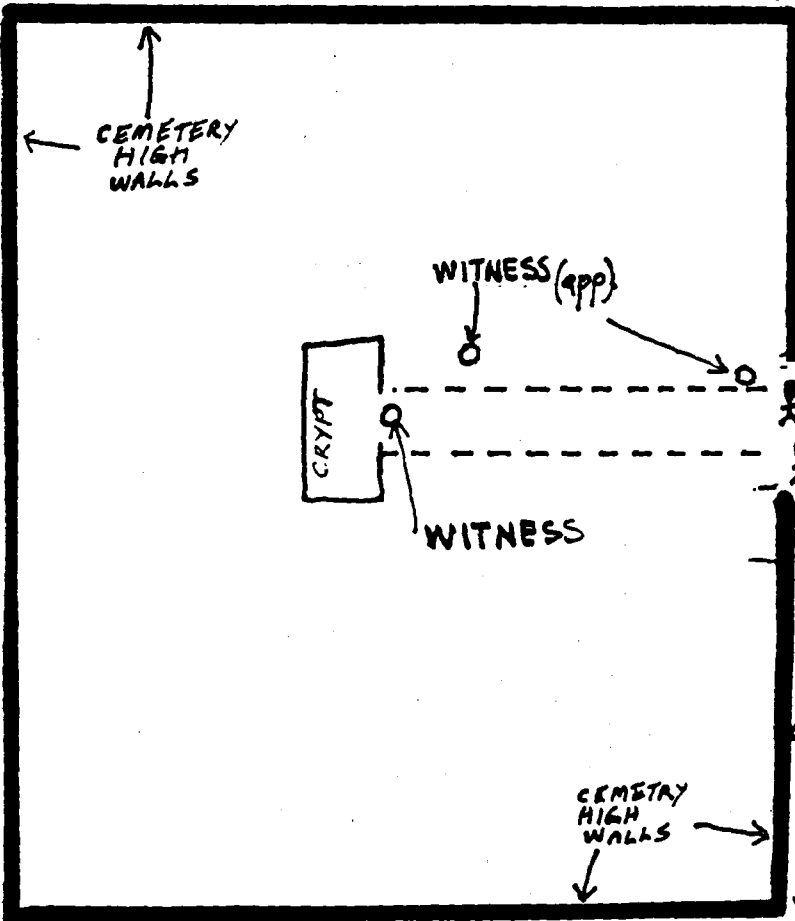
18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

MAP OF CEMETERY AREA
MOMENTS PRIA
TO SHOOTING.

BLACK ARROWS
SHOW MILITARY
MOVEMENT.
(I SAW)



WALL 1 METER HIGH
RUNNING ALONG
THE STREET.



→ → → → direction Russell
RAN.