7.2.3.9 Unlawful killings and enforced disappearances by Indonesian security forces, 1990-1998

599. The Commission found that from the late 1980s until the explosion of violence in 1999, significantly fewer unlawful killings and massacres were reported, with the dramatic exception of the Santa Cruz Massacre of 12 November 1991. Despite the decrease in reported executions, even excluding the executions and disappearances that occurred during and after the Santa Cruz Massacre, the Commission received testimonies from most districts regarding at least 185 killings and disappearances during this period. The Indonesian military responded to the activities of a small number of armed Resistance fighters and an increasingly sophisticated clandestine movement by subjecting civilians sympathetic to the Resistance to arbitrary detention, torture and ill-treatment, and enforced disappearances and killings. The witness testimonies below show that the Indonesian military continued to terrorise the population and kill civilians.

**Santa Cruz Massacre (November 1991)**

600. On the morning of 12 November 1991, Indonesian security forces opened fire on a thousand or more demonstrators gathered at the Santa Cruz Cemetery in Dili. This demonstration against Indonesian occupation, led by clandestine groups in Dili, was the largest since 1975. Tensions in Dili heightened with the August announcement of a planned visit by a Portuguese parliamentary delegation. The Resistance was preparing a large demonstration to coincide with the visit, which was scheduled for 4 November. However, on 25 October the Portuguese parliament suspended the visit in protest of the Indonesian demand that journalists including Jill Joliffe and Rui Araújo not be allowed to accompany the delegation. The cancellation of the visit disappointed the Resistance, especially as the preparations made by the clandestine movement throughout the country had risked exposing its networks to Indonesian intelligence. Towards the end of October the military's harassment of activists in Dili escalated, culminating in a raid on the Motael Church on 28 October. The raid left two dead, an East Timorese "intel" and a clandestine activist, Sebastião Gomes Rangel whose funeral was held the next day. The Resistance decided to use the occasion of the flower-laying service for Sebastião Gomes on 12 November—while the UN Special Rapporteur on Torture, Professor Peter Kooijmans, was also in Dili—to demonstrate for independence.

601. Approximately 3,500 people attended a mass at the Motael Church that ended at about 7.00am on 12 November. A procession then started from the Church and headed towards the Santa Cruz Cemetery. It immediately turned into a demonstration. Activists displayed pro-independence banners and flags. After passing in front of the Governor's office the march turned south at the T-junction where the Kodim headquarters was located, because the road to Hotel Turismo was blocked by Brimob (Mobile Police Brigade). At about 7.15am, in front of the Dharma Wanita office, a scuffle occurred in which Major Andi Gerhan Lantara was stabbed and his assistant, Private Domingos, was also injured. Leonardo de Araújo, a demonstrator, told the Commission that he was also stabbed in the right leg by a man in a camouflage uniform just near the Kodim. As the demonstration proceeded, some marchers threw stones at the Summa Bank and the Regional Police (Polwil) headquarters on Bispo Madeiros Avenue. The march turned east at the intersection of the Military Police Detachment and the Balide Church, and arrived at Santa
Cruz Cemetery at approximately 7.50am where some 500 other demonstrators were already waiting.

602. In 2004 the Commission obtained six Indonesian military documents concerning the events of 12 November 1991 that list the units which were mobilised for the demonstration. They included the following:

- A platoon from Brimob 5486 under the command of First Lieutenant (Police) Maman Hermawan.
- A Combined Company led by Second Lieutenant Sugiman Mursanib comprising a platoon of Brimob 5486 under the command of Second Lieutenant Rudolf A Roja and three platoons from Battalion 303 comprising Company C under the command of Second Lieutenant John Artonang, Company D under the command of Lieutenant Handrianus Eddy Sunaryo and another company whose commander is not known.
- A group of about 24 soldiers from Company A, Battalion 303 under Captain Yustin Dino. This included at least three Milsas (East Timorese recruited from civil defence units, such as Hansip, into the regular military structure), namely Second Privates Jorge Barreto, Domingos da Conceição and Financio Barreto.
- An anti-riot detachment from Battalion 744.

603. The Military Police (Pom) investigation identified First Sergeant Udin Syukur as the first soldier to open fire. At his trial Sergeant Syukur said that he and the demonstrators had had an altercation, which, he claimed, led him to shoot at either side of them though he claimed no one was hit. Marito Mota, coordinator of the clandestine youth group Fitun, told the Commission that he was standing at the T-junction lined up with fellow demonstrators facing the troops. Marito Mota said that he saw one of the demonstrators approach the soldiers and try to say something. This person was the first to be shot, and he said that after this the demonstrators began to flee in panic.

604. A period of intense firing quickly followed. Russell Anderson, one of the foreign eyewitnesses of the massacre, described this sudden escalation of firing by the soldiers.

Bob Muntz and I decided we should leave. I had taken ten hurried steps north along the cemetery wall and was glancing back to see the helmets of the military front line bobbing up and down, jogging or marching towards the crowd. The crowd began to walk backwards, walk away, some were already running.

Suddenly a few shots rang out, continued by an explosive volley of automatic rifle fire that persisted for two to three minutes. It sounded like the whole 15 in the front row had their fingers pressed firmly on the trigger. They were firing directly into the crowd.

605. The Third Military Police Report concluded that "elements" of Battalion 303's two platoons, under Second Lieutenant Mursanib, along with the Battalion 303 company from Taibessi, overtook the Brimob platoon because the latter looked as if they were hesitant to proceed. These "elements" formed into a unit in front of the Brimob platoon. Mursanib ordered two warning shots, but by the second shot troops, including three East Timorese auxiliaries to Battalion 303, were already shooting directly into the crowd. Jacinto Alves, a clandestine activist involved in organising the demonstration, heard the order to shoot as he passed troops coming from Taibessi. Many years later, he told UN investigators.
On reaching a bridge called "My Friend", which is about 100 metres from the cemetery, a group of Indonesian soldiers, bare-chested and armed, passed me and stopped two metres ahead. I identified them as Battalion 744 members because of the direction they were coming from. One of them, whom I do not know, instructed his colleagues to shoot the demonstrators on the spot. I did not expect the orders to be carried out owing to the presence of the [UN] human rights rapporteur in Dili at the time... After I heard these orders I turned and started heading for my residence. After walking approximately 200 metres, I heard rapid gun-shots for about five minutes, followed by isolated single shots that continued long after I reached my house.\(^2\)

606. The bare-chested troops Jacinto Alves saw advancing were in fact a group of soldiers under the command of Yustin Dino from Battalion 303. At least four Brimob members testified to the military investigators that they saw shots fired by bare-chested soldiers.\(^3\) Soldiers also started shooting from inside the Indonesian military Heroes' Cemetery directly opposite Santa Cruz Cemetery. Marcio Cipriano Goncalves told the Commission that he saw soldiers inside the Heroes' Cemetery pointing their guns at the demonstrators and that he was almost hit by a bullet fired from that direction.\(^4\)

607. Many witnesses recalled that they continued to hear shooting for some time.\(^5\) Simplicio Celestino de Deus told the Commission that many were killed during the main burst of firing, but that many others were also killed in various ways in its immediate aftermath:

> When I got into the cemetery, the guns were still being fired and continued to be for about 10 minutes. Inside the cemetery I looked for a place to hide. Then the military stormed in, beating victims with rifles and kicking them. Many were killed in the cemetery, but many more were killed outside the cemetery as they tried to run away or were taken from their homes and other places where they were hiding, and murdered.

> The military found me, beat me and wounded my ear. Later a policeman came and severed it completely... Because of all the blood they threw me into the back of an Indonesian military truck full of dead bodies. When the truck started moving I realised that one of the people in the truck was still alive. He tried to get up and asked the guards for water. Instead of giving him water, the soldier in charge slashed his throat with a bayonet.\(^6\)

608. Medical files presented at the trial of Gregório da Cunha Saldanha, a clandestine leader involved in organising of the 12 November demonstration, list 19 dead and 91 wounded. They also indicate the general pattern of the shootings.\(^7\) Of the 17 victims listed as shot at the cemetery, six were hit by bullets fired from in front of them and which lodged in the upper part of the body, mostly around the chest. This suggests deliberate firing directed at the demonstrators' bodies. Of the 91 wounded victims, 43 sustained bullet wounds; 21 of those with bullet wounds were shot from behind and were hit in the back, the buttocks, and the back of their legs and necks.
The death of Kamal Bamadhaj

Kamal bin Ahmed Bamadhaj, 21, was the only foreigner who lost his life in Dili on 12 November 1991. He was watching the demonstration at Santa Cruz Cemetery together with six other foreigners. It is likely he was standing close to the front line of demonstrators, as security forces were gathering at the T-junction. He somehow escaped the massacre and reached Bispo Madeiros Avenue where he was shot by a passing patrol. The Indonesian military court-martialed two low-ranking East Timorese soldiers—Second Private Afonso de Jesus and Second Private Mateus Maia—on charges related to the death of Kamal.

Helen Todd, Kamal’s mother, spoke about his death during the Commission’s Public Hearing on Massacres:

Kamal was a student born and educated in Malaysia. He was a Muslim. At the time of the Santa Cruz Massacre, Kamal was a second year university student in Australia. When he moved to Australia to study, he was shocked to learn of the situation in Timor. In neighbouring Malaysia he had never heard about East Timor.

Kamal was not shot at Santa Cruz. After the shooting at the cemetery he was walking along the road of the old market. As you know, an intel agent had earlier been stabbed. The ABRI unit that took him to the hospital was returning and saw Kamal walking alone and shot him. A member of the International Red Cross tried to take the bleeding Kamal to the civilian hospital, but was refused entry and obliged to go to the military hospital, losing precious time. He died after admission from loss of blood. Kamal’s death was one small part in the struggle of thousands and thousands. A small thing, but you will understand that it is important to me.

There were so many lies after Kamal’s killing. Max Stahl was graphic about the lies told after the Santa Cruz Massacre. I can testify that this is true. For three days the Indonesians denied that any internationals had been killed. Then the official Indonesian report was that Kamal was killed in the crossfire. Then it was suggested that he was some sort of stupid tourist, killed because he should not have been there.

The New Zealand government was initially very helpful in terms of the retrieval of the body, but once this was done it was back to business as usual, [doing] anything to please Indonesia. Malaysia barely acknowledged the killing. The major English-language newspaper wrote of the killing, editorialising generally that young people should not get mixed up in politics, that if they do they are somehow troublemakers.

The Red Cross in Dili was a great help. Kamal was first buried in an unmarked grave in Hera. It was only because of the efforts of the Red Cross representative, Anton Manti, that we had his body removed and were able to have him buried in Malaysia.

This year, on the anniversary [of the massacre], I walked to the place where Kamal was shot. People came out to tell me that the place was a little further along the road. Later that day, I came back to the place. Somebody had come and placed flowers and candles at this place. I thank you.738

Alleged killings at Wirahusada Hospital

609. In 1994 two people came forward to claim that they witnessed the killing of people who had been taken to the Wira Husada military hospital after being wounded at Santa Cruz. At the time of the massacre Aviano Antonio Faria was a pupil at the Santo Joséf school and João Antonio Dias a laboratory technician at the Wira Husada Hospital. The two were smuggled out of Timor-Leste and testified to the 50th session of the United Nations Commission on Human Rights in 1994. The
Commission interviewed the two witnesses and a new witness, Inocência da Costa Maria Freitas, who had worked for the intelligence branch of the Dili Kodim.

610. Aviano Antonio Faria told the Commission that after he was wounded at Santa Cruz, he was taken from the cemetery to the Wira Husada Hospital and not long afterwards was placed in the morgue. Two Indonesian soldiers came into the room. One had a big stone and the other had two plastic bottles that contained water and some kind of medicine. The soldier with a big stone dropped it on the heads of the seriously wounded. When Faria’s turn came, he suddenly stood up and lied to the soldiers that he was an informer for Kopassus, who had been sent to monitor the demonstration. The soldiers allowed him to go, but before that they ordered him to take the medicine. After the medicine induced vomiting, he was taken to the hospital and received treatment. On the night of 12 November, soldiers came into the room where Aviano Antonio Faria and other patients were sleeping. They asked which of them had come from the morgue. Faria remained silent, and they did not take him.

611. João Antonio Dias told the Commission that tablets of formaldehyde were given to the wounded. He told the Commission that he was ordered to help take the bodies brought in to the hospital on trucks. This made him feel sick and he went to the bathroom of the laboratory where he heard a conversation between his supervisor and a group of four soldiers who had come to the laboratory to get sulfuric acid. The soldiers said they wanted to kill the wounded quickly and silently. His supervisor told them that people would scream if they were given sulfuric acid, so the soldiers left and returned later with a drug. When this was administered to the victims, many screamed and then fell silent. The soldiers took away and burned the clothes and shoes of the dead in front of the morgue. Then a water truck came and washed the ground.

612. Inocência da Costa Maria Freitas, the member of the Kodim’s intelligence section, reported to the Commission that he came to Wira Husada Hospital that morning carrying Major Gerhan Lantara who was wounded. While he was there, Kamal Bamadhaj and Gerhan Lantara’s assistant, Private Domingos, were brought to the hospital. Hino trucks began arriving and he saw about 200 bodies carried into the hospital. He went to the morgue and there he saw two Indonesian soldiers crushing the heads of the wounded lying on the floor with a stone.

Culpability

613. The Indonesian military and civilian investigations described the demonstrators as bringas or "wild" and claimed they were armed with rifles, pistols, grenades, swords and knives. Both investigations also claimed that the demonstrators threw a grenade and attempted to seize firearms from the soldiers. One witness told the Commission that some of the demonstrators had grenades. Fernando Tilman, a witness at the trial of Gregório da Cunha Saldana, is recorded as having told the court that he saw a demonstrator, Atino Brewok, shoot a weapon and saw two other demonstrators carrying rifles. However, he told the Commission that what he had told the court was false. The Indonesian investigations failed to present evidence such as photographs or film that showed armed demonstrators. Adding to the sense that these allegations were fabricated was the fact that the Indonesian list of weapons supposedly seized frequently changed.

614. Because the massacre was filmed by the British film-maker Max Stahl and shown around the world it caused unprecedented international outrage, which the Indonesian government could not ignore. The military’s strategic intelligence agency, Bais, immediately started an internal investigation, but never announced its findings. A National Commission of Inquiry (NCI) was appointed by President Soeharto to carry out an investigation. Its advance report, issued on 26 December 1991, assigned most of the blame to the demonstrators. It concluded that the response of the Indonesian security personnel was a spontaneous reaction to defend themselves, and, because it had occurred without orders from above had resulted in excessive shooting at the demonstrators. Its full report was not made public. In 1992 ten low-ranking
members of the security forces were court-martialled and received sentences of from eight to 18 months. The Indonesian government put the number of confirmed deaths at 19 and those missing at 56 as of 29 November 1991. However, other sources put the death toll far higher. For instance, the list of victims compiled by two Portuguese non-government organisations, published in 1993, contains the names of 271 dead, 382 wounded and 250 missing.

615. The figure for the number of wounded on the list compiled by the Portuguese NGOs was confirmed by an internal Indonesian military investigation, which put the number of wounded taken to Wira Husada Hospital at about 400. In a brief survey of selected Dili neighbourhoods the Commission was able to establish that the whereabouts of 59 people on the Portuguese list of missing people were still unknown. In addition it received the names of a further 18 missing people through its statement-taking process. Excluding duplicated names that were given to the Commission through both processes, the Commission collected the names of a total of 72 people who have been missing since November 1991. It is clear to the Commission that the total number of missing people must be much higher. The Commission’s survey was far from comprehensive, covering only a few of Dili’s neighbourhoods and excluding much of the area immediately around the Santa Cruz Cemetery itself. Moreover, it is clear that many of those who joined the demonstration came from outside Dili and though it is known that several of them too were killed or “disappeared”, their number is not known. The Commission has no way of judging how many are still missing, but it believes that a figure of 200 is not an unreasonable estimate.

616. The Commission has also received several reports of extra-judicial executions outside Dili at around the date of the Santa Cruz Massacre. In Sorolau (Ainaro, Ainaro) four clandestine activists were killed by soldiers identified as members of Kopassus and East Timorese Milias. In Maubisse (Ainaro) a group of 14 men were arrested by East Timorese Sukarelawan acting on the orders of the Maubisse Koramil. They were taken to the local Koramil where they were bound and beaten, and interrogated about their supposed clandestine connections. Two of the men died as a result of the beatings.

617. The Commission believes that a more comprehensive survey than its own is needed. It finds credible reports there is at least one mass grave in Tibar (Bazartete, Liquiça) and possibly another one in Hera (Cristo Rei, Dili) and and believes that a more rigorous investigation is required. For example, the Commission did not have the resources to conduct exhumations. The Commission recalls that in his report to the United Nations on his mission to Indonesian and Timor-Leste, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, cited Article 17, Paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, which states: “Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.”

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2 See, for example, CAVR Community Profile liiomar II, liiomar Sub-district, Lautém District, which says that 12 people from liiomar, who attended the Santa Cruz demonstration, were killed or “disappeared”.
Case study: Indonesian investigations into the events at Santa Cruz Cemetery on 12
November, 1991

Introduction:

618. When film footage of the massacre at Santa Cruz\(^*\) was broadcast to audiences around the
world it provoked a significant international outcry against the practices of the Indonesian military
in Timor-Leste. It brought an unprecedented level of pressure upon Indonesia about the actions
of the its armed forces in Timor-Leste. However, as the research presented in this section
demonstrates, even in the face of strong international demands to bring those who had killed
unarmed demonstrators to account, the institutional practices of ABRI/TNI provided the majority
of perpetrators who were most responsible with effective impunity.

619. As reported in this Chapter, scores of unarmed demonstrators were executed by heavily
armed members of the Indonesian military forces in the course of what has come to be known as
the Santa Cruz Massacre. This included shooting civilians in the back when they were running
away, stabbing wounded civilians to death, or killing the wounded who were incapacitated by
blows to the head. However, the series of subsequent investigations which were carried out by
civilian police, military police and the local military command resulted in the demonstrators, who
were the victims of the massacre, suffering even further punishment. Demonstrators were
variously killed, rounded up, arrested, or faced unfair trials designed to guarantee convictions and
ensure long prison sentences.

620. The investigations were not carried out by independent authorities, but were conducted by
persons who were connected institutionally to those under investigation. The investigations were
thus designed to condemn the demonstrators and in turn exonerate those responsible for the
violence. Ultimately, those military officers who were directly involved in shooting or commanded
troops who shot the unarmed demonstrators were protected, with only a few low ranking officers
facing court martial on relatively minor charges.

Background:

621. The events leading up to and including the killings at the Santa Cruz Cemetery on 12
November 1991, as well as the trials of demonstrators, are examined at length in other parts of
this Report (see in particular, Chapter 7.6 Political Trials, Chapter 7.4 Detention Torture and Ill-
treatment, and Part 3 History of the Conflict). The United Nations Special Rapporteur on
Extrajudicial, Summary or Arbitrary Executions, Mr Bacre Waly Ndiaye (Senegal) visited
Indonesian and East Timor from 3 to 13 July 1994 and examined the events of the massacre at
Santa Cruz. He presented his report to the UN Commission on Human Rights in February
1995.\(^{173}\) The evidence which has been presented to the Commission generally confirms the
findings of UN Special Rapporteur Ndiaye in his 1994 report on the extra-judicial killings at Santa
Cruz.

622. In particular, the UN Special Rapporteur found that:

\begin{enumerate}
  \item The procession was a peaceful demonstration of political dissent.
  \item The claims of some officials that the security forces had fired in self-defence and had
        respected the principles of necessity and the proportionality of use of lethal force were
        unsubstantiated.
\end{enumerate}

\(^*\) Cameraman Max Stahl filmed the demonstration and the reaction by the Indonesian military on 12 November 1991. The
film was smuggled out of Timor-Leste within days and broadcast on networks across the world. The Commission has
examined this film footage, and holds copies in its Archive. José Ramos-Horta told the Commission that this film footage
had changed international perceptions of the situation in Timor-Leste [José Ramos-Horta, Closing Address to the CAVR
National Public Hearing on Famine and Forced Displacement, 2003.}
19. Security forces had used unnecessary force beyond the extended needed for the performance of their duties.

20. The security forces had advance information of the preparations for the demonstration.

21. The demonstrators carried no firearms.

22. The only act of violence by demonstrators, namely, the stabbing of Major Anri Gerhan Lantara and his assistant, Private Domingos, took place some time before the crowd reached Santa Cruz cemetery.

23. No security forces had been killed at or around the cemetery, the site at which they opened fire.754

623. The established international standards for assessing the assessment of investigations involving possible violations of the right to life are set out in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.755

624. According to these principles, the massacre at Santa Cruz required a thorough, prompt and impartial investigation. In line with Principle 9, the purpose of the investigation should have been:

[T]o determine the cause, manner and time of death, the person[s] 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.

625. On this basis, the Indonesian investigations should have attempted to:

- Identify the numbers and identities of the dead and missing.
- Distinguish between the different reasons for death: natural death, accidental death, suicide and homicide.
- Assess whether a person’s right to life was unlawfully taken, that is, taken arbitrarily, for a non-lawful purpose, or in a disproportionate way, or taken summarily.
- Determine to a sufficient degree individual and/or command responsibility of person(s) under review in order to recommend further action where such action is justified.

626. This section examines the extent to which the various investigations and actions by Indonesian authorities in response to the killings at the Santa Cruz Cemetery satisfied these standards and therefore discharged Indonesia’s duty to hold the perpetrators accountable through a genuine process of investigation, prosecution and punishment of perpetrators.

627. The Commission has considered:

1. The investigations conducted by the civilian police in East Timor.
2. The investigations conducted by the military in East Timor.
3. The investigations conducted by the military police into the actions of military personnel at the incident.
4. The investigation of the National Commission of Inquiry (NSI).
5. Action taken against members of the armed forces, including the trials of members of the armed forces.
Civilian police investigation

628. The Indonesian legal system did not provide the police with authority over the military, and so they could only investigate the actions of civilians. In this case the civilians were the demonstrators and victims of crimes allegedly committed by security forces. Nevertheless, the police were required to undertake a fair and diligent investigation into the entire circumstances of the events before they decided that criminal action against the demonstrators was required.

629. It is clear that the police undertook a large-scale investigation. On 13 December the Chief of Police for East Timor (Kepala Kopolisian Wilayah Timor Timur), Drs. Ishak Kojiat, formally opened an investigation by a 28-person team.758 However, this investigation was focused from the beginning on bringing the demonstrators to trial. Indeed, on the day of the demonstration and before the investigation had even commenced, the civilian police concluded that subversive crimes had been committed.757 As a result, the investigation was neither comprehensively nor impartially conducted. The impartiality of the police was further compromised by the fact that the police force was part of the Indonesian armed forces apparatus.

630. The failings in the investigation into the demonstrator’s conduct have been discussed in detail in Chapter 7.6: Political Trials. The evidence examined by the Commission, which included hundreds of official court files and the evidence of witnesses, clearly demonstrated that the court proceedings were designed and implemented to guarantee the conviction of those demonstrators who were charged. Many confessions were obtained through torture, evidence was fabricated, in most cases no defence witnesses were called by court appointed lawyers, none of those charged were acquitted and no appeals were successful. The findings of the Commission included the following:

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7 The Commission uses this terminology to distinguish the “civilian police” from “military police”. At the time of the incident and until 1999, both were part of the armed forces.
• The investigation was directed at punishing the demonstration organisers for their defiance and then to pin blame for events at the cemetery on the demonstrators. The Records of Interview and the court transcripts show that the authorities went to great lengths to draw out details about the alleged brutality of the demonstrators and how the security forces were attacked and provoked into shooting in self-defence, while avoiding the issue of what actually happened at the cemetery when dealing with demonstrators or organisers.

• There is nothing on the files of the defendants to indicate that police investigators attended, let alone secured and conducted a forensic investigation, at the site of the mass killings at the Santa Cruz Cemetery. Further, the materials examined by the Commission also do not indicate that any investigation into the alleged stabbings of the two ABRI soldiers outside the Kodim was carried out.¹

• Admissions made during interviews by suspects were made under conditions of duress, sometimes torture, and in the absence of obligatory defence lawyers (see Chapter 7.4: Detention, Torture and Ill-Treatment).

• The court files contain the medical reports for the two ABRI members who were attacked by demonstrators, but there was no documentation whatsoever about the demonstrators who were killed or wounded by security forces. There were not even details of the 19 persons (18 unidentified persons plus the Malaysian student Kamal Bamadhaj) that the authorities alleged were the only persons who were killed that day. UN Special Rapporteur Ndiaye concluded the following:

According to the Chief of the East Timor Police, the bodies of the acknowledged 19 victims were buried at Hera on 13 November, one day after the killings. No adequate autopsy had been performed, no pictures of the corpses had been taken and, to date, 18 of the bodies remain unidentified. It is not known what measures were taken as regards the bodies of victims allegedly buried in mass graves. The Special Rapporteur therefore reached the same conclusion as the NCI, which reported that "there was careless handling of those who died, because although the visual and repertools were performed the deceased were not properly identified. Little opportunity was given to the families/friends of the victims to identify the bodies."²

¹ The Santa Cruz files in the District Court of Dili reveal that on 12 November the police were gathering items in relation to the stoning of the Bank Summa and the old Regional Police Station (Polwil Lama): Achmad Bey, Kebag Serse (head of the investigation section), issued an order for the seizure of a rock and shards of glass from the Bank Summa and five rocks and shards of glass from the Polwil Lama [Surat Perintah Penyitaan, No. Pol. SPPNY/file/gible/X/1991/Serse, 12 November 1991, Kebag Serse, Achmad Bey]. The next day, the police informed the District Court of Dili that they had identified José Francisco da Costa in relation to the stone-throwing and sought to have the confiscation of the rock and shards of glass legitimised [Mohon Persetujuan Penyitaan Barang Bukti, No. Pol. B/1294/XI/1991/Serse. Under the KUHAP, confiscation of evidence requires a court order. An immediate confiscation requires retrospective approval of the court. This was provided by the District Court of Dili on 17 December 1991 in its Penetapan No. 154/Pen.Pid/1991/PN.DIL.]. The same was done in relation to José Barreto, suspected of having thrown the rocks at the Polwil Lama. [Mohon Persetujuan Penyitaan Barang Bukti, No. Pol. B/1243/XI/1991/Serse. Approval was granted by the District Court of Dili on 17 December 1991 in its Penetapan No. 153/Pen.Pid/1991/PN.DIL.].

² However, the Second Warouw Report, infra, states that Major Gerhan Lentara was stabbed by Mariano and Siko (witness Julio da Costa) and Private Domingos da Costa was attacked by Francisco Amaral, p.4.

³ Ndiaye Report, para.56 and para 570. The Special Rapporteur reported that all the East Timorese witnesses whom he met said that there had been no public appeal for families to come and identify the bodies, as had been claimed by East Timor's Chief of Police.
• No photographs of the allegedly armed, violent and "brutal" demonstrators, who taunted and attacked the security forces, were included in the files. This is particularly surprising given the number of intelligence officers who were monitoring the movements of the crowd (one of whom was Major Gerhan Lentara, who was taking photographs when he was stabbed). Only manually drawn diagrammes of events were included. The Commission observes that audio and visual recordings and equipment were confiscated and there was one video in wide circulation showing what happened at Santa Cruz – that made by Max Stahl and shown by Yorkshire Television of the United Kingdom. This was never taken into consideration. Likewise, neither military nor police case files contain statements from any of the foreigners who were present.

• The police failed to properly identify the weapons said to have been seized at the Santa Cruz Cemetery and used against the security forces by demonstrators. There is nothing to indicate who found what, where and when, and thus nothing to show that the items were actually found at the cemetery or on the persons of demonstrators. There is only a list of items on the files accompanied by the description:

Some of the items of evidence were found in the TKP by members of Brimob, and then handed to the Sub-Regional Police of East Timor, then confiscated by Investigators.

• Specific notes were made about items seized from the Bank Summa and the old Sub-Regional Police Station, as well as items seized from the home of accused demonstrators Francisco Branco and Jacinto Alves. The list of items that the police entered in evidence was different from the several military lists (see below), above all for containing no firearms. This discrepancy is significant, for it was the police who were said by the military police to have been in possession of the firearms.

631. The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions found that the civilian police investigations were inadequate because:

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1 The absence of this material puts it out of the usual pattern of virtually all the political trials that the Commission has examined. For instance, the case file of Inacio de Jesus dos Santos in relation to a demonstration at the University of East Timor on 9 January 1995, contains several photographs of the demonstration and the arrest of the accused. [Inacio de Jesus dos Santos, Case File: 36/PID.B/1995/PN.DIL].

1 The Commission observes that the failure to use relevant evidence was also a feature at the trials in Jakarta conducted by the Ad Hoc Human Rights Court on East Timor in 2002 and 2003 – perhaps the most striking being the failure to consider film footage showing militia leader Eurico Guterres’ addressing a crowd of militia, in the presence of senior Indonesian officials, just prior to militia went on a rampage around Dili and attacked the home of Manuel Carrascálão and killing at least 12 people. The Commission has also examined this film footage and holds copies of the footage in its Archive.
• As a part of the armed forces, they lacked independence and impartiality.

• Forensic examinations, in particular autopsies and ballistics tests, were inadequate: "The Chief of Police told the Special Rapporteur that the necessary technological means were not available in East Timor."  

• The criminal investigation was inadequate, failing to identify either perpetrators or victims, nor even the number of victims or ascertain the number and whereabouts of missing persons. He particularly noted that the police simply focused on investigating the demonstrators.  

• There was careless handling of the bodies of the deceased, including burial of the bodies one day after the killings without adequate autopsies, photographs or thorough identification.  

• Little effort went into identification of bodies and the Rapporteur did not accept that any public appeal had been made for families of the missing to examine bodies at the morgue.

Reports by the military command in East Timor

632. The military command in East Timor conducted its own investigations into the events at Santa Cruz. Two reports were prepared by the head of the Operations Implementation Command in East Timor (Komando Operasi Pelaksana Timor Timur, Kolakops Timor Timur, Kolakops), Brigadier General Rudolf S. Warouw, and sent to the Regional Military Command based in Bali. These reports, dated 13 November 1991 and 30 December 1991, presented the official military version of what happened at the demonstration and explained the response of the security forces. They are referred to here as the First and Second Warouw Report respectively. † No attempt appears to have been made by the military to investigate the unlawful killings on 12 November 1991 or the other serious human rights violations which took place there.

633. The District of Dili was designated "Sector C" by Kolakops and the sector was under the command of Infantry Colonel Binsar Aruan. Colonel Binsar formed the Combined Company on the night of 11 November to manage the flower-laying ceremony for Sebastião Gomes Rangel, which the military was aware was to happen the next day. The Combined Company was composed of one platoon of the Police Mobile Brigade (Brimob) and two platoons of soldiers from Battalion 303. Some soldiers apparently also came from the Dili District Military Command (Kodim Dili), as well as from Batallion 744.

The First Warouw Report

634. The First Warouw Report reveals that military investigations were carried out immediately after the incident but that only members of the security forces were interviewed. The Report contains a 22-page document signed by Brigadier General Warouw, which is based on a 12-page accompanying document by Colonel Binsar Aruan. Colonel Binsar was the commander of Sector C, the military area covering Dili. He had formed the Combined Company, comprising two

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† These documents submitted to the Commission by the Minister of Foreign Affairs and Cooperation of the RDTL, José Ramos-Horta, and are held in the CAVR Archive. They were among those requested, but never received, by Special Rapporteur Ndiaye.

† Laporan Khusus Lapsus/20/XI/1991 tentang Peristiwa '12 Nopember 1991' di Dili, Timor Timur, Special Report Lapsus/26/XI/1991 regarding the '12 November incident' in Dili, East Timor dated 13 November, from Komando Pelaksanaan Operasi Timor Timur (Pangkolakops). The 22-page report from the chief of Kolakops was sent to the commander in chief of the Regional Military Command, based in Bali, and copied to 10 others including the Commander in Chief of the Indonesian Armed Forces (Panglima ABRI), and the Chief of Staff of the Army (Kepala Staf Angkatan Darat); Laporan Khusus Tentang Pengungkapan Para Perusuh Yang Terlibat Dalam Peristiwa Demonstrasi 12 Nopember 1991 Di Santa Cruz, Dili, Timor Timur, [Special report on the disclosure of the rioters of 12 November 1991 demonstration in Santa Cruz, Dili, East Timor]dated December 1991 (no day entered) signed and sealed by Komando Pelaksana Operasi.
platoons from Battalion 303 and one Brimob platoon, the evening before the demonstration. The
Combined Company was commanded by Second Lieutenant Mursanib.

635. As well as the two written documents, the First Warouw Report also contains diagrammes
showing troop movements in relation to the visit of United Nations Special Rapporteur on Torture
Professor Pieter Kooijmans which was taking place at the time, and in anticipation of and
following the demonstration. It contains details of weapons seized from the Santa Cruz Cemetery
and reports that the injured were taken to hospital and 308 persons were taken to police
headquarters. Of those, 49 were kept in detention and 259 returned to their families.

636. It is clear that this investigation was not impartial. First, it was made by the person in charge
of the armed forces in Timor-Leste, and therefore responsible for the actions of the military at the
cemetery. Second, from the outset the military assumed that the demonstration was organised by
the Resistance, providing justification for the military’s conduct. The First Warouw Report’s stated
aim was to:

[R]eport to the Command on the case of the demonstration
by an anti-integration group with the support of GPK
Fretiin...with the purpose of becoming material for
consideration in determining what policy should follow.

637. The military’s analysis of the incident relies on the notion that the demonstration was
planned by radical and criminal elements; it was not merely a peaceful commemoration mass.
The First Warouw Report states that “those we faced were not demonstrators but were armed
guerrillas”. Two of the differences between this demonstration and a peaceful mass, which were
noted by the First Warouw Report, were merely examples of the exercise of the right to freedom of
expression:

1. This was the first public display of Fretiin and Falintil flags.
2. The demonstrators carried posters and banners of GPK leaders said to be symbols of the
   national unity of East Timor.

638. It was alleged that the demonstration was part of a larger plan by the GPK (that is, the
Resistance), to influence a small number of people, including students and youth, to conduct
destructive anti-integration activities. This plan was said to include strategies of blowing issues
out of proportion and using religion and the Church to influence people. The Report
acknowledged that the cancellation of the visit of the Portuguese parliamentary delegation
caused much disappointment. The military found that the leadership of the Resistance took the
opportunity to plot destructive acts to provoke repressive actions from the security forces. It
reported that the Resistance spread false rumours about ABRI. The Report indicates that
members of ABRI viewed the demonstrators as part of the Resistance, and therefore as enemies.
Demonstrators were therefore seen as deserving, if not legitimate, targets of attack.

639. This demonstration was also said to be different because “demonstrators deliberately
attacked ABRI personnel, tried to grab their weapons and insult their honour. This sort of brutal
demonstration was a typical insurgent ploy”. The supposed armed and aggressive character of
the demonstrators was the second key point in the military’s analysis of the incident. According to
the report, Mursanib ordered his men to fire warning shots into the air but the crowd surged
forward again, there were shouts to attack and stones were thrown. After a second round of
warning shots were fired a grenade with the pin intact was allegedly thrown at the military and
captured by Second Lieutenant Mursanib. There were skirmishes as demonstrators tried to wrestle
weapons from soldiers and one soldier’s hand was hurt. Finally, given the critical situation, shots

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1 The Kolakops commander in chief, Brigadier General Rudolf Warouw, ordered an "Investigation of the case of the
demonstration by a Fretiin group and their supporters". In the First Warouw Report of 13 November.
were fired for between six and eight seconds and then the crowd stampeded and many were crushed.

640. The Report's view, in light of this version of the facts, was that the security personnel acted in self-defence, without premeditation in a pressured situation where the attacking crowd was threatening their lives and shouting out very hurtful insults. It noted that professional soldiers are required to take firm, quick and precise action at critical moments when their lives and weapons are under threat. It reported that the developments were regretful, but that this matter involved ABRI’s efforts to defend the honour and sovereignty of the nation because GPK/Fretilin were a national enemy that had to be destroyed.*

641. Recommendations were to:

- Prosecute the leaders and participants in the disturbance for subversion.
- Bring those members of the security forces against whom there was evidence to a court, while those who took part and against whom there was insufficient evidence be sanctioned.
- Refuse entry to journalists pretending to be tourists because of operational reasons.

Failures in the military investigation methods

642. The Commission has identified numerous gaps and failings in the way that the military went about its investigation. First, there were important issues of conflict of interest. The military relied on the officers responsible for the Combined Company for its version of what took place at the cemetery. Further, it used the security forces which had been involved in the massacre to investigate the scene of the crime. In the course of the "cleaning-up" operation, soldiers from Batallion 303 and Brimob gathered together evidence against the demonstrators. They also removed corpses and survivors before forensic investigation of the scene of the crime could be done.

643. The opportunities for planting or destroying evidence in such a situation were manifold. No proper chain of custody of evidence records were kept. There is one general diagramme on file showing where certain weapons were found, but only one weapon (the Mursanib grenade) was recorded as being found by an individual. Other weapons were simply marked as found by military unit, for example, Batallion 303 or Brimob. There was also a high risk of evidence being destroyed. Demonstrators have reported that before the security forces removed them from the cemetery, they saw blood being washed off the road.† In fact, this destruction was to continue into the next few days, as bodies of victims were secretly disposed of, without proper forensic handling and without being returned to their families.

644. No records were kept of where each body or injured person was found, or the condition of the body or person. The location of shot persons is particularly important given the claim of self-defence raised by the military. If the military genuinely fired in self-defence, then the victims would have been those closest to the security forces and there would not have been any victims of gunshot wounds inside the cemetery or away from the "confrontation line" between security forces and demonstrators.

*The UN Special Rapporteur, who did not have access to the documents examined by the Commission, was nevertheless able to conclude that: "The actions of the security forces were not a spontaneous reaction to a riotous mob, but rather a planned military operation designed to deal with a public expression of political dissent in a way not in accordance with international human rights standards." [Ndiiye Report]
The Second Warouw Report

645. The second report from the commander in chief of Kolakops East Timor, dated more than six weeks after the first report, focused on conveying the intelligence information that had been obtained from individuals charged and interrogated about the Resistance in East Timor. It contained:

- Records showing who was arrested and released or still detained and the charges that had been laid against certain detainees.
- Intelligence reports on the activities of the foreigners who were present at the demonstration.

646. The report was not an investigation into responsibility for the killings and other serious human rights violations perpetrated by security forces at Santa Cruz. Rather, through its detailed descriptions of the structure and strategies of the clandestine network and summaries of testimonies extracted from detained demonstrators, it seems to suggest that this intelligence triumph was a justification for the killings at the Santa Cruz Cemetery.

Investigations by the Military Police

647. The investigations into the conduct of the military in East Timor regarding the Santa Cruz killings were carried out by the military police operating out of the Regional Military Command (Kodam) in Bali. The Commission has come into possession of three reports by the military police commissioned to report on investigations into the actions of the Combined Company. These reports, referred to here as the First, Second and Third Military Police Reports, were dated 26 November 1991, December 1991 and January 1992 respectively.\[64\]

The First Military Police Report

648. All three reports accept the Kolakops version of the facts of the demonstration, particularly the political background and the dangerous character of the demonstrators. The First Military Police Report states for example:

>The mass of Demonstrators carrying out the demonstration on 12 November 1991 were brutal, emotional and wild as a result of outside instigation from the Anti Integration group, which is suspected of masterminding the demonstration.\[66\]

649. The report confirms that the Combined Company members did everything possible to control the crowd through persuasive means, through positioning and warning shots in accordance with procedures. It states that the security forces could not have anticipated that the mob would get increasingly violent and attack them with sharp weapons, firearms and grenades. The troops were forced to fire in self-defence. The report stressed that Article 49 of the Criminal Code (KUHP) provides that a person acting in self-defence to a direct threat to body, honour or personal property may not be punished. Exceeding the limits in self-defence is permissible when

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1 The Commission has examined the originating report of the massacre, made to the Military Police, and contained in the Berkas Perkara of Sgt. Aloysus Rani (see below), Police Report no. LP-28/A-22/MILITARY POLICE DETACHMENT IX/4/1991, was filed by Second Sergeant Zainuddin, reporting on: "a disturbance between security forces and demonstrators opposed to integration with Indonesia. The cause of the aforesaid disturbance was that a group of youths against integration with Indonesia carried out a violent and brutal demonstration that resulted in security forces opening fire".
it is the "direct result of offence [lit. shakiness of heart] caused by the attack". So, the report concludes, the security forces acted in accordance with the law.

650. Further, it stated that the attacks by the demonstrators on Major Girhan Lentara and Private Dominggos were criminal acts requiring legal processing.

The Second Military Police Report

651. The Second Military Police Report, at seven pages, presents a new explanation for the serious human rights violations perpetrated at Santa Cruz. It mentions members of the Combined Company and other ABRI members who acted outside of command. Three members of the Dili Kodim reportedly left the Kodim without being ordered to do so, went to the cemetery and fired at the crowd. The three men were Sergeant Major Petrus Saul Meta, First Sergeant Aloysius Rani and First Sergeant Udin Syukur. A member of the police, First Corporal Marthin Alau, also went to the site without orders and stabbed a demonstrator because of his heightened emotion on seeing the actions of the crowd and the tearing of the Indonesian flag in front of the Dili Police Station. The report concludes that these personnel acted on their own initiative, and did so in violation of Article 103 Military Criminal Code (KUHPM).

652. The Commission observes that it is unclear why this element of the story only emerged in the Second Military Police Report in December 1991. All four of the "own initiative operators" say they reported back immediately on return to their respective bases on 12 November and surrendered the weapons they had taken to await disciplinary action. Their role would therefore have been known by the time that the Warouw reports and the First Military Police Report were prepared. 

653. Of serious concern in the Second Military Police Report is the alteration to an original statement given by witness Second Lieutenant Mursanib, who was eventually dismissed from his post. The Commission has examined an original signed copy of the first Mursanib record of interview. It has compared this to the copy of the statement that appears in the Second Military Police Report, a photocopy of the original. At two points in the copied document related to the finding of the grenade the wording has been blocked out and then typed over. These changes were not initialed by the deponent or the interrogators.

The Third Military Police Report

654. The Third Military Police Report, just five pages, introduces two major new features – the role of the Batallion 303 from Taibessi and six other soldiers who acted on their own initiative. It contains summaries of the statements of 36 witnesses and lists 12 potential accused. It highlights the roles of:

- Private Mateus Maya and Private Alfonso who shot dead a foreign journalist (Kamal Bamadhaj) in front of the office of the Dili Department of Information.
- Three Milisas who were attached to Batallion 303/SSM who shot at the crowd on passing Brimob at My Friend Bridge (in Taibessi, near the cemetery).
- Three members of Batallion 303/SYB named Adolfo Tilman, Mustari and Gomboh. They allegedly beat and jabbed their rifles towards some of the demonstrators.
- Second Lieutenant Alex Penpada, platoon commander for intelligence in the Sub-Regional Military Command 164/Wira Dharma. He allegedly beat demonstrators and saw a member of Railakan militia beat demonstrators.

655. New analysis was carried out revealing the role of Batallion 303/SSM that came from Taibessi on hearing about the developing situation at the cemetery:
A unit of Batallion 303/SSM passed in front of SST Brimob from the direction of Taibessi and also from the military police detachment, which it is suspected occurred because SST Brimob appeared doubtful about facing the critical moment described above.\textsuperscript{767}

656. It makes the point that because of this, Batallion 303/SSM arrived before Brimob to confront the demonstrators:

[A]t the time of the second shots, some soldiers pointed directly at the target, some of [the soldiers] were ex-Milsas soldiers under the command of Batallion 303, which caused fatalities among the demonstrators. Besides the acts of the riot police above, which were inappropriate, some soldiers, without order, exacerbated the chaotic atmosphere and joined in shooting the demonstrators. When consolidation took place, where the prisoners were grouped together, some members of the security forces, in full uniform, not in full uniform and in civilian clothes, continued to ill-treat the demonstrators.\textsuperscript{768}

657. According to the report, the change of status and tasks of Batallion 303/SSM played an important role in why personnel behaved the way they did. Batallion 303 was initially posted to East Timor as a combat force “with the task of hunting, finding and destroying the enemy”. It was noted that the unit was not trained for Territorial duties such as riot control and that given their strong patriotism, the provocation they faced led them to act to solve the problem in the way they knew best.

The military police method of investigation

658. The military police based their findings mainly on interviews. The First Report contains 38 Records of Interview (Rols) with original signatures of the interviewees. The interviews were conducted with 30 members of the Combined Company, eight members of Brimob and 28 soldiers from Batallion 303, four members of Batallion 744 and four civilians. These civilians, Viktor Benevides (15 years), Joanico dos Santos, Yose (sic) Francisco da Costa and Manuel Eduardo dos Santos, were the first civilians to be interviewed in any of the military and police investigations. Their statements were made and signed at the Military Police Detachment Headquarters IX/4 but it is unclear if they were in detention at the time. The Rols confirm that the demonstrators were violent and aggressive and had weapons such as sticks, knives and rocks.

659. The Second Military Police Report contains five additional Rols – those of the Kodim chief of staff, Pieter Lobo, and the members of ABRI suspected of acting outside of command.

660. The Commission observes that the statements of the security personnel were extremely consistent, often word-for-word, in describing the genuine threat to the security forces and how they acted in self-defence. All security personnel interviewed reported the same aggressive, “wild” and “brutal” crowd; they all heard the same taunts and saw or heard the same things. Such consistency may well be because it reflects the truth; but it may also reflect perversion of the course of justice through a common agreement on the version of events or one that was imposed by investigators. Given that independent witnesses, as reported by international organisations, report with equal consistency that the demonstrators were unarmed, non-violent and did nothing to provoke the security forces who gave no warning before opening fire, a genuine investigator should have considered both versions to make an objective and fair assessment of facts. The fact that the existence and consistency of other accounts was never even considered in the course of the Indonesian investigations is cause for genuine concern about the integrity of the process.
661. The military police apparently carried out a forensic investigation at the cemetery on 14 November 1991, but this investigation was far from comprehensive. The extent of the investigation was the number of bullet marks noted down on a basic diagram of the crime scene. Seventy-two bullet marks were counted. All except one were outside the cemetery and were on the cemetery's front wall, trees and electricity poles. However, angles of entry were not recorded and checked against troop locations and embedded bullets were not removed and taken for ballistics testing. There seem to have been no checks of the site for evidence of other ill-treatment that may have taken place, such as lacerations on the gravestones from sharp weapons or rifle butts. There were no conclusions drawn from the crime scene investigation.
Unanswered questions

The omissions in the investigations conducted by Indonesian security agencies provide valuable insight into the credibility of the process.

The Commission observes that some questions that should be basic to any genuine and impartial investigation into the lethal use of force by law enforcement officials do not seem to have been asked, and if asked, given appropriate consideration. This is particularly notable in light of the starkly opposed versions told of what happened. For example, it was never asked:

- What sort of forces were deployed to deal with the demonstrators and what sort of equipment were they given? Were these appropriate forces and equipment for the situation at hand? Why were standard riot gear such as rubber bullets, water cannons and tear gas not used?
- What exactly was the threat faced by the security forces? What evidence is there that the soldiers acted in self-defence?
- If the use of force and firearms was unavoidable, as alleged by the military and the NCI, did the security forces exercise restraint and act proportionally in relation to the threat against them and the legitimate objective to be achieved? Was the threat so great as to justify the number of shots that were fired?
- If the use of force was unavoidable and used in self-defence, why is it that, in accordance with questions raised by the UN Special Rapporteur:

> Demonstrators who were trying to flee were shot in the back. Why, after the shooting had stopped, did soldiers continue stabbing, kicking and beating the survivors (including the wounded) inside the cemetery, on the way to the hospital and in neighbouring villages during the rest of the day, and possibly for several days?  

- Why were combat soldiers (Battalion 303) used and not simply Brimob who were trained to deal with riot situations?
- Was there anyone in overall control of the situation at the cemetery? Who should have been in overall control? What were the methods of coordination between the different forces present?
- What happened to the dead and disappeared?

Failure to question relevant actors

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The overall picture that emerges from the files is that about 140 shots were reported to have been fired. Weapons checks after the event reveal that those members of the Combined Company from Battalion 303 fired 73 times and those from Brimob fired 33 times. Nine warning shots were fired by Battalion 744. At least 25 shots were fired by the Battalion 303 who came from Taibesi. Thus, 140 shots are known to have been fired. In addition, 72 bullet marks were found at the site by military police.
Although the statements taken by military investigators of lower ranking security force personnel appear to have been quite comprehensive, some senior officers involved in the incident were not interviewed by the military police. The commander of Sector C, Colonel Binsar Aruan, and the commander of Battalion 303, Asril H. Tanjung, do not appear to have been questioned as part of the fact-finding investigations that the Commission has been able to examine. Neither were other relevant actors such as the Kodim and Battalion 744 commanders, and those involved in intelligence. The key questions of who was in charge? what was actually ordered on 12 November? and what was done to avert the violence? was, therefore, never clarified. Significantly, Colonel Binsar Aruan was the person responsible for writing the first military version of events, which was adopted in general by all later investigators, even though he was then dismissed.

The testimony of the foreigners who were with the demonstrators was not taken. They were eyewitnesses to what happened and some, such as Allan Nairn and Amy Goodman, were at the front of the demonstration and although not shot, were physically attacked by the security forces. No reason was apparent from the files why they were not formally interviewed or why their public statements were never considered by investigators.

Inconsistencies in the evidence

Investigators failed to resolve numerous inconsistencies in the evidence. Major inconsistencies included:

- Each of the reports from Kolakops, the military police and other statements and records of interview noted numbers and types of weapons recovered from the site. This is important because it goes to whether the demonstrators were indeed armed and whether the security forces had cause to shoot in self-defence. The civilian police found no firearms, only weapons including 26 machetes, 70 knives, one spear and 19 sickles. A member of Brimob testifying in the trial of Jacinto Alves also mentioned only knives, spears, machetes, pipes and flags. Other witnesses and reports mentioned numerous firearms that were reportedly recovered from around the site of events, but these reports were also highly inconsistent. The commander of the Combined Company, Second Lieutenant Mursanib, described one G-3 rifle and two FN pistols. This was confirmed in the First Military Police Report in late November. The earlier First Warouw Report, however, prepared the day after the demonstration, reported that as well as those firearms there was one Mauser rifle and one Smith and Weston gun found along with bullets. The Second Warouw Report added another Mauser and a Colt rifle, with the serial numbers of all weapons. No attempt to determine the reason for these inconsistencies appears to have been made by the investigators.

- There were also inconsistencies in the evidence given by individuals. Second Lieutenant Mursanib provided three written statements to military police investigators. These statements had serious contradictions that were never resolved. For example, in his first two records of interview, Mursanib states that he ordered the members of the Combined Company to fire warning shots into the air. In his third statement however, he denies having ordered any warning shots. In answer to the leading question: "Is it true that you gave the order to fire a warning shot and how did that command sound?" Mursanib replied:

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1 The Commission must assume that some kind of investigation into their roles was carried out because these commanders were eventually disciplined. However, it is notable that for some reason their evidence was not taken into account in an attempt to obtain an accurate picture of what happened at the demonstration.
2 17 November 1991 [First Mursanib BAP], contained in First Military Police Report; 25 December 1991 [Second Mursanib BAP], contained in the Rani file; 21 March 1992 [Third Mursanib BAP], contained in Rani file. The Commission has observed that while Mursanib's later two statements were part of the dossier against Aloysius Rani, the First Mursanib BAP was never submitted to the Military Court.
3 The documentary material examined by the Commission suggests that Mursanib's changes in testimony may have not been challenged by investigators because the whole exercise was engineered. This is supported by the leading nature of the questions put to him, and the pursuance of questions in supplementary issues when the matter appeared to have been
I did not give an order for a warning shot at that time because the crowd was making a racket. I heard shouts from the south of the small food stall, and the sound of weapons being loaded and members of the 303 that formed part of the Combined Company started firing. I saw members of 303 shooting and yelled at them to stop. [answer to q.4b5]

- Mursanib’s role was described inconsistently. In the first Rol of 17 November 1991, Mursanib is clearly identified as the Commander of the Combined Company and this is how he is described in the second Rol of 25 December 1991. However, in the third Rol of March, he describes himself only as a Socio-Political officer, that he never gave any commands, and indeed says that there was never a Combined Company, that the term was possibly just used for convenience.

The fact that these inconsistencies were ignored by investigators, when they are clearly crucial to whether the security forces acted according to procedure and how they were commanded, either reveals striking incompetence or a deliberate effort to obscure the truth.

Gaps in the forensic investigation

Similarly, investigators ignored important gaps in the forensic investigation. The projectiles in the bodies of the wounded and dead were vital evidence that should be have been preserved and sent for ballistics testing for matching against the weapons that were fired by the security forces. The files contain no information on what happened to the projectiles removed from the wounded and no attempt to match those to weapons.

Further, the position remains confused on what forensic work was done with the dead bodies. While members of the public claim that there were no facilities for autopsy in Timor-Leste, the First Military Report claims an autopsy was carried out on a body on the day of the massacre itself and that the cause of death was a bullet that was not fired from a military issue weapon. Also there are 110 names on a list in the court martial file of Aloysius Rani, said to be “autopsy reports” (see below for an analysis of this court martial). The UN Special Rapporteur was told by the chief of police that the 18 unidentified bodies and the body of Kamal Bamadjar were buried on 13 November 1991 because the morgue of the hospital could only accommodate three to four bodies. The chief of police also told the Special Rapporteur that medical certificates had been issued by the hospital concerning the 19 bodies.

It is known that the bodies of these 19 persons were hurriedly disposed of at Hera cemetery and not returned to their families. Further, this is not the complete death toll, and reports of mass burials of persons killed at or after the events at Santa Cruz were not followed up. The NCI exhumed a grave at Hera with a tractor. The UN Special Rapporteur was not impressed with those efforts:

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well-settled in earlier interviews, as well as the failure to admit the original Mursanib statement as evidence in the Rani case.

According to Asia Watch in EAST TIMOR: THE MASSACRE COURTS MARTIAL, p. 4, Mursanib was the head of the social and political section of the Kodim (Kasi Sospol).

1 International standards, reflected in the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, for such investigations require that bodies may not be disposed of until an adequate autopsy is conducted by a suitably qualified expert. 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. Principle 13 states: “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.”

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National Commission of Inquiry investigation and report

662. On 18 November 1991, through Presidential Decree No.53, President Soeharto appointed a National Commission of Inquiry (Komisi Penyelidik Nasional, NCI). The Commission's review of the NCI's inquiry is limited because it has had access only to the one-page conclusions of a nine-page preliminary report of the NCI dated 26 November 1991. These conclusions were published by Amnesty International and reproduced as an Annex to the Ndiaye Report. The NCI's full report has never been made public. Nevertheless, it is clear from the conclusions to the preliminary report and the critiques by other human rights organisations, that the NCI investigation was not comprehensive or impartial. Indeed the NCI agreed with the military version of events without question, despite considerable evidence to the contrary.

663. One of the most serious concerns about the NCI was its lack of independence. It was composed of seven people representing different branches of the government and military establishment: it was headed by a Supreme Court judge with a military background, and members came from ABRI headquarters, the President's Supreme Advisory Council and the People's Representative Assembly, as well as the ministries of justice, foreign affairs and home affairs. Amnesty International pointed out that this composition was perhaps the NCI's most intractable weakness and accordingly East Timorese did not perceive the commission as an impartial body but as a representative of the Indonesian government and military. The NCI acknowledged that it faced difficulties in persuading East Timorese witnesses to deal with it:

[B]ecause 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.

664. The NCI methods of investigation are described in the report of the UN Special Rapporteur. Work commenced on 21 November 1991 after one week of research in Jakarta was:

[F]ollowed by an investigation in East Timor from 28 November to 14 December 1991. The National Commission of Inquiry [NCI] met with a variety of representatives of the local authorities, members of the Church, members of the armed forces, private individuals and eye-witnesses; visited hospitals and police detention centres; inspected Santa Cruz Cemetery; exhumed one grave at Hera Cemetery; and carried out unsuccessful inspections and excavations at locations at Pasir Putih, Tasi Tolu [sic], and Tobar in response to information received from the local people alleging that those were places of mass burial of victims.

665. Among the key officials who the NCI met were Governor Mário Carrascalão, Brigadier General Rudolf Warouw and Bishop Carlos Ximenes Belo. It also interviewed 132 witnesses.

666. The Commission observes that the Advance Report opted for the version of events set out in the early Warouw and Military Police Reports: the demonstration was not a religious ceremony in
honour of the deceased Sebastião but a carefully planned criminal act, masterminded by Fretelin. Like the military, the NCI blamed the demonstrators for the attacks on the two security personnel outside the Kodim, and for provoking the security forces with their Fretelin flags, banners and shouts, by being belligerent, aggressive, and by attacking them. The security forces were therefore forced to defend themselves.

667. Also like the military police reports, the NCI report found that there had been "a group" of rogue security forces ("pasukan liar") out of uniform and acting outside any control or command. It concluded that the killings were not an act ordered by or reflecting official policy, and what happened on 12 November 1991 was essentially a tragedy that should be deeply regretted. The report found that there were weaknesses in the implementation of proper riot-control procedures and some excesses by security personnel. The NCI did not accept the official figure of 19 casualties and 91 wounded, citing unspecified "strong grounds" for concluding that the death and wounded toll exceeded 50 and 91 respectively, but it did not identify those victims.

668. The NCI criticised the handling of the dead. While autopsies were conducted, families were not properly notified and identification was not correctly handled. The NCI recommended 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.]

669. It did not substantiate this with recommendations of named individuals for further investigation and prosecution.

670. Based on its own investigations into the situation, Amnesty International was particularly strong in its condemnation of the NCI – stating that its composition and work were fatally flawed and the findings were "unacceptable". According to Amnesty International, the NCI gave undue credence to military accounts while ignoring or misconstruing independent evidence to the contrary. Interviews with East Timorese eyewitnesses were not conducted in a safe and confidential environment. In fact, those of the 132 eyewitnesses who were not security personnel were either in hospital or in detention when they were interviewed.

671. Further, the NCI's conclusion that the demonstrators provoked the security forces was tantamount to saying that the expression of political dissent may serve as a justification for the use of lethal force or other unlawful measures against civilians. Criticism of the security forces by the NCI was kept to a minimum. Amnesty International accused the NCI of having failed to obtain accurate details of the numbers and identities of the dead and missing, how they died and their whereabouts, and of missing the point when conducting its one and only exhumation of a grave. There were no specific recommendations for prosecution, beyond the general statement that legal action should be taken against those "involved in the 'incident'. Amnesty International also alleged deliberate obstruction of independent investigation and human rights monitoring following the massacre.

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"Amnesty International alleged that the ICRC was prevented from speaking privately to those detained in relation to the events, including those hospitalised; that "the authorities have taken measure to ensure that witnesses, human rights activists and independent observers are not in a position to dispute the official version of events. Some witnesses are said to have been killed and scores have been detained"; that NGOs were threatened, demonstrations were banned and newspapers threatened (in one case three journalists from Jakarta were dismissed after the weekly publication's publisher was officially warned for publishing the testimonies of 12 East Timorese who witnessed the massacre); that tight restrictions were imposed on access to and reporting about East Timor by foreigners [Amnesty International, Indonesia/East Timor – Santa Cruz: The Government Response, AI Index: ASA 21/03/92, February 1992]."
672. UN Special Rapporteur Ndiaye found that while this first ever Indonesian commission of inquiry into gross violations of human rights was an encouraging initiative, there were fundamental flaws that rendered the investigation incompatible with international standards, specifically those set out in the United Nations Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions:

| The institution lacked credibility for lack of independence from the State and was not trusted by the East Timorese. |
| Its members lacked the necessary technical skills and did not conduct their investigations in a professional manner, for example by using a tractor to excavate alleged burial sites. |
| Most of the eye-witness investigations were held in prison or at the military hospital and appear to have been monitored by the security forces. |

673. The Special Rapporteur's concerns were so serious that he recommended that a new commission of inquiry conduct an additional investigation.

**Action taken against those held responsible**

674. Despite the failings in the investigative process, action was taken against both senior officers and members of the military in relation to the killings at Santa Cruz. Further, although the military structure in East Timor did not change for another two years, there were shifts in personnel.

**Action against senior officers**

675. On 28 November 1991, before the NCI had issued its final report, the most senior military figures in the region, Major General Sintong Panjaitan (the commander in chief of the Regional Military Command Udayana IX) and Brigadier General Rudolf Warouw (the commander in chief of Kolakops East Timor), were dismissed from their positions.

676. In February 1992, the Chief of Staff of the Army found six officers guilty of misconduct on the basis of a report by a Military Honour Board that he had convened on instructions from President Soeharto. The disciplinary steps taken, as reported by Indonesia to the United Nations Commission on Human Rights, resulted in the following: three officers were dismissed from military service, two were not given any post within the organisational structure of the Army although remaining on active duty, and one was temporarily not given a post within the organisational structure.

677. UN Special Rapporteur Ndiaye was informed that these six officers were responsible for intelligence and security in East Timor and should have taken steps to forestall the demonstration. Asia Watch reports that these officers were:
• Dismissed: Infantry Colonel Gatot Purwanto (Intelligence officer Kolakops East Timor); Infantry Colonel Binar Aruan (commander of Sector C); Brigadier General Rudy Warouw (commander in chief of Kolakops East Timor).

• No post but still on active duty: Infantry Colonello Sepang (deputy commander in chief of Kolakops East Timor and concurrently commander of the Sub-Regional Military Command 164/WD); Infantry Lieutenant Colonel Wahyu Hidayat (Commander of the Kodim 1627/Dili).

• Temporarily not posted but still on active duty: Major General Sintong Panjaitan (commander in chief of the Regional Military Command Udayana IX).787 (Note that Sintong Panjaitan was reported by the same organisation to have been dismissed on 28 November 1991).

677. The Commission has not been able to obtain any information on the proceedings or examined any documents or material that may cast light on these disciplinary actions. However, the Commission notes that there was not an open and transparent judicial process, to which victims and families had access or were able to participate in. This in itself renders the process not an effective remedy for gross violations of human rights. The Commission is not in a position to assess if the accused officers enjoyed fairness and due process in the course of the proceedings against them.

Internal purges

678. Independent observers report that there were major personnel movements within the command of East Timor following the massacre at Santa Cruz. Asia Watch reported that every single one of the six Kolakops assistants was transferred out of East Timor, along with Kodim commanders. The commander of the Sub-regional Military Command was also replaced. Batallion 303 was deployed out of East Timor in November 1991.788

679. Asia Watch also reported that three officers were given administrative sanction: Lieutenant Colonel Cheri Bolang, chief of staff at the Sub-regional Military Command; Infantry Colonel Dolgi Rondonuwu, operations assistant at Kolakops East Timor; and Infantry Colonel Michael Suwito, territorial assistant at Kolakops East Timor.789

The courts martial in Bali

680. Ten low-ranking members of the security personnel involved in the events of 12 November 1991 were tried and convicted before Military Courts in Denpasar, Bali. Sentences ranged from eight to 18 months and all those convicted were dishonourably discharged.

<table>
<thead>
<tr>
<th>Name</th>
<th>UNIT</th>
<th>Charge</th>
<th>Verdict and sentence</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Udin Syukur</td>
<td>Kodim 1627</td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 18 months</td>
<td>Own initiative operator. Fired four shots or two shots at the demonstrators, but not charged with killing.</td>
</tr>
<tr>
<td>Aloysius Rani</td>
<td>Kodim 1627</td>
<td>Disobeying or exceeding orders (Articles 103, 126, 124(1) KUHPM); Article 351 KUHP</td>
<td>Convicted 14 months</td>
<td>Own initiative operator. Fired two shots at the demonstrators, but not charged with killing.</td>
</tr>
</tbody>
</table>

787 Contradictory information on the Third Military Police Report.
<table>
<thead>
<tr>
<th>Name</th>
<th>Kodim</th>
<th>Offence Description</th>
<th>Sentence</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petrus Saul Meda</td>
<td>1627</td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 12 months</td>
<td>Own initiative operator. Fired either 10 or three shots at the demonstrators, but not charged with killing.</td>
</tr>
<tr>
<td>Mateus Maya (sic)</td>
<td>1627/Dili</td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 8 months</td>
<td>On patrol as a Garmezun, shot a foreigner (Kamal Bamadha). Not charged with killing.</td>
</tr>
<tr>
<td>Afonso de Jesus</td>
<td>1627/Dili</td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 8 months</td>
<td>On patrol as a Garmezun, shot at a foreigner (Kamal Bamadha) he had earlier seen in the crowd of demonstrators. Missed. Not charged with attempted murder.</td>
</tr>
<tr>
<td>Mursanib</td>
<td></td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 14 months</td>
<td>Loss of control of troops.</td>
</tr>
<tr>
<td>John Harlan Aritonang</td>
<td></td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 12 months</td>
<td>Loss of control of troops.</td>
</tr>
<tr>
<td>Handrianus Edi Sunaryo</td>
<td></td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 12 months</td>
<td>Loss of control of troops.</td>
</tr>
<tr>
<td>Yohanes Alexander Penpada</td>
<td></td>
<td>Disobeying or exceeding orders (Article 103 KUHPM)</td>
<td>Convicted 8 months</td>
<td>Assault on a demonstrator after the shootings.</td>
</tr>
<tr>
<td>Martin Alau</td>
<td></td>
<td>Assault, (Article 351 KUHP)</td>
<td>Convicted 17 months</td>
<td>Own initiative operator. Stabbed twice, one involved cutting the ear of an identified demonstrator (Simplicio Celestino de Deus). All committed after the shootings.</td>
</tr>
</tbody>
</table>

**Decision to charge**

681. There were at least 72 security personnel directly involved in acts of violence at the Santa Cruz Cemetery, but only 10 were tried. All members of the Combined Company, other than the two Battalion 303 platoon commanders and Second Lieutenant Mursanib, escaped prosecution. It is notable that the Brimob platoon commander, whose men were reported to have fired 33 shots without order to shoot, was not prosecuted.

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1 Contradictory information on the Third Military Police Report.
2 Contradictory information provided by Mursanib.
682. The failure to prosecute any of the Battalion 303 platoon from Taibessi is also remarkable, given that the Third Military Police Report specifically identified East Timorese soldiers from this battalion and their commander as suspects. Investigations found that they cut across hesitating Brimob and shot at the demonstrators. They included Private Jórgê Barreto, Private Antoni Beretus, Januario Gutteres, Venancio Barreto and Carlos Soares. All said that they were ordered to go to Santa Cruz by their company commander and they shot at the demonstrators upon his order.

683. Even if these men were not charged on the basis that they were following orders, it is unclear why their commanding officer, Infantry Captain Yustin Dino (NRP.30011), was not tried. The Third Military Police Report recommended he be charged and a case was prepared against him on the grounds that it was he who ordered about 24 Battalion 303 soldiers from Taibessi to Santa Cruz and then ordered them to fire on the demonstrators. For some reason this case never went ahead.

684. As a consequence, the blame for the many deaths and injuries at Santa Cruz was shifted onto Second Lieutenant Mursanib, two out of three of his platoon commanders, and a collection of rogue elements comprising individual members of the Kodim, police and intelligence and two members of the Kodim garrison, all of whom acted as “own initiative operators”.

**Appropriateness of the charges laid against members of the security forces and the punishment imposed**

685. Serious violations of human rights including unlawful killing, enforced disappearance, torture and severe ill-treatment of civilian demonstrators occurred at Santa Cruz. This was not reflected in the charges filed against those members of the security forces who were put on trial. Only two individuals were prosecuted in relation to assaults committed in the cemetery itself, but they were only charged for failure to follow orders or control subordinates.

686. The reason given to UN Special Rapporteur Ndiaye for only minor charges being laid was that it was impossible to link individual killings to individual soldiers. This is not convincing for two reasons. First, it would have been possible to carry out ballistics testing on the bullets removed from the bodies that underwent an autopsy and the bullets matched to individual guns. Second, some killings were clearly linked to individual perpetrators. The Third Military Police Report found that the Malaysian Kamal Bamadaj was shot at by two soldiers but hit by the shot of Private Mateus Maya (sic), who was out patrolling with the garrison. Reports from the military proceedings in Bali indicate, however, that this evidence was ignored and Mateus Maya (sic) was described only as having fired at unidentified demonstrators when taking the wounded Major Gerhan Lentara to the hospital.²

687. The military trials underplayed the seriousness of what occurred at Santa Cruz on 12 November 1991, and light sentences were imposed. The Commission endorses the finding of UN Special Rapporteur Ndiaye that:

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¹ Under Article 51 of the KUHP, one cannot be found guilty if one acted in pursuance of superior orders in certain circumstances. The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions.

² The Commission notes that a bullet removed from the body of 19-year-old João Mica Alves was tested and found to have come from a Mauser, which evidence was used to incriminate the demonstrators.

³ Asia Watch, THE MASSACRE COURTS-MARTIAL, p. 4. The timing suggests that the shooting would have taken place on their return from the hospital, for the two Kodim staff were wounded about an hour before.
688. Asia Watch also criticised the light sentences and the secrecy surrounding the questions of how the shooting started or what happened to the bodies of those killed:

[The inadequacy of the charges and the inappropriately light sentences imposed by the court martial on the few members of the armed forces accused of having been implicated in the 12 November 1991 incident are in no way a fulfilment of the obligation to punish perpetrators, and thus to provide a deterrent for the recurrence of a similar tragedy in the future. On the contrary, he feels that they illustrate that little importance is given to the respect of the right to life by Indonesian law enforcement officials in East Timor. On the other hand, the 13 civilians involved in the peaceful protest during and after 12 November 1991 were sentenced to terms of up to life imprisonment.]

689. The Commission obtained an English translation of the Case Dossier against Aloysius Rani from his court martial in Bali. The Commission has also examined the Asia Watch reports on the Court Martial held in Bali between 29 May and 6 June 1992, as well as its report Remembering History in East Timor, the Commission’s collection of military documents in relation to Santa Cruz and the Ndiaye Report by the UN Special Rapporteur.

690. Aloysius Rani was a member of Kodim who worked on equipment maintenance, and one of four security force members who were alleged to have acted “spontaneously”. He was tried for taking a weapon without permission, going on his own initiative to the Santa Cruz Cemetery and shooting at demonstrators on the basis that he was deeply offended by the actions of the demonstrators and their attack on the members of Kodim. This version of events can be traced back to the Second Military Police Report.

691. The case against Rani was based primarily on witness testimony, from security forces and civilians, including demonstration organiser Gregório Saldanha. The only evidence of Rani shooting any of the demonstrators comes from Rani’s own admission that he fired two shots. Not one of the other witnesses saw Rani shoot anyone. Rani’s admission was “supplemented” by a photograph of the gun he is supposed to have taken (G-3, Weapon number 059108, Rifle Butt Number 39) and two bullet cartridges. There were no ballistics tests to confirm if they were fired from the said gun, and there was no description of where, when or how the bullets were found or by whom and how it is known that those bullet cartridges were those fired by Rani.

692. The Commission is not persuaded by the factual scenario put forward by the military in Rani’s case. Not only was this Kodim soldier not part of the Combined Company, but he worked

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1 Regional Military Command, Udayana, Military Police, Case Investigation File, No. DPP-10/A-09/Military Police Regional Command IX/1992, April 1992. The documents in it are consistent with documents contained in the military documents on Santa Cruz in the Commission’s possession [for example, statements on a particular date are satisfactorily translated when compared to original language versions]. The CAVR therefore believes it may consider this to be a reliable translation of a file which it has not cited in original form.

2 In a 2001 interview with UNTAET CVPOL (police), after relating how he was beaten many times in detention by Sergeant Martinus Wae and another, Gregório Saldanha stated that “I cannot remember the date but I was also made to sign a statement for Aloysius Rani, an Indonesian Army soldier who was charged by his superiors for acting without orders. I do not know the name of the person who made me to sign the statement”. [Gregório Saldanha, interview with UNTAET CVPOL, 31 March 2001].
on equipment maintenance at the Kodim. The Commission notes that after seeing the two wounded Kodim staff brought in, he was sufficiently composed to go back into the canteen to have some tea, not overcome with patriotic emotion as suggested. While in the canteen, someone is supposed to have come in to tell him he had been left behind so he grabbed a G-3 weapon from the guardroom without permission and headed out to the Santa Cruz Cemetery in a taxi. There, he was sufficiently composed to wait for the Combined Company, not his own unit, in the taxi before joining them in a formation. He then fired two shots, not an emotional outburst as portrayed.

693. This explanation is so unlikely and convenient that the Commission concludes that it was devised by the military for the purpose of scape-goating an individual and thereby avoiding any responsibility being attributed to the military command structure.

Conclusions

694. The Indonesian authorities conducted investigations into the massacre at Santa Cruz through at least four channels: the civilian police, the local military command, the regional military police and a commission of inquiry appointed by the President. Despite the number of personnel involved and the number of reports produced through these investigations, the Commission is of the view that Indonesia did not meet the standards set out in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. In particular there was inadequate efforts 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 Commission notes in support of this that:
• Not one of the investigations was sufficiently impartial or independent to conduct an objective and credible investigation. The civilian police, the local military command in Timor-Leste and the military police were all part of the apparatus that was under investigation. Their findings and the way in which they carried out their investigations reveal that from the outset their role was to exonerate the military as an institution and condemn the demonstrators. This position was only confirmed by the report of the NCI, which was composed of individuals who were part of the Indonesian government and military establishment and thus insufficiently distanced from the State apparatus being investigated.

• The entire investigation process, including the NCI and various military and civilian investigations, was secretive and lacked transparency. Only the Advance NCI report was made public. The courts martial of the eight low ranking officers were public, but the proceedings against senior officials were in secret.

• The previously confidential documents that the Commission has examined reveal that these investigations were wholly biased in favour of the security forces and focused on justifying the actions of the security forces. There was no examination of the contentions of both sides, rather the version of events provided by the military officers responsible for the incident was accepted without question. The First Warouw Report, which provided this version of events, was completed the day after the massacre and was based solely on military sources.

• There were striking inadequacies in the investigation of the crime scene by all investigators. The civilian police did not carry out any forensic examination at the scene of the deaths. The "clean-up" efforts of the military were inadequately documented and carried out in a way that left manifold opportunity for fabricating and/or destroying evidence.

• The evidence of the witnesses interviewed by investigators raised numerous questions about what occurred at the Santa Cruz Cemetery which were never adverted to by the investigators, let alone resolved satisfactorily. Further questions that were central to the claims of self-defence by the military personnel were never asked by any of the investigators during the course of the investigations, leaving the picture of what occurred vague and unconvincing. These irregularities are of such significance that the Commission concludes that they were part of an attempt at manufacturing an account of what happened on 12 November.

• The light charges (disobeying orders, assault) and sentences for the security forces were wholly disproportionate to what happened and are particularly objectionable given the serious charges and sentences imposed on the demonstrators. This reveals not just imbalance but deliberate and cynical manipulation of the criminal justice process. Even if the security personnel who were punished were involved in violations of human rights, it appears likely that they were scape-goated in order to shield others.

695. Overall, the complex tragedy of Santa Cruz was made all the more tangled by what appears to have been damage limitation and deliberate attempts to manufacture a version of what happened by representatives of the Indonesian security forces. The processes of accountability that were provided were deeply flawed and unbalanced, and involved collaboration between military, police and judiciary. The Commission is satisfied that a deliberately manipulated version of events at Santa Cruz was presented and accepted by both military and civilian courts dealing with the matter. The investigations and trials were not intended to seek the truth of why the massacre at Santa Cruz happened, how events unfolded and the full consequences in terms of human life. They were also not intended to bring those responsible to account, but rather served to continue and strengthen the institutional mechanisms of impunity which protected members of ABRI/TNI involved in serious human rights violations.
696. In 1994 UN Special Rapporteur Ndiaye concluded that the victims of human rights violations and their relatives had not had an effective remedy. The Government of Indonesia has still not provided to the victims and families either basic information on the dead and disappeared or justice or reparation for harms suffered. The Government of Indonesia has not made public any information that would contribute to the public record of what happened, nor has it provided assistance with locating or identifying dead and missing persons. This uncertainty is the cause of continued suffering for the families of victims. This is an continuing violation of the right to an effective remedy, and the failure to resolve the issue of the disappeared is an continuing human rights violation, as well as of violation of Indonesia's international obligations.

697. The failure of the State of Indonesia to respond in an appropriate manner to the unlawful actions of its security forces violated its treaty obligation as an occupying power to investigate, prosecute and punish those responsible for grave breaches against civilians (Article 146, Geneva Convention IV).

Unlawful killings and enforced disappearances (1992-1995)

698. In 1992 the number of fatal violations committed by ABRI again decreased significantly from their annual level in the previous decade. In March 1993, the Operations Implementation Command (Kolakops) in East Timor was abolished and the Korem again became the peak military command responsible for the military's full territorial structure as well as for external troops deployed from outside Timor-Leste in both territorial and combat roles. During 1993 and 1994 the Indonesian military committed relatively few fatal violations.

699. In 1995, however, there was not only an increase in fatal violations committed by the Indonesian military, but also a marked shift westwards in their location to the districts of Ermera, Bobonaro and Liquiça.

Executions in Gariana, Liquiça (January 1995)

700. On 12 January 1995, members of the Liquiça Kodim killed six unarmed men near the aldeia of Gariana, Vatuvo (Maubara, Liquiça), allegedly while searching for Resistance fighters who had participated in an armed clash with ABRI the day before in Leotela Village (Liquiça, Liquiça). Those killed were: José Nunes, the sub-village head of Gariana, Agusto Pinto, Abel Nunes, Victor, Americo de Araújo and Osorio Soares. Eyewitnesses who later spoke to the Indonesian National Human Rights Commission (Komnas HAM) about the killings reported that five of the six were lined up in a ditch and executed. Testimony given to the Commission confirms that all six were executed and that more than one may have been beaten before being killed.