

INDONESIA & EAST TIMOR

@Fact and Fiction Implementing the Recommendations of the UN Commission on Human Rights

Introduction

In March 1993, the United Nations Commission on Human Rights (UNCHR) expressed deep concern at reports of continuing human rights violations in East Timor and offered several concrete recommendations for improvement. Most of the recommendations had been enumerated in a consensus statement by the Commission in the immediate aftermath of the Santa Cruz massacre of 12 November 1991, and in a series of later resolutions by United Nations bodies.¹ Specifically, the Commission urged the Government of Indonesia to:

- Clarify the fate and the number of those killed and "disappeared" after the Santa Cruz massacre.
- Bring promptly to justice all members of the security forces responsible for the massacre and related human rights violations.
- Ensure that all civilian detainees arrested on that occasion be treated humanely, that any trials meet international standards of fairness, and that those not involved in violent activities be immediately released.
- Implement the recommendations contained in the January 1992 report of the UN Special Rapporteur on torture, prepared following his visit to Indonesia and East Timor in late 1991, and report back to the Commission on the steps taken.

¹ In a consensus statement at its 48th session, in March 1992, the UNCHR deplored the loss of life at the Santa Cruz cemetery in Dili on 12 November 1991, and called on the government to take a number of steps to ensure the future protection of human rights in East Timor (See Appendix I). In August 1992, the UN Sub-commission on Prevention of Discrimination and Protection of Minorities, reiterated this call. A resolution passed at the 49th session of the UNCHR, in March 1993, expressed concern at the Indonesian government's failure to honour its commitment to carry out the recommendations made in the 1992 consensus statement (See Appendix II). Accordingly, it reiterated the recommendations made in the 1992 consensus statement and made two additional recommendations. A Resolution of the Sub-commission, dated August 1993, called upon the Indonesian authorities to implement fully both the 1992 consensus statement and the 1993 resolution of the UNCHR.

- Facilitate access to East Timor by humanitarian and human rights organizations.
- Invite four of the UNCHR's human rights monitoring mechanisms to visit East Timor, and welcome a second visit by the UN Secretary-General's Personal Envoy, Mr Amos Wako.

This report briefly reviews the Indonesian Government's record in implementing each of these recommendations. It also assesses the impact of government actions relating to the human rights situation on the ground both in East Timor and in Indonesia itself. It concludes that while the government has taken a number of welcome human rights initiatives since late 1991, it has failed to implement, either in substance or in spirit, the most important of the recommendations made by the UNCHR. The measures taken so far appear to have been principally aimed at improving Indonesia's human rights image internationally rather than at squarely addressing the root causes of human rights violations. Consequently there has been no significant improvement in the human rights situation on the ground and, unless concrete measures are taken, no such improvement can be expected in the near future.

This document also evaluates the 1993 UNCHR resolution itself, and outlines a program for action by the Commission and by member states of the United Nations. It concludes that, while most of the UNCHR's recommendations refer specifically to East Timor, the problems they identify and the proposals they offer are equally relevant to Indonesia itself. By viewing the human rights situation in East Timor in isolation - and in particular by treating the Santa Cruz massacre as an isolated incident - UN member states have overlooked the problem of systematic and institutionalized human rights abuse by Indonesian government forces throughout the archipelago. By turning a blind eye to systematic violations in Indonesia and East Timor over nearly three decades they have contributed to the problem. Accordingly, this report urges the UNCHR to reiterate the recommendations enumerated in last year's resolution, and also to broaden the scope of its concern to encompass Indonesia as well as East Timor.

1. The Fate of the Dead and the "Disappeared"

The Commission on Human Rights...Expresses its Concern at the lack of information about the number of people killed on 12 November 1991 and at the persons still unaccounted for and urges the Government of Indonesia to account fully for those still missing since 12 November 1991. (Resolution 1993/97, paragraph 3)

The Indonesian authorities have made only a perfunctory effort to identify those who died or "disappeared" during and after the Santa Cruz massacre. In the past two years they have provided clarification to the UN of the fate of only a small fraction of the people reported to

have "disappeared" on or about 12 November 1991.² The government has located the remains of only 19 of the dead, and only one has been positively identified. They have failed to account for the whereabouts of some 200 others reported as "disappeared", and as many as 250 feared dead, after the massacre. Government claims to have complied with the Commission's recommendation, therefore, cannot be accepted.

In March 1993 the government released a list of 84 East Timorese, 66 of whom were said to be missing.³ The list contained a number of factual errors, which raised doubts about the care with which it had been compiled, and about the veracity of the information it contained. For example, at least one of those named as dead or missing, **Afonso Maria**, had reportedly been arrested in late 1992, and was believed to be in Indonesian custody at the time the list was compiled. The list had other peculiarities as well. No more than 29 of the 84 names on it were mentioned in the far more extensive lists compiled by independent sources, thereby raising doubts about whether the majority of those on the official list had, in fact, "disappeared" at all.

The list of 84 was said to include 18 people who died in the massacre but, for reasons which remain obscure, the government has failed to identify them publicly. Only one of the dead (the New Zealander, **Kamal Bamadhaj**) has been positively identified by his relatives following exhumation. A more fundamental problem with the official list - and particularly the suggestion that only 19 people were killed in the massacre - is that it contradicts the findings of the government's own National Commission of Inquiry (KPN) that roughly 50 people were killed.⁴ It is also at odds with the bulk of independent evidence that at least 100 and possibly as many as 250 died, on or shortly after 12 November 1991.

The government has attempted to evade its responsibility, and to mask its inability, to account for the dead and "disappeared" by publishing information which is false and misleading. For example, after seven young East Timorese sought political asylum at two embassies in Jakarta in June 1993, military authorities said that there was a "strong possibility" that two of them - **Profirio da Costa Oliveira** and **Clementino Faria Oliveira** - were among

² See the Report of the UN Working Group on Enforced or Involuntary Disappearances, dated 22 December 1993 (UN Doc. E/CN.4/1994/26).

³ The list was given to a representative of the US-based human rights organization, Asiawatch during a visit to Indonesia and East Timor in March 1993. It was published as an appendix to the Asiawatch report, *Remembering History in East Timor: The Trial of Xanana Gusmão and a Follow-up to the Dili Massacre*. April 1993.

⁴ For details of the government's official inquiry into the Santa Cruz massacre, see the Amnesty International report *Indonesia/East Timor: The Government Response*, dated February 1992 (ASA 21/03/92).

the 66 then considered missing.⁵ In fact, none of the seven appeared on the government's own list of missing and dead. In another instance of apparently deliberate misreporting, in April 1993, one day after the second visit of the UN Secretary General's Personal Envoy, Mr Amos Wako, the Commander of the Armed Forces announced that 32 of the 66 reported missing had "already returned from the jungle."⁶ This claim was contradicted by the government's own announcement, three months later, that only 2 of the 66 missing had been located. Most seriously, in letters to the UN's Assistant Secretary General for Human Rights (dated 13 September and 29 November 1993), the Indonesian Government claimed that, as a result of its investigations, the number still missing after the massacre had been reduced from 66 to 56. The revised figure was based on some dubious arithmetic. Of the ten the government claimed had reappeared, only two were actually on the government's own list of 84 dead and missing.⁷ Of the remaining eight people that the government claimed had reappeared, four were actually unidentified corpses, with no known connection to the Santa Cruz massacre. Even the government, in a separate passage of its letter of 13 September 1993, admitted that "...it could not be ascertained if these were the remains of persons considered missing after the Dili incident."⁸

To its credit, the government has cooperated with the UN Working Group on Enforced or Involuntary Disappearances. Unfortunately, its replies to date have not been wholly satisfactory. In 1992, the Working Group submitted the names of 207 "disappeared" East Timorese to the government for clarification. By late 1993, the government had supplied responses concerning only 20 of those cases. Moreover, the Working Group considered only five of the government's replies to be satisfactory,⁹ noting that: "*In the remaining 15 cases the names of the persons contained in the Government's reply did not*

⁵ See "64 E. Timorese still listed as missing by ABRI," *Jakarta Post*, 12.7.93. For further details on the asylum bid, see the Amnesty International reports: *Indonesia/East Timor: Seven East Timorese Seek Asylum*, dated 23 June 1993 (ASA 21/13/93); and *Indonesia/East Timor: Seven East Timorese Still in Danger*, dated 5 July 1993 (ASA 21/14/93). The seven were permitted to leave Indonesia at the end of December 1993.

⁶ See "32 Dari 66 Yang Hilang Pada Peristiwa Dili Sudah Kembali," *Suara Pembaruan*, 10.4.93.

⁷ The two were: **Januario da Conceição** was said to have "surrendered" to the authorities on 14 May 1993 while **Afonso Maria**, was reportedly "found" in his home on 5 November 1992. See "ABRI Terus Mencari 64 Warga Dili yang Hilang," *Republika*, 11.7.93.

⁸ The other four named by the government as reappeared were **Constancio Pinto**, **Antonio Lay**, and the two asylum-seekers mentioned above (**Profirio da Costa** and **Clementino Faria Oliveira**), none of whom appeared on the government list of missing or dead. See Report of the UN Secretary General on the Situation in East Timor, dated 20 January 1994 (UN Doc No. E/CN.4/1994/61, Annex 1).

⁹ These were the responses concerning **Alberto Nascimento**, **Ulisses Conceição Gonçalves**, **Caetano Ximenes**, **Francisco Magali**, and **Joanico Silva**, all of whom were said to have returned home.

correspond to the names...contained in the lists of the Working Group."¹⁰ In three cases, the government response claimed that the person in question had been released from custody in late 1990 - that is roughly one year before they were reported to have "disappeared" - thereby obscuring the essential question of what happened to them after November 1991.

These are serious shortcomings, but the failure of the Indonesian authorities to account for the victims in this case is only a symptom of two more general problems: first, the government's systematic failure to remedy past violations; and second, its failure to bring the perpetrators of such violations promptly to justice. The identity and fate of many thousands of people extrajudicially executed or "disappeared" by Indonesian forces over the past three decades in both East Timor and Indonesia remain a mystery. The victims include an estimated 100 people killed by security forces in Tanjung Priok, Jakarta, in September 1984, at least 5,000 alleged petty criminals killed in cold blood by government death squads between 1983 and 1985 in various parts of the country, scores killed in an assault by government forces in Lampung on the island of Sumatra, in February 1989, and at least 2,000 killed in the course of government counter-insurgency operations in Aceh at the northern tip of Sumatra, from 1989 to 1993, not to mention the hundreds of thousands of civilians killed by, or with the acquiescence of, military forces in the immediate aftermath of the 1965 coup.

In the absence of any concerted international outcry, these violations have never been properly investigated and their perpetrators have not been brought to justice. Not only does this send a frightening message to the victims, their families and to ordinary citizens, it also contributes to a climate of impunity. If members of the security forces are not brought to justice for criminal acts constituting human rights violations, the chances are great that such crimes will continue to be committed. The problem has been compounded by the lack of any effective domestic avenues through which ordinary people can seek redress, or institutions for the impartial investigation of such violations. It remains to be seen whether the newly established National Human Rights Commission will fill this need for the victims of future violations. With respect to the right to redress, it seems unlikely that the new body will be able to provide an effective mechanism, since Commission members have already indicated that it will not examine past violations.

Given the inadequacy of the government's efforts to date, Amnesty International believes it would be appropriate for the UNCHR once again to urge the Indonesian authorities to account fully for those who died or "disappeared" during and after the Santa Cruz massacre. It believes, furthermore, that the Commission must urge the government to establish effective mechanisms which will ensure that the victims of violations and their

¹⁰ See Report of the Working Group on Enforced or Involuntary Disappearances, 22 December 1993 (UN Doc. E/CN.4/1994/26).

relatives, both in Indonesia and in East Timor, can seek redress and compensation for human rights violations, including those committed in past years.

2. Bringing the Perpetrators to Justice

The Commission on Human Rights...Regrets the disparity in the severity of sentences imposed on those civilians not indicted for violent activities - who should have been released without delay - on the one hand, and to the military involved in the violent incident, on the other. (Resolution 1993/97, paragraph 4)

While 13 civilians involved in peaceful protest during and after the Santa Cruz massacre were sentenced to terms of up to life imprisonment in 1992, the ten police and military officers tried in connection with these events received sentences ranging from just eight to 18 months for disciplinary offenses.¹¹ Despite substantial evidence of deliberate killing and torture, none of those tried was charged with murder and only one was charged with assault. Moreover, the higher ranking military officers, who were ultimately responsible for the actions of their troops, have not been brought to justice and there is no indication that they will be. The decision to transfer some of them from their posts may have served to divert international attention, but it hardly satisfied the Commission's call, in paragraph 3 of its 1992 consensus statement, for "*...the Indonesian Government to bring to trial and punish all those found responsible*".¹²

The extreme disparity in the treatment of the military perpetrators of abuse and their civilian victims highlights two serious shortcomings of government human rights policy and practice. First, as noted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in Indonesia and East Timor "*...the perpetrators of human rights violations continue to enjoy impunity*".¹³ Second, civilians may be imprisoned for the exercise of fundamental rights to freedom of conscience, expression and association. The prosecutions of military and police officials that followed the Santa Cruz massacre were an exception to the general rule insofar as some members of the security forces were tried and sentenced. Yet in most respects these trials reflected the general problem of impunity.

To those familiar with the government's record on punishing the perpetrators of human rights violations, and with the workings of the Indonesian system of military justice,

¹¹ Two of the 13 East Timorese were released in 1993, having served their sentences.

¹² For the full text of the consensus statement, see Appendix I.

¹³ Report of the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions. (UN Doc. E/CN.4/1994/7, para 355).

the inadequacy of the measures taken against those involved in the Santa Cruz massacre came as no surprise. The pattern of impunity is especially clear where those responsible are members of the army and where the victims are alleged government opponents. Police and prison officers, as well as police-trained security guards, accused of torture and other human rights violations are somewhat more likely to be tried, but even when they are convicted, they tend to receive light sentences, thereby diminishing their deterrent value.

The exceptions to this pattern - limited in scope though they may be - have occurred where serious violations have become the focus of international attention. Amnesty International would therefore urge the UNCHR, at a minimum, to reiterate its concern at the failure to bring to justice those responsible for the Santa Cruz massacre, and at the disparity in sentencing between members of the security forces and their civilian victims. In view of the fact that the failure to bring to justice the perpetrators of human rights abuse is a general problem in Indonesia and East Timor, it would suggest that the Commission also call upon the Indonesian authorities to establish a mechanism through which thorough and impartial investigations are conducted into all reported violations of human rights, and to ensure that all those believed to be responsible for such violations are tried by a civilian court, with due regard to legal safeguards, and punished in accordance with the severity of their crime.

3. Political Imprisonment

The Commission on Human Rights...Also calls upon the Government of Indonesia to ensure that all the East Timorese in custody, including main public figures, be treated humanely and with their rights fully respected, that all trials be fair, just, public and recognize the right to proper legal representation, in accordance with international humanitarian law, and that those not involved in violent activities be released without delay. (Resolution 1993/97, paragraph 6)

The government has paid lip service to the UNCHR's call for the fair and humane treatment of political prisoners but, in practice, that call has been ignored. In the two years since the Santa Cruz massacre, at least 400 East Timorese have been held without charge for periods ranging from a few days to several months. Many have been denied access to their relatives, lawyers and to the International Committee of the Red Cross (ICRC). Some have also been required to undergo "political guidance" while in military custody and to swear oaths of allegiance to the Indonesian Government as a condition of their release. The conditions of detention in East Timor have left detainees vulnerable to torture and ill-treatment by police

and military forces; and despite claims to the contrary by the Indonesian authorities, torture continues to be practised.¹⁴

In addition to those held without charge, there are currently some 20 East Timorese serving sentences of up to life imprisonment for subversion and other political crimes; they include three men who have been in detention since 1984. Without exception, these prisoners were sentenced in trials which failed to meet international standards of fairness.¹⁵ In this respect, the unfair trial and ill-treatment of the resistance leader, **Xanana Gusmão**, documented by Amnesty International and other human rights organizations, were hardly unique.¹⁶

Xanana's treatment by the authorities, even after sentencing, has also highlighted the vulnerability of political prisoners in Indonesia and East Timor to restrictions and punishments that are at odds with UN standards for the treatment of prisoners.¹⁷ In early January 1994 the government "temporarily" suspended ICRC and family visits to Xanana Gusmão, after it was discovered that he had written letters to the International Commission of Jurists and the Portuguese Government in which, among other things, he described the unfairness of his trial, asked for a re-trial in an international court, and expressed his wish to consult with lawyers of the Indonesian Legal Aid Institute (LBH). Following strong protests from domestic human rights organizations, the ban on visits by the ICRC and relatives was lifted on 9 February 1994. However, the authorities have continued to prevent Xanana Gusmão from meeting LBH lawyers. When asked to explain this decision, the Director General of Corrections reportedly said: "*What is Xanana's interest to meet lawyers of the LBH? If all people who want to [are allowed to] visit him, his cell will be full*"¹⁸

¹⁴ For examples, see the Amnesty International report *East Timor: State of Fear, Statement before the UN Special Committee on Decolonization* July 1993 (ASA 21/15/93) and an Urgent Action appeal on behalf of 53 students reportedly arrested on 1 and 2 September 1993. (ASA 21/20/93, 6 September 1993).

¹⁵ Moreover, in view of the fact that Indonesia's sovereignty over East Timor is not recognized by the UN, fundamental doubt remains about the competence of Indonesia's courts to try East Timorese for their opposition to the government.

¹⁶ See the Amnesty International document entitled *East Timor: Unfair Political Trial of Xanana Gusmão*, July 1993 (ASA 21/05/93).

¹⁷ These rights are enumerated in a number of international covenants, including the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, approved by the General Assembly in its resolution 43/173 of 9 December 1988.

¹⁸ AP, 10 February 1994.

Among the East Timorese recently sentenced to long prison terms in unfair trials are several who had neither used nor advocated violence. They include a number of young men tried for taking part in the procession to the Santa Cruz cemetery, and others tried for organizing a peaceful demonstration in Jakarta to protest against the massacre one week later. Comments made by the judges and prosecutors in some of these trials indicate that they were punished principally because the Santa Cruz massacre had caused the government international embarrassment. For example, in his verdict in the trial of **Fernando Araujo**, sentenced to nine years for subversion in 1992, the judge said that the defendant was guilty of "*undermining the Indonesian government and disgracing the nation in the eyes of the international community*", because he had sent information about human rights violations to the ICRC and to Amnesty International.¹⁹

Political imprisonment is not unique to East Timor. The New Order government has made a habit of jailing its political opponents in Indonesia as well. Since 1966 several thousands have been jailed following political show-trials. Tens of thousands more have been detained without charge or trial for up to 14 years, and some have "disappeared" in custody.

Today some 400 political prisoners are held in jails throughout Indonesia, many of them prisoners of conscience. In addition to East Timorese, they include university students, farmers, community leaders, human rights workers, trade unionists, advocates of independence for Aceh and Irian Jaya, Islamic activists, and former members of the Communist Party of Indonesia (PKI). They are in prison for "crimes" such as possessing banned novels, criticizing the electoral system, peacefully resisting eviction, disseminating information about human rights violations, holding peaceful flag-raising ceremonies, advocating closer ties among Muslims, criticizing the state ideology (*Pancasila*), belonging to legal political organizations and organizing peaceful demonstrations. At least thirty political prisoners have been in jail for more than a quarter of a century, six of them on death row.²⁰

Within the last three months alone, at least 22 human rights activists and as many as 19 trade unionists have been detained for the peaceful exercise of their internationally-recognized rights to freedom of expression, association and assembly. Most of the trade unionists were released within a few days, but Amnesty International considers all of those still in detention to be prisoners of conscience and has called for their immediate and unconditional release.

¹⁹ For further detail see Amnesty International reports *Indonesia/East Timor: Fernando de Araujo - Prisoner of Conscience*, May 1992 (ASA 21/07/92), and "*In Accordance With the Law*" - Statement before the UN Special Committee on Decolonization, July 1992 (ASA 21/11/92).

²⁰ For further details about political prisoners, see the Amnesty International report *Indonesia/East Timor: A New Order? Human Rights in 1992*, February 1993 (ASA 21/03/93).

One of 22 human rights activists detained in recent months, **Nuku Soleiman**, is currently on trial in Jakarta, on charges of insulting the President (Article 134 of the Criminal Code), a crime punishable by up to six years in prison. He was arrested in front of the national parliament in Jakarta on 25 November 1993, during a peaceful demonstration at which the President was blamed for past and continuing human rights violations. A further 21 young people were arrested in Jakarta on 14 December 1993, during a peaceful demonstration in which they called for Nuku Soleiman's release, and urged parliament to hold a special session to look into the President's responsibility for past human rights abuses. The authorities have said that the 21 are to be charged with publicly expressing feelings of hostility toward the government (Article 154), a crime punishable by up to seven years in prison.

The 19 trade unionists - all of them officials and members of Indonesia's largest independent trade union federation (*Serikat Buruh Sejahtera Indonesia*, SBSI) - were arrested in the days leading up to a national strike, planned for 11 February 1994. They included the SBSI's national chairman, **Mochtar Pakpahan**, a member of the union's national executive council, **Sunarty**, and the chairman of its provincial council for Central Java, **Trisjanto**. Most were reportedly released shortly after the strike date, but two remained in custody as of 14 February 1994. The releases were welcome but, at the same time, tended to confirm suspicion that the original arrests were arbitrary and had been intended mainly to intimidate people from taking part in peaceful trade union activities.²¹

The UNCHR has been right to call for the immediate release of East Timorese prisoners who were not involved in violent activities, and to urge the proper treatment of all East Timorese prisoners in accordance with international human rights and humanitarian law. Amnesty International would strongly urge that the Commission continue to insist that the Government of Indonesia meet these standards. But the Commission's preoccupation with East Timor, and particularly with the Santa Cruz massacre, has obscured the breadth and scope of the phenomenon of political imprisonment in Indonesia. Amnesty International would therefore urge the Commission to extend its expression of concern, and its recommendations, to encompass the problem of political imprisonment throughout Indonesia.

4. Recommendations of the Special Rapporteur on Torture

²¹ For further details, see Amnesty International report, *Indonesia: Labour Activists Detained*, 10 February 1994 (ASA 21/06/94). Four of the trade unionists detained were reportedly released from police custody in Bekasi, West Java, on 11 February, but were still required to report to the authorities twice per week for an indefinite period.

The Commission on Human Rights...Encourages once again the Indonesian authorities to take the necessary steps to implement the recommendations presented by the Special Rapporteur on the question of torture in his report (E/CN.4/1992/17/Add.1) following his visit to Indonesia and East Timor and to keep the Special Rapporteur informed of the progress made towards their implementation (Resolution 1993/97, paragraph 8)

The Special Rapporteur's 1992 report concludes that torture is commonplace in Indonesia and East Timor,²² and offers eleven concrete recommendations for its prevention, including the following: the government should accede to major human rights covenants like the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT); an arrested person's right of access to a lawyer should be rigorously upheld; illegally obtained evidence should not be admissible in court; the sweeping Anti-Subversion Law should be repealed; officials found guilty of committing or condoning torture should be severely punished; jurisdiction over human rights offenses committed by members of the armed forces should be given to the civilian courts; and a national commission on human rights, with independent investigative powers, should be established.

As of January 1994, a full two years after the report was published, the Indonesian Government had begun to implement only one of these recommendations, with the establishment of a National Human Rights Commission. The government's decision to invite the Special Rapporteur to visit Indonesia and East Timor in 1992 was a positive initiative, but its failure to act upon his recommendations inevitably raises questions about the sincerity of the government's stated commitment to upholding international human rights standards. More important, the failure to act has meant that the root causes of torture and ill-treatment, as identified by the Special Rapporteur, have yet to be addressed.²³ As a consequence, the problem of torture remains. In a letter to a friend, dated 14 January 1994, Bishop Carlos Felipe Ximenes Belo of Dili, wrote:

*With this letter I would like to let you know that torture continues in East Timor. On January 4, 1994 in Dili, the military were waiting for a young man named **Salvador Sarmiento**, who is a student at the Pastoral Institute. When he left the classroom they took him, stuck him in a military vehicle and took him to a*

²² Paragraph 73 of the report states: "In view of the information received by him, the Special Rapporteur cannot avoid the conclusion that torture occurs in Indonesia, in particular in cases which are considered to endanger the security of the State. In areas which are deemed to be unstable [Aceh, Irian Jaya, East Timor]...torture is said to be practised rather routinely; it is also allegedly used elsewhere, in particular on persons who are suspected of belonging to groups which threaten the State philosophy..."

²³ The most recent report of the Special Rapporteur on Torture (UN Doc. E/CN.4/1994/31), published in January 1994, indicates that torture and ill-treatment are still endemic in Indonesia and East Timor.

place where he was kicked, beaten, tortured until he was almost dead. Then they forced his parents, who are illiterate, to declare that they had seen their son participate in subversive meetings. With these kind of injustices, they want to force a declaration that Father Sancho Amaral is a priest who is against Indonesia.

Indonesia's National Human Rights Commission was established by Presidential Decree in June 1993 and its full complement of members was decided only in December 1993. It is therefore too early to judge whether it will meet the minimum standards for such bodies spelled out by the UNCHR in March 1992.²⁴ However, available information about its mandate, terms of reference and composition gives rise to concern that it may fall short of those standards.

The mandate of the Commission is limited. Its main functions are to provide advice to the government about human rights issues, to engage in human rights education, and to monitor the human rights situation in the country. While it may look into specific cases of human rights violations, the government has no obligation to accept its recommendations or advice. To date, the Commission appears to have interpreted even this limited mandate rather narrowly. In one of their first official acts, five members of the Commission visited eleven of the 21 young people who had been arrested during a peaceful protest on 14 December 1993. In comments to the press, members of the Commission noted that the youths had been well-treated by police, but they conspicuously failed to comment upon the fact of their arrest and detention.²⁵ Apparently, the Commission did not consider imprisonment for the peaceful expression of political opinions to fall within their mandate. Moreover, as noted earlier, statements by the Chairman and other members of the Commission indicate that it will not be looking into past violations of human rights.

The composition of the Commission has given rise to concern about its independence. The presidentially-appointed Chairman, Ali Said, is a retired military officer who has served as a military court judge, Minister of Justice, and Chief Justice of the Supreme Court. In the aftermath of the 1965 coup he was Chief Justice on the Special Military Court (*Mahmilub*) which convicted former Foreign Minister and Deputy Prime

²⁴ These principles are enumerated in the Annex to UNCHR Resolution 1992/54 on National institutions for the promotion and protection of human rights (adopted by consensus, 3 March 1992). The annex is included as an appendix to an Amnesty International report, *Proposed Standards for National Human Rights Commissions*, January 1993 (IOR 40/01/93).

²⁵ The Commission members visited two women detained at the Jakarta Police Headquarters, and nine men detained at the Central Jakarta Police Precinct. After the visit, one member told the press that the detainees "...were in fine condition. We didn't see any sign that they had been subject to any physical pressures." Cited in *Indonesia News*, Volume 22, Issue 01 (31 January 1993).

Minister, Dr Subandrio, of subversion and sentenced him to death.²⁶ The trials conducted in these Special Military Courts failed utterly to meet international standards of fairness; at least 30 of those convicted by these and other courts, including Dr Subandrio, remain in jail, six of them on death row.

The Secretary General of the 25-member Commission is the current Director General of Corrections in the Ministry of Justice, a fact which raises serious problems of conflicting loyalties. The potential for conflict surfaced just weeks after the Commission was formed, when the government announced that it had suspended visits to Xanana Gusmão by the ICRC and relatives. Despite the fact that the ban infringed UN principles for the protection of persons in detention, the Director General defended the decision saying "*I have to discipline him for disgracing the people and the nation of Indonesia.*"²⁷ On the positive side, some members of the Commission are respected lawyers and legal scholars with no direct connection to the government or the military. It is nevertheless striking that the Commission does not include any of the country's best known human rights activists. According to available reports, prominent human rights activists declined to serve on the Commission because they were not confident that it would be able to function freely and independently.

Additional concern about the Commission's independence arises from its legal status. Because it was established by Presidential Decree, Indonesian legal experts have expressed concern that its survival remains subject to Presidential approval. In their view, both the perception and the reality of independence would be better guaranteed if the Commission were incorporated through an act of the legislature. A related concern is that the Commission is entirely funded by the government's State Secretariat, thus raising questions about its likely impartiality in investigating alleged government wrong-doing.

In view of the above, Amnesty International believes that the UNCHR should once again call upon the Indonesian authorities to implement the recommendations of the UN Special Rapporteur on torture, and urge them to take immediate steps to ensure that the recently created National Commission on Human Rights meets the standards of impartiality and independence enumerated in the UN's own *Principles relating to the status of national institutions for the promotion and protection of human rights*.

5. Access to Human Rights Monitors

²⁶ His sentence was formally commuted to life imprisonment in December 1980.

²⁷ Cited in *Jakarta Post*, 13 January 1994.

The Commission on Human Rights... Welcomes the greater access recently granted by the Indonesian authorities to human rights and humanitarian organizations, and calls upon the Indonesian authorities to expand this access further.
(Resolution 1993/97, paragraph 7)

In the two years since the Santa Cruz massacre the Indonesian Government has frequently stated its commitment to improving access to East Timor by human rights and humanitarian organizations. That commitment was reiterated following a meeting between Indonesian and Portuguese government representatives at the UN headquarters in New York in December 1993, and in a meeting between President Suharto and seven members of the US Congress on 8 January 1994.²⁸ It must be said that there has been progress on this front; East Timor is now more open to outsiders than it has ever been since the invasion of 1975. Nevertheless, in the past year, military authorities have continued to impose unacceptable conditions on the work of the ICRC, to closely monitor visits by foreign delegations and journalists, and to restrict access by international human rights organizations such as Amnesty International. Just as important, the government - and in particular the military - has continued to restrict the activities of domestic human rights activists and journalists, not only in East Timor but throughout Indonesia.

The government record with regard to the ICRC has been mixed in recent years. On the positive side, it has gradually improved the organization's access to political detainees both in East Timor and Indonesia. Whereas in 1989 ICRC representatives were only permitted to visit prisoners still detained in connection with the 1965 coup, by the end of 1993 they had been granted access to most categories of political prisoner, including those from East Timor, Aceh, Irian Jaya, and to Muslim prisoners in Java and Sumatra. However, in the past two years the government, or more precisely the military, has continued to deny access - or to grant it only after some delay - where matters of "national security" are deemed to be at stake. The ICRC was able to conduct confidential prison visits in East Timor only sporadically between March and December 1992. In June 1993 it suspended visits to political prisoners in the territory for the third time in six months because of unacceptable restrictions imposed by the military. These had occurred despite assurances from civilian authorities that ICRC representatives would have unrestricted access to prisoners.²⁹ Since

²⁸ On the December 1993 commitment, see *Secretary-General reiterates intention to assist in solution to East Timor question and to monitor human rights situation there*, United Nations Information Service, 17 September 1993 (SG/SM/5095). Following the meeting with President Suharto in January 1994, one of the Congressman, Richard Gephardt, said the President had assured him that "*there would be no problem with groups or individuals wanting to visit East Timor and see for themselves the real situation there.*" Cited in *Jakarta Post* 11.1.94.

²⁹ Asked whether Indonesia had honoured its promise to permit unrestricted access to prisoners in East Timor, the ICRC President, Mr Cornelio Sommaruga, was reported to have said: "*...we have had difficulties. The process of visiting all people detained because of a particular situation of East Timor has resumed. We have resumed our*

then the organization has apparently been able to work without undue interference in East Timor, but the potential for problems remains as long as military authorities have ultimate authority over political and security issues in East Timor.

A number of government and parliamentary delegations have been granted permission to visit East Timor in the past two years. This is a positive sign. However, as in previous years, such visits continue to be tightly controlled by military authorities, making it difficult for visitors to obtain a clear picture of the human rights situation. Just as important, ordinary East Timorese who speak to foreign delegates are likely to be detained for questioning. Visitors who speak critically about their impressions of East Timor - like the Swedish Parliamentarians who visited in September 1993 - are condemned in official statements by government officials, while the words of those who echo the official position are paraded at international meetings and in the press.

Amnesty International was officially barred from visiting Indonesia for more than 15 years following the 1977 publication of a report on political imprisonment in the country. Relations have improved somewhat in recent years, but the government has continued to characterize Amnesty International as a subversive organization, and to regard its campaigns against human rights violations in Indonesia and East Timor as unwarranted interference in the country's internal affairs. In January 1993 the government permitted an Amnesty International delegate to attend the UN human rights workshop in Jakarta, but imposed restrictions which prevented any serious human rights investigation or dialogue. The delegate was allowed to stay in the country for only five days. Requests for a visa extension were denied, as were requests to hold substantive talks with government officials. The government also refused the delegate permission to travel to East Timor to observe the trial of Xanana Gusmão. More worrying still, Amnesty International's visit was subsequently exploited by the government for political purposes. When improved access by international human rights organizations was under discussion at the 1993 UNCHR, the government falsely claimed that Amnesty International had already been allowed to visit without restriction.

In a more positive development, an Amnesty International representative was able to visit Indonesia for two weeks in July 1993 to conduct research into human rights developments in selected areas of the country. The government was informed of this visit in writing, and a formal request was extended to meet government representatives in order to discuss issues of mutual concern. Unfortunately, the government officials contacted by the Amnesty International representative after arrival in Jakarta were not available.

The preoccupation with access to East Timor by international organizations and delegations has obscured an even more basic problem: continued restrictions on the work

activities but we have not been able to do it regularly and completely as we did want." Cited in *The West Australian*, 15 September 1993.

and freedom of domestic human rights monitors and activists. As noted above, notwithstanding President Suharto's recent call for greater political openness, at least 22 people have been arrested in Jakarta since late November 1993 in connection with their non-violent human rights related activities, and one of them is currently being tried on political charges.

In view of the above, Amnesty International urges the UNCHR to encourage the Government of Indonesia to further improve access to East Timor by human rights organizations, including Amnesty International, and to put an end to the legal and other obstacles that continue to impede the work of international and domestic human rights and humanitarian bodies, both in East Timor and Indonesia.

6. Visits by UN Mechanisms and Representatives

The Commission on Human Rights...Urges the Government of Indonesia to invite the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and to facilitate the discharge of their mandates. (Resolution 1993/97, paragraph 9)

The Commission on Human Rights...Welcomes the agreement given by the Government of Indonesia to the proposal of the Secretary-General for a new visit to Indonesia and East Timor by his Personal Envoy in the coming months, and invites the Secretary-General to consider transmitting the full reports of Mr Wako's previous and next visit to the Commission on Human Rights. (Resolution 1993/97, paragraph 10)

In early 1994, the Indonesian Government invited the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit East Timor later in the year. This was a welcome initiative, but it fell far short of the recommendation made in paragraph 9 of the Commission's 1993 resolution. There was no indication, for example, that any of the other three human rights theme mechanisms had been invited to visit. Nor was it clear whether the Special Rapporteur himself would be able to visit different parts of Indonesia as well as East Timor. In view of the fact that, in recent years, extrajudicial executions and other serious violations have been committed throughout the country - and particularly in Aceh, North Sumatra, West Java, East Java, Madura, Irian Jaya and Jakarta - Amnesty International believes that it is of the utmost importance that the Special Rapporteur, and any other UN theme mechanism that may eventually be invited by the government, visit these areas as well as East Timor.

In the year since the Commission's recommendation was made, these UN monitoring mechanisms have continued to receive reports of human rights violations both in Indonesia and in East Timor. While the government has answered inquiries by these bodies, its responses have not always been satisfactory. In some cases the government has simply issued a blanket denial of reported violations. Responding to a letter from the UN Working Group on Enforced or Involuntary Disappearances, concerning Aceh, the government claimed that *"the allegation of disappearances in Aceh as reported to the Working Group is clearly a fabrication, as there is no such thing as a 'general pattern of disappearances' in Aceh."*³⁰ Following a long-established pattern, the government has also sought to question the integrity and impartiality of those who have submitted the reports to the UN, rather than address the substance of the allegations. In the communication cited above, the government said that it was:

*...displeased that partisan observers have submitted reports to the United Nations on allegations of human rights violations in Indonesia which are one-sided, unsubstantiated and not supported by the facts. Moreover, the allegations are exaggerated and based only on second-hand sources whose reliability is questionable.*³¹

The government has taken a more positive attitude toward the work of other United Nations officials and bodies. The UN Secretary-General's Personal Envoy, Mr Amos Wako, visited East Timor in February 1992 and April 1993. United Nations representatives were permitted to attend at least one session of the trial of Xanana Gusmão and, in January 1994, the government accepted a visit to Jakarta and Dili by a delegation from the UN Secretary-General's office. These moves suggest that the Indonesian Government has taken expressions of UN concern about East Timor to heart, and they should therefore be welcomed.

Yet, for a number of reasons, visits by the personal envoys or staff of the Secretary General do not serve as a satisfactory replacement for the visits by the UN's human rights monitoring mechanisms recommended by the Commission. Because their mandates do not generally encompass human rights fact-finding, and their findings are generally not made public, they do not provide the Commission or the international community with a basis for assessing the human rights situation in the territory. The decision not to release the findings from such visits also means that information about the conditions under which they are conducted cannot be made public. As a result, there is no reliable way to verify allegations

³⁰Report of the Working Group on Enforced or Involuntary Disappearances, 22 December 1993 (UN Doc. E/CN.4/1994/26, para 270).

³¹ Report of the Working Group on Enforced or Involuntary Disappearances, 22 December 1993 (UN Doc. E/CN.4/1994/26, para 268).

made by East Timorese political prisoners that they and their relatives were threatened, detained, and otherwise interfered with, both before and after being visited by Mr Amos Wako in February 1992, and April 1993.³² Nor is there any public account, from the UN side, of reported attempts by the Indonesian military to prevent one of its delegates, as well as a number of diplomats and journalists, from reaching East Timor in time for a session of Xanana Gusmão's trial in May 1993.³³ A more general problem is that such visits do not provide concrete recommendations, based on specific expertise, through which the human rights situation might be improved.

For these reasons, Amnesty International believes that the UNCHR should urge the Government of Indonesia to invite all four of the UN theme mechanisms to visit both Indonesia and East Timor in the near future, and to facilitate the discharge of their mandates. It also recommends that the Commission continue to seek a full report, at its next session, by the UN Secretary General, regarding the results of the two visits to East Timor by his Personal Envoy, Mr Amos Wako.

Conclusions and Recommendations

Indonesia became a member of the UN Commission on Human Rights in 1991. As such, it bears a special responsibility to implement the recommendations enumerated in that body's statements and resolutions. Yet, with some minor exceptions, it has not done so. Indeed, it has indicated that it does not feel bound to abide by the provisions of that resolution.³⁴ If the Government of Indonesia trusts the role of UN bodies - and particularly the UNCHR of which it is a member - to discharge its mandate in promoting and protecting human rights, then it should comply and cooperate fully with the suggestions and recommendations of that body. To do so selectively raises questions about the sincerity of the government's commitment to these principles and institutions. The government has also failed to become a party to the most important international human rights conventions, such as the International Covenant on Civil and Political Rights or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³² A declassified US Department of State document, dated 21 February 1992, reportedly said that more than 100 young East Timorese had been rounded up shortly before Amos Wako's visit, sent for political guidance courses outside of Dili, and then released after he had departed. *Reuter*, 6.9.93.

³³ *AFP*, 12 May 1993.

³⁴ See the Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (UN Doc. E/CN.4/1994/7, para 356).

The principal responsibility for improving the human rights situation in Indonesia and East Timor rests with the Indonesian Government. But member states of the UN also have a role to play. By encouraging Indonesia to allow international monitoring of the human rights situation, and by insisting that the government abide by international human rights standards, the international community has recently begun to have an impact, albeit limited, on Indonesian Government policy and practice. That success, however modest, is one of the strongest arguments for the reiteration of international concern through the UNCHR and other bodies. It also points to the need for broadening the focus of UN concern beyond East Timor to Indonesia. With these considerations in mind, Amnesty International offers the following recommendations to UN member states and, in particular, to members of the UN Commission on Human Rights.

Recommendations to Members of the UN Commission on Human Rights

1. Urge the Indonesian authorities to account fully for the dead and "disappeared" from the Santa Cruz massacre and its aftermath; and to establish durable mechanisms to ensure that the victims of other serious human rights violations, in East Timor and Indonesia, have an effective avenue through which to seek redress and compensation.
2. Reiterate concern at the government's failure to bring to justice all those ultimately responsible for the Santa Cruz massacre, and at the disparity in sentencing between members of the security forces and their civilian victims; and call upon the Indonesian authorities to ensure that all those believed to be responsible for human rights violations, whether in Indonesia or East Timor, are tried by a civilian court and punished in accordance with the severity of their crime.
3. Reiterate concern about the unfair trial and imprisonment of the government's political opponents in East Timor, and call for the immediate and unconditional release of all prisoners of conscience throughout Indonesia and East Timor.
4. Call upon the Indonesian authorities to implement the recommendations of the UN Special Rapporteur on torture; and urge them to take immediate steps to ensure that the recently created National Commission on Human Rights meets the standards of impartiality and independence enumerated in the UN's *Principles relating to the status of national institutions for the promotion and protection of human rights*.
5. Encourage the Government of Indonesia to further improve access to East Timor by human rights organizations, including Amnesty International, and to put an end to the legal and other obstacles that continue to impede the work of international and domestic human rights and humanitarian bodies, both in East Timor and Indonesia.
6. Welcome the Government's decision to invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit East Timor in 1994, and suggest that it also extend invitations to the UN Special Rapporteur on torture, the Working Group on Arbitrary Detention, and the Working Group on Enforced or Involuntary Disappearances; also urge the government to invite all four UN monitoring mechanisms not only to East Timor but also to Indonesia, and to facilitate the discharge of their mandates.
7. Seek a full report to the UN Commission on Human Rights at its next session, by the UN Secretary-General, regarding the results of the two visits to East Timor by his Personal Envoy, Mr Amos Wako.
8. Encourage the Government of Indonesia to become a party to key international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and its (first) Optional Protocol.

Appendix I: Consensus Statement of the UN Commission on Human Rights, Made by the Chairman, Concerning East Timor, Geneva, 4 March 1992

I have been asked to make the following statement announcing what has been agreed by consensus by the Commission on the situation of human rights in East Timor:

1. The Commission on Human Rights notes with serious concern the human rights situation in East Timor, and strongly deplores the violent incident in Dili, on 12 November 1991, which resulted in the loss of lives and injuries of a large number of civilians and in many unaccounted for.
2. The Commission welcomes the early action of the Indonesian Government in setting up a national commission of inquiry and the prompt response which its advance report elicited from the highest Indonesian authorities; expresses its hope that, as announced by the Indonesian Government, further investigation into the action of the security personnel on November 12, 1991, and into the fate of those unaccounted for, will clarify the remaining discrepancies, namely on the number of people killed and those missing.
3. The commission is encouraged by the recent announcement by the Indonesian authorities of disciplinary measures and military court proceedings regarding some members of its Armed Forces and urges the Indonesian Government to bring to trial and punish all those found responsible. Furthermore, the Commission calls upon the Indonesian authorities to ensure that all civilians arrested on the occasion are treated humanely, that those brought to trial are assured of proper legal representation and fair trial and that those not involved in violent activities are released without delay.
4. The Commission welcomes the appointment of Mr Amos Wako, as Personal Envoy of the Secretary General of the United Nations, to obtain clarification on the tragic events of November 12, 1991 and the willingness of the Indonesian authorities to cooperate fully with him. The Commission encourages the Secretary General to continue his good offices for achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor.
5. The Commission urges the Government of Indonesian to improve the human rights situation in East Timor: commends the report entitled "Visit by the Special Rapporteur to Indonesia and East Timor" of its Special Rapporteur on Torture following his visit at the invitation of the Indonesian Government; urges the Indonesian authorities to take the necessary steps to implement its recommendations and looks forward to a report thereon; calls on the Indonesian government to facilitate access to East Timor for additional humanitarian organizations and for human rights organizations; and requests the Secretary General to continue to follow closely the human rights situation in East Timor and to keep the Commission informed at its 49th session.
6. This statement will be included verbatim in the report of the 48th session of the Commission.

Appendix II: Resolution 1993/97 concerning East Timor 49th Session of the UN Commission on Human Rights Geneva, February 1993

The Commission on Human Rights,

Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and the universally accepted rules of international law,

Bearing in mind the statement on the situation of human rights in East Timor agreed by consensus by the Commission on Human Rights at its forty-eighth session (see E/CN.4/1992/84, para 457) following the violent incident of 12 November 1991 in Dili,

Recalling resolution 1992/20 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Gravely concerned at continuing allegations of serious human rights violations and noting with concern in this context the reports of the Special Rapporteur on the question of torture (E/CN.4/1993/26), of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1993/46) and of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25),

Bearing in mind the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment approved by the General Assembly in its resolution 43/173 of 9 December 1988 and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Taking note of the information the Government of Indonesia has provided the Commission on actions it has taken during the past year,

Welcoming the recent access to East Timor to human rights organizations as well as to some other relevant international observers, but remaining disappointed that such access is still frequently denied,

Having examined the report of the Secretary-General on the situation in East Timor (E/CN.4/1993/49),

1. Expresses its deep concern at reports of continuing human rights violations in East Timor;
2. Recalls that the Commission has commended the decision of the Government of Indonesia to set up an inquiry commission but regrets that the Indonesian investigation into the actions of the members of its security personnel on 12 November 1991, from which resulted loss life, injuries and disappearances, failed to clearly identify all those responsible for these actions;
3. Expresses its concern at the lack of information about the number of people killed on 12 November 1991 and at the persons still unaccounted for and urges the Government of Indonesia to account fully for those still missing since 12 November 1991;
4. Regrets the disparity in the severity of sentences imposed on those civilians not indicted for violent activities - who should have been released without delay - on the one hand, and to the military involved in the violent incident, on the other;

5. Calls upon the Government of Indonesia to honour fully its commitments undertaken in the statement on the situation of human rights in East Timor, agreed by consensus by the Commission on Human Rights at its forty-eighth session;
6. Also calls upon the Government of Indonesia to ensure that all the East Timorese in custody, including main public figures, be treated humanely and with their rights fully respected, that all trials be fair, just, public and recognize the right to proper legal representation, in accordance with international humanitarian law, and that those not involved in violent activities be released with delay;
7. Welcomes the greater access recently granted by the Indonesian authorities to human rights and humanitarian organizations, and calls upon the Indonesian authorities to expand this access further;
8. Encourages once again the Indonesian authorities to take the necessary steps to implement the recommendations presented by the Special Rapporteur on the question of torture in his report (E/CN.4/1992/17/Add.1) following his visit to Indonesia and East Timor and keep the Special Rapporteur informed of the progress made towards their implementation;
9. Urges the Government of Indonesia to invite the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and to facilitate the discharge of their mandates;
10. Welcomes the agreement given by the Government of Indonesia to the proposal of the Secretary-General for a new visit to Indonesia and East Timor by his Personal Envoy in the coming months, and invites the Secretary-General to consider transmitting the full reports of Mr Wako's previous and next visit to the Commission on Human Rights;
11. Also welcomes the resumption of talks on the question of East Timor and encourages the Secretary-General to continue his good offices for achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor;
12. Decides to consider the situation in East Timor at its fiftieth session on the basis of the reports of the Special Rapporteurs and Working Groups and that of the Secretary-General, which would include an analytical compilation of all information received from, inter alia, Governments, intergovernmental and non-governmental organizations.

68th meeting
11th March 1993

[Adopted by roll-call vote of 22 to 12,
with 15 abstentions. See Chap. XII.]

Appendix III: Recommendations from the Report of the UN Special Rapporteur on the Question of Torture, Following his Visit to Indonesia and East Timor

80. In the light of these considerations the Special Rapporteur wishes to make a number of recommendations:

- (a) Accession by Indonesia to the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and ratification of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are highly desirable;
- (b) A greater awareness should be created within the judiciary of the vital role it can play in the enforcement of respect for human rights in general and for the right to physical and mental integrity in particular. The independence of the judiciary should be scrupulously respected;
- (c) The responsibility of the independent Attorney-General's office and of the judiciary for the supervision of the legality of arrests and the regularity of criminal investigating procedures should be extended;
- (d) An arrested person's right of access to a lawyer, which is guaranteed by law, should be strictly respected;
- (e) All evidence which is obtained in a way which is not in conformity with the law should be dismissed in court;
- (f) In view of the lack of clarity as to whether basic human rights are required to be respected under the Anti-Subversion Law and in view of the fact that crimes against the security of the State and against public order are already punishable under the present Criminal Code (and will also be so under the new Criminal Code which is in the process of being drafted), the Anti-Subversion Law should be repealed;
- (g) A national commission on human rights should be established (on the proposal of the Interdepartmental Committee on Human Rights, see para. 13 above). The primary task of such a commission should be to educate authorities and officials in the field of human rights;
- (h) An authority or agency should be established where victims of human rights violations (e.g. torture) can file their complaints. Such an agency should have independent investigative powers. Local offices of a national commission on human rights could function as such an agency;
- (i) A system of regular visits to all places of detention, including police stations, by an independent authority should be established. Local offices of a national commission on human rights could be entrusted with this task;
- (j) Officials who have been found guilty of committing or condoning torture or other cruel, inhuman or degrading treatment should be severely punished;
- (k) Jurisdiction over offenses committed by members of the armed forces, including the police, should be given to the civilian courts.