

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade

Human Rights Mechanisms and the Asia-Pacific

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AETFA has for 34 years promoted human rights in our region, particularly in relation to East Timor and Indonesia. Indonesia's invasion and occupation of East Timor, 1975-1999, has generated a wide range of enquiries and court cases – most focussing on 1999, the year of the independence referendum. The findings of these enquiries reveal more about human rights mechanisms in the region than do any other source. This submission briefly considers each enquiry and draws conclusions from what they reveal.

1. Indonesia's National Commission on Human Rights (Komnas HAM)

In September 1999, Komnas HAM set up a team to investigate the period January-September 1999, the period up to and including the referendum. It found evidence of crimes of universal jurisdiction: systematic and mass murder, extensive destruction, enslavement, forced deportations and other acts against civilians. It called on the government to form a Human Rights Court to prosecute crimes against humanity committed before and during 1999.

2. International Commission of Enquiry

Appointed by the UN High Commissioner for Human Rights in October 1999. It found gross violations of human rights and recommended an International Tribunal to try perpetrators.

3. UN Special Rapporteurs

Visited East Timor in November 1999. They examined extrajudicial executions, torture and violence against women. They recommended forming an International Tribunal with jurisdiction back to 1975 – preferably with the consent of the Indonesian Government, but without such consent if necessary.

4. Ad Hoc Human Rights Court

Set up by the Indonesian Government. 18 defendants were tried for failing to prevent crimes against humanity, rather than for committing crimes. Witnesses were intimidated, even by the prosecution. Soldiers carried weapons, shouted, jeered and threatened in court. Judges lives were threatened inside and outside the court. A UN Commission of Experts said

the proceedings were manifestly inadequate and failed to deliver justice. 12 of the 18 accused were acquitted; all of the others have since had their convictions overturned.

5. Serious Crimes Unit

Set up in East Timor in October 1999 by the UN Security Council. Its attempts in 2004 to issue arrest warrants for Indonesian military commanders were blocked by East Timor's Government – to avoid harm to its relations with its powerful neighbour (apart from any other consideration, Indonesia largely controls East Timor's economy, especially its food imports). The Government says the UN should bear responsibility for prosecuting war criminals.

6. Commission for Reception, Truth and Reconciliation (CAVR)

Set up by the UN in 2001. It used scientifically verifiable methods to calculate the number killed from 1975 to 1999: it concluded the number killed was between 103,000 and 183,000. It found widespread evidence of crimes against humanity (widespread attack on a civilian population), and that these attacks were directed by government policy. The crimes committed were: sexual violence, torture, enslavement, deportation or forcible transfer, arbitrary imprisonment, murder and extermination. All crimes against humanity are a concern of the international community. The enforced disappearance of Timorese civilians by arrest or abduction is an ongoing crime against humanity because the authorities continue to conceal the disappeared persons. Their relatives lack any information about their fate many years after their disappearance.

CAVR recommended that Indonesia bring the perpetrators to justice, and cooperate with the justice process in East Timor.

CAVR recommended that the international community ensure perpetrators do not enjoy impunity – and set up an International Tribunal if necessary.

7. Commission on Truth and Friendship (CTF)

Set up in 2005 by the governments of Indonesia and East Timor. Indonesia wanted to get the international community off its back and avoid an International Tribunal – with a process which could recommend amnesties but not prosecutions. East Timor just wanted good relations at any price – a very short-sighted approach. CTF found widespread violations of human rights. It refused to grant any amnesties, but was unable to recommend any prosecutions. For the first time, the Indonesian Government was obliged to openly admit systematic violations of human rights and its own institutional responsibility.

International Law

The Statute of the International Criminal Court states: “the most serious crimes of concern to the international community as a whole must not go unpunished.” And “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” The East Timorese Government should not be left to confront the Indonesian military on its own. By requiring prosecutions, international law can give the government the support of the international community

Military impunity and Indonesia's democracy

Prosecuting offenders is the best guarantee against future crimes against humanity. Military officers who committed crimes against humanity in East Timor have since gone on to commit further atrocities elsewhere in Indonesia. Many were promoted and posted to other conflict zones like West Papua, eg General Simbolon, promoted to Major General in command in West Papua, and Police Chief Silaen, given police command in West Papua.

Military impunity undermines the legitimacy of elected government and civil institutions. Prosecutions would show that nobody is above the law – that's what Indonesia's civil society groups have been demanding. A major threat to Indonesia's democracy is the candidacy of several notorious former officers with appalling human rights records in this year's presidential election: Generals Wiranto, Prabowo and Sutyoso. All of them should be in jail rather than standing for president. Wiranto was indicted by the Serious Crimes Unit for crimes against humanity. Prabowo led the 1983 Kraras massacre, the worst massacre during the occupation. Sutyoso was identified as being at the killing of the Australian journalists at Balibo.

Military impunity and East Timor's future

By 1999, almost every family had suffered at least one death at the hands of the military. When communal violence erupted in Dili in 2006, hundreds of thousands fled their homes and sheltered in refugee camps. Most remained in the camps for 2 years, too fearful to return home. Psychiatrists report that trauma is widespread throughout East Timor. The law (domestic and international) has been seen to fail. In this situation there is no easy way to "teach" respect for the rule of law and other civil institutions – if all men are equal but some are clearly seen to be much more equal than others! The government's policy of forgive and forget does nothing for a traumatised population.

Military impunity and the Lombok Treaty

In its December 2000 report "East Timor", the Senate Foreign Affairs, Defence and Trade References Committee, on the subject of "Australian defence cooperation with Indonesia" paragraph 8.51 said:

"The Committee believes that there are at least 2 criteria, apart from the general state of the relationship between Australia and Indonesia, which should be met **before any additional defence cooperation** measures are undertaken."

Paragraph 8.53 says:

"The second criterion is clear evidence that the TNI is **dismantling the territorial command structure throughout Indonesia** and that it is becoming a professional defence force rather than mainly an internal security force. It has been the territorial command structure that has **given TNI the power to meddle in domestic matters** both nationally and right down to village levels, **and given rise to gross human rights abuses** perpetrated in East Timor and elsewhere in Indonesia. As Indonesia now has a democratic system, albeit in a fragile state, **it would be anathema for Australia to support the TNI or any other element in Indonesia not working to strengthen democracy.**"

Despite Indonesia's military (TNI) **strengthening** its territorial command structure, the Howard Government signed the Lombok Treaty on security cooperation with Indonesia in November 2006. When the public enquiry prior to ratification raised serious problems and widespread opposition, Foreign Minister Downer issued a National Interest Exemption to enable ratification without completing the enquiry - presumably to avoid an embarrassing

report and difficult questions in Parliament. The Howard Government had introduced this system whereby a treaty could not be ratified until it was investigated, severely criticising the Keating Government for secretly negotiating a treaty with Indonesia in 1995. Now the Howard Government had done virtually the same thing eleven years later. An expert called the aborted enquiry an “elaborate charade that wasted public money and time”, and that “the Government showed contempt for public opinion” (Clinton Fernandes, “The Age”, 14/6/07).

The US Congress showed that it agreed with Australia’s Senate Committee’s 2000 report. In its Appropriations Bill in November 2005, it legislated conditions and benchmarks for reform of the TNI, making military assistance conditional upon reform. Two days after Congress passed the Bill, the Bush Administration issued a State Department Memo “Waiving Congressional Conditions on Military Assistance to Indonesia”.

“We will teach them human rights.” That’s what both the Keating and Howard governments said throughout the 1990s. Eight years of extensive Australian training ended in the **1999 bloodbath in East Timor**; a so-called “special relationship” between our armies amounted to nothing. Our Defence Minister Moore made repeated ‘phone calls to their Minister; he just never answered the calls. Foreign Minister Downer made repeated “representations” (60 or 70, he said). All were ignored.

The American experience has been the same. Their training produced no results at all. In fact, TNI’s human rights abuses actually got worse while there was military cooperation. TNI’s corruption and criminality will not be eliminated until the structural causes are eliminated. Unconditional military assistance like the Lombok Treaty only supports Indonesian military impunity. When critics of the Treaty tried to get conditions included, like media and human rights access to West Papua, Foreign Affairs (DFAT) asserted it would not change a word of the Treaty. Shortly afterwards, Foreign Minister Downer introduced the National Interest Exemption into Parliament. **The Lombok Treaty is military assistance without conditions, and as such it supports Indonesian military impunity.**

DFAT: Don’t Fuss About That

DFAT continues to ignore the comments of experts and the recommendations of committees. In June 2007, the Joint Standing Committee on Treaties recommended that “the Australian Government continue to address widely expressed concerns about human rights in Indonesia with the Indonesian Government and in appropriate international fora.” DFAT’s reply: “The Australian Government continues to register with the Indonesian Government at the highest levels the importance of upholding its commitment to an open, tolerant and pluralist society.” The cosy bilateral chats behind closed doors continue while the appropriate international fora are ignored – and the Committee’s recommendation is ignored. This will only lead to the need to reform TNI being ignored.

Conclusion

Our conclusions are drawn mainly from the conclusions of the Commission for Reception (CAVR) report **“Chega!”**

The **United Nations** should remain committed to justice for crimes against humanity in East Timor. If other measures fail, it should set up an International Tribunal (**“Chega!”** Recommendation 7.2)

The Joint Standing Committee should recommend to the Government that **Australia:**

1. Should apologize to East Timor's people for failing to uphold rights and freedoms while it had a military cooperation program with Indonesia ("Chega!")
Recommendation 1.6)
2. Should refuse a visa to any TNI officer suspected of human rights violations, and freeze their bank accounts until their innocence is credibly established ("Chega!")
Recommendation 1.9)
3. Should make military cooperation conditional on progress towards democratisation, subordinating TNI to the rule of law and civilian government, and adhering to international human rights, including the right to self-determination ("Chega!")
Recommendation 1.10)
4. Should undertake a joint initiative with the governments of Britain and New Zealand to find the truth about the deaths of the 6 foreign journalists in East Timor in 1975 ("Chega!")
Recommendation 1.11)
5. Should above all scrap the Lombok Treaty in its present form and act in accordance with Recommendation 1.10 (above).

Submission to the
Enquiry

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